

Changes and Benefits of the '99 Professional & Pollution Incident Policy Vs. the '95 Professional & Contractors' Pollution Incident Liability Policy

The following illustrates the changes in the 99 policy form

CHANGE	WHY	BENEFIT
Pollution related changes:		
Simplified the description of the coverage to "pollution incident"	The word "contractor" in the title caused concern and confusion over who the coverage was intended for.	This eliminates the confusion that a firm was being treated as a "contractor" instead of an engineering firm.
World wide coverage for wrongful acts and pollution incidents	More and more firms are involved in projects outside of the United States	Gives our Insureds confidence that their liability coverage follows them wherever they chose to do business
Removed all dates from the Pollution exclusion	Restricting pollution coverage prior to October 1, 1986 is no longer necessary	Eliminates confusion on which prior acts date would take effect in the event of a claim.
Exclusion for pollution incident at/from owned property	Policy not intended to cover pollution at owned/rented locations	Shorten exclusion is easier to understand.
Added pollution incident exclusion for Automobiles	Coverage should be provided under an Auto Liability policy	Coverage is provided for mobile equipment, some non-owned watercraft and auto loading and unloading operations

Part I. Coverage Agreements:

Removed the "hammer clause" from consent to settle	Strength of CNA claims staff in claim handling without need for threats.	Agreement on all settlements with the Insured
Punitive Damages are added as a standard coverage where allowable by law.	Provides protection for unanticipated and unpredictable large claims	Over 40 jurisdictions allow punitive damages as an insurable exposure. Diminishes the fear of large and uncontrollable punitive damage awards.

Part II. Supplementary Payments:

Added new section	Puts additional benefits prominently in one place.	These are not subject to a deductible and are in addition to policy limits
Free pre-claims assistance.	Defines it in the policy for the first time. Encourages insured to obtain assistance early.	Covers all costs that we incur to investigate and mitigate circumstances unless/until they become claims. Deductible obligation does not apply to circumstances.
Defendants reimbursement	Increases benefit to insureds in reimbursing for indirect cost such as: non-billable hours while participating in legal proceedings.	Increases payments to \$300 per day/ \$7,500 total.
Added coverage for ADA, FHA, OSHA defenses.	Administrative actions under these federal regulations are increasing.	Provides defense cost coverage up to \$25,000 for contesting fines levied by ADA, FHA or OSHA.

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Part III. Definitions:

Bodily Injury	Defines scope of pollution incident coverage.	Provides broad coverage for BI.
Claim Expenses	Defines our position that premiums for bonds are covered.	Adds coverage for premium bonds posted in connection with an appeal.
Extended Reporting	Defines instead of describing it.	Eliminates confusion on the available lengths and cost of an ERP
Newly Acquired Subsidiary	Mergers and acquisitions are increasing. Defines newly acquired subsidiary.	Provides firms free 90 days coverage with time to analyze options for newly acquired entities. Ease of doing business.
Nuclear Facility The word "stored" is deleted from the definition.	"Stored" created ambiguity on whether or not facilities such as hospitals, which contain low levels of stored nuclear materials, are covered. The intent has always been to exclude facilities such as reactors or disposal sites that contain high levels of radiation.	Provides coverage for claims from hospitals, laboratories, and other facilities that may contain radioactive materials. Gives leeway to work in fields of advancing technology that may include nuclear materials.
Policy Term Refers to the Policy Year .	Facilitates the use of multi-year policies.	Reduces amendatory endorsements.
Policy Year Added due to the commonality of multi-year policies.	Gives us flexibility in offering multi-year policy terms with annual limits/ retention without having to use amendatory endorsements.	Ease of doing business by using one form regardless of term.
Professional Services Expanded definition of professional services now includes scientists and technical consultants	More and more firms are diversifying their scope of services to answer the needs of their customers	Acknowledges the need to provide coverage for non-licensed scientific and technical consulting services.
Property Damage Extended Definition	Added to define broad scope for Pollution Incident coverage. Pollution incident coverage provides BI/PD coverage and is limited to BI/PD.	Clarifies the pollution incident coverage to include; physical injury to tangible property, clean up costs, loss of use and damage to soil, surface water, groundwater, and plant/animal life.
Wrongful Act Definition modified and replaces a prior exclusion.	The word "negligent" predicates coverage on a tort cause of action thereby inhibiting international practice. A Wrongful Act cannot arise from a dishonest, fraudulent, malicious, or criminal conduct. Replaces prior exclusion (Exclusion A).	In international jurisdictions where the standard of care is established by contract, not tort laws, the new wording, together with section IV. Exclusions, Item B facilitates ability to practice internationally.
You or Your broadened to	Coverage now includes heirs,	Expands our coverage to protect

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include spouses and newly acquired entities.	assigns spouses and newly acquired subsidiaries.	spouses. Automatic coverage for newly formed or acquired entities.
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Part IV. Exclusions:

Liquidated damages exclusion (Exclusion B) reduced in scope.	A liquidated damage provision can be used to effectively limit an insured's liability. Provides coverage for liquidated damages to the extent that liability would apply in the absence of a liquidated damage provision.	Supports an insured's risk mitigation efforts by allowing reasonable liquidated damages provisions.
Contractual liability exclusion amended.	With the exception of consequential or liquidated damages, new language exempts exclusion from applying in international jurisdictions where liability is predicated on contract.	In international jurisdiction where the insured's liability to the owner is established solely by contract, not common laws, the new wording facilitates the insureds' pursuit of international project opportunities.
Faulty workmanship Changed "Performed by you " to " you perform".	No change in coverage intent. (grammatical change only)	Continues to provide coverage for faulty workmanship not provided by you, but for which you are responsible.
Products Design is no longer part of the exclusion.	Increased concern over what constitutes a product e.g. software design, control systems, etc.	New exclusion only pertains to the sale and distribution of products. Clients no longer need to worry about whether design is product related.
Related Entities/Equity Interest Exclusion Exception to exclusion is now 49%, increased from 15%.	Increasingly, design professionals are taking equity positions in projects.	Clients can now assume up to 49% ownership interest in a project without uninsured exposure.
Modified pollution incident exclusion for automobiles.	Coverage should be provided under Auto Liability Policy.	Coverage provided for mobile equipment, some non-owned watercraft and non-owned auto loading and unloading operations.

Part V. Limits of Liability/Deductible:

Broadened to allow for the use of multi-year policy terms .	More insureds are requesting multi-year terms.	Illustrates that the limits of liability apply separately each policy year and are not cumulative.
Differentiates between Item 6a. and 6b. on the Declarations.	Split limits are now shown on the Declarations rather than shown on an attached endorsement.	Clarifies the policy limits and simplifies the policy.
Mediation credit Increased from \$15,000 to \$25,000.	To encourage early resolution of claims .	A 66.7% improvement in the maximum dollar amount.

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Part VI. Conditions:

Rights & Duties	Changes first named entity to first named insured .	Emphasizes that the first named insured has authority for all.
Duties in event of circumstance	Reinforces that circumstance reporting is at the discretion of the insured.	Allows the insured to manage their risk.
Legal Action Limitation Alternative dispute resolution added.	This language gives structure to a more efficient and cost effective process and thus establishes ground rules to achieve closure.	Avoids a deterioration of the carrier-insured relationship should conflicts arise.
Transfers of Interest	Since executors and heirs now part of "you" – deleted last sentence.	Transfer of interest.
Other Insurance Specifically includes project insurance.	States that this policy is excess, if there is other insurance.	Provides differences in conditions and excess coverage to our insureds. Deleted Project Insurance exclusion.
Extended Reporting Period	As the frequency of mergers and acquisitions increases, clients are looking for optional solutions for covering prior exposures. Sets forth availability and pricing of coverage in the insuring agreement.	Provides cost to purchase up to 5 years of extended reporting coverage. 60 days automatic coverage is provided for no additional premium.