



Hidden in Plain English: A Comparison Guide to E & O Policy Language

By Fredric W. Schultz, CPCU, ARM

The AIA Trust commissioned Fredric W. Schultz, CPCU, ARM and Chairman and Principal Consultant of Insurance Buyers Council (IBC) to develop a detailed annotated version of the new CNA Professional Liability policy which became effective in 2015, comparing the new CNA policy with five other insurance carriers: Beazley, RLI, Travelers, Berkley and ACE. The overall goal was to provide guidance to AIA members about coverage differences between various insurer forms and about what one should look for when purchasing professional liability insurance policy. This was accomplished with the following two objectives in mind:

1. Identify CNA form changes from the 10/2005 edition; and
2. Compare key coverage terms and conditions between insurers' forms.

The forms used for comparison with the CNA form were as follows:

1. Beazley - F00120 (08/09)
2. RLI -RDP 101 (01/09)
3. ACE-PF-14373 (07/03)
4. Travelers– DPL-1001 (11/08)
5. Berkley - BDP-0713001

The major difficulty in comparing coverage between different insurance carriers is that there is no standard form as a basis for insurers to start with when composing their policies. Policies are all very different while proclaiming they provide the same protection. For example, some insurers put more coverage extensions into the professional liability policy whereas others may provide the same protection using two or more separate policies. The problem with adding more protection into one policy is that the single policy may have only one aggregate limit applying to all coverages, essentially reducing the limits an architect might have available with separate policies.

One consistent provision on all the policies that were reviewed is that the insurance is written on a “claims made and reported” basis. This means that the claim must be made against the insured and reported to the insurer generally within the policy term. In some of the policies, the reporting requirement is extended to 60 or even 120 days. Communication with the insurer is critical in preserving the insured’s rights under the terms of the policy.

The policies differ in many aspects including the actual insurance agreements. The new CNA form has two insurance agreements, one for Professional Liability and the second for Pollution Incident Liability. They have also added a new “supplemental insurance agreement” for “rectification expense.” The other insurer forms compared also include a Professional Liability insuring agreement and some have also added several other insuring agreements for technology-based services, technology products, computer network security, privacy liability, cyber liability, etc. The new CNA form is not as broad as many of its competitors in providing coverage for “Cyber Liability” or “Technology Based Services”; however, CNA does offer

Cyber Liability via a separate policy or by endorsement.

A new coverage in the CNA form is known as “rectification expense.” This involves an architect recognizing that there may be a design defect which can be corrected or otherwise can be rectified prior to completion of the project. The architect must provide CNA with details of the action which can rectify the problem and the amount of expense involved. If the design defect can be corrected and CNA consents, then CNA will reimburse the architect up to the “rectification expense” limit provided by the policy. This is an unusual coverage for a Professional Liability policy in that it provides for the payment of the potential claim before a claim has actually been made.

Pre-claims assistance is another unusual feature of CNA’s and the other policy forms reviewed for this analysis. The insurers will pay for all costs or expenses to its insured at the insurer’s sole discretion in investigating a circumstance that might lead to a claim.

One of the new elements in the CNA policy is the addition of a “Knowledge Date”. It is similar to a retroactive date which is still in use by the other professional liability insurers. The new CNA form covers a wrongful act provided that “on the knowledge date” none of the insured’s officers, directors, principals, partners or insurance managers knew of any act, error, omission or event that could reasonably be expected to become the basis of a claim. **Similar to a retroactive date, it is important that this date not be moved forward each year at renewal.** The date used should be the same date the Professional Liability Policy was first purchased from CNA.

The definition of covered “Professional Services” is a critical item in a professional liability policy. CNA's definition in the new form adds “Interior Designer”, “LEED Green Building Program Consultant” and “Technology Consultant”. Some of the terms used by other carriers include space planner, expert witness, project manager, construction or project consultant and environmental consultant. **It is critical that the architect review the definition of “professional services” closely to make certain all of the firm functions are contemplated in the definition.**

The CNA form provides for certain credits on deductibles known as the Risk Mitigation Credit, and Early Resolution Credit. If the insured architect complies with certain risk management protocols as described in the policy, a deductible can be reduced by 50% up to \$25,000. Similarly, if a claim can be resolved within 180 days from the time it was reported to the insurer, the deductible can be reduced by 50% up to \$10,000 under the Early Resolution Credit. This Risk Mitigation Credit is exclusive to CNA but the Early Resolution Credit in some form is available from the other insurers whose policies were reviewed.

Regarding specific CNA form changes in the 2015 version, the following notable changes were identified:

I. Coverage

- Expanded the Pollution Incident Liability coverage to include the following:
 - liability that the Insured assumes from an insured client;
 - a covered location; or
 - a non-owned disposal site;
- Added new insuring agreement for rectification expenses.

II. Supplementary Payments

- Added crisis event expenses. This reimburses the Named Insured up to 50% of \$30,000 per crisis event, subject to a maximum reimbursement by the Insurer of \$50,000 per policy year for all crisis events.
- Increased the defendant reimbursement to \$500 a day per person, subject to a maximum of \$15,000 per claim (was \$300; \$7,500 max).
- Increased the ADA, FHA and OSHA reimbursement from \$25,000 to \$35,000.
- Added disciplinary proceedings. This reimburses the Insured up to \$25,000 in the aggregate per policy year.
- Added Dodd-Frank fees and expenses. This reimburses the Insured for legal fees and expenses up to \$50,000 per policy year.

III. Definitions – several new terms were added and amendments to existing terms were made. For example:

- Knowledge date is now a defined term.
- Insured is now a defined term.
- Professional services now includes interior designer and LEED green building program consultant.

IV. Exclusions

- Unlawful Discrimination was added as an exclusion.

V. Limits of Liability/Deductible

- Added Early Resolution Credit which reduces the deductible by 50%, up to \$10,000 for resolution reached from negotiation or mediation within a specified timeframe.

VI. Conditions

- Participating Provision removed
- Extended reporting period provisions – Added: Death or disability ERP (VI. N. 3) and Non-practicing ERP (VI. N. 4)

From the comparison of the CNA form and the competitive forms listed above, the following guidelines to avoid ‘potential pitfalls’ are noted as follows:

1. Compare insuring agreements. Several forms provided insuring agreements beyond Professional Liability and Pollution Incident Liability. One of the broadest forms was Beazley which provides coverage for Technology Based Services, Technology Products, Computer Network Security, Multimedia and Advertising and Privacy Liability.
2. Identify what is included in ‘professional services’. Some forms may be broader. For instance, Beazley F00120 (08/09) also includes project manager, forensic consultant and construction or project consultant.
3. Seek the broadest definition of Wrongful Act. The RLI -RDP 101 (01/09) ties to negligence whereas the CNA form does not.
4. Seek defense coverage for alleged fraudulent, dishonest or criminal acts until adverse adjudication. The CNA form does not include this provision. However, we found this in the RLI, Beazley and ACE forms.

5. Understand the reporting requirements in the event of a circumstance or actual claim.
6. Identify how prior acts coverage applies. Although the CNA form does not have a retroactive date like many of the other forms, there is a knowledge date. Be mindful if this is an advancing knowledge date where at each policy renewal, the date is amended.
7. Look for a 'hammer clause' which limits recovery to amount of first proposed settlement offer. The CNA form did not contain this recovery limitation. However, 3 of 4 remaining forms did contain such a clause.

In summary, the new CNA form is broader in most respects than the previous CNA form and the CNA changes have improved the form which compares favorably with the others that were reviewed. The new policy is also slightly broader in certain respects and not as broad in other areas than the competition's forms that were reviewed. However, it should be noted that the forms reviewed were *base forms without* endorsements. Carriers can and will add endorsements to their policies which amend the terms. Thus, another carrier's basic form plus endorsements may end up as a better product for a particular architect. **Because these forms are not standard, each one plus endorsements must be reviewed closely when considering options for professional liability insurance. An experienced insurance broker is critical in assisting an architect in reviewing and advising which carrier's coverage is more appropriate.**



Professional Liability and Pollution Incident Liability Insurance Policy

PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY

THIS PROFESSIONAL LIABILITY AND POLLUTION INCIDENT LIABILITY INSURANCE POLICY IS WRITTEN ON A "CLAIMS-MADE AND REPORTED" BASIS AND APPLIES ONLY TO THOSE CLAIMS FIRST MADE AGAINST AN INSURED AND REPORTED TO THE INSURER IN ACCORDANCE WITH THE SECTION OF THE POLICY ENTITLED CONDITIONS, THE CONDITION ENTITLED THE INSURED'S DUTIES IF THERE IS A CLAIM.

Insured means the Stock Insurance Company named on the Policy Declarations. Other key words and phrases that have special meaning are displayed in bold face type. See the DEFINITIONS section of the Policy.

The Insurer and the Insured agree as follows:

I. COVERAGE

Comment [JLD1]: 2005 FORM STATED 'YOUR'

Comment [JLD2]: 2005 FORM STATED 'YOU'

Comment [JLD3]: 2005 FORM STATED 'US'

Comment [JLD4]: Slight rewording from 2005 form but same intent

Comment [JLD5]: Replaced terms 'we', 'us' and 'our'

Comment [JLD6]: Slight rewording from 2005 form but same intent

Comment [JLD7]: COMPARISON: Beazley - F00120 (08/09) also provides coverage for: Technology Based Services, Technology Products, Computer Network Security, Multimedia and Advertising, Privacy Liability. RLI -RDP 101 (01/09), ACE-PF-14373 (07/03) and Travelers-DPL-1001 (11/08) provides personal injury coverage via the definition on Wrongful Act. Travelers-DPL-1001 (11/08) also includes 'Network and Information Security Offense' in the definition of Wrongful Act/ Berkley - BDP0713001 -includes 'Contractor's Pollution Liability', 'Cyber Liability' and 'Media and Personal Injury Liability'

Comment [JLD8]: Comparison - RLI, ACE, Travelers and Berkley have a retro; CNA does not

Comment [JLD9]: COMPARISON: ACE-PF-14373 (07/03) - limitation on where a claim must be brought and maintained

Comment [JLD10]: COMPARISON: Beazley - F00120 (08/09) - must result from Professional Services or Contracting Services ACE-PF-14373 (07/03) and Travelers-DPL-1001 (11/08) - coverage not provided Berkley - BDP0713001 - must result from Professional Services

Comment [JLD11]: NEW

A. INSURING AGREEMENTS

The Insurer will pay all amounts in excess of the Deductible up to the Limit of Liability that the Insured becomes legally obligated to pay as a result of:

1. Professional Liability

a wrongful act that results in a claim anywhere in the world; or

2. Pollution Incident Liability

a pollution incident arising out of:

a. the Insured's activities or the activities of any person or entity for whom the Insured is liable;

b. liability that the Insured assumes from an insured client;

c. a covered location; or

d. a non-owned disposal site;

that results in a claim anywhere in the world;

provided that:

Form No: CNA79034XX (09-2014) [FORMTYPE]; Page: a of b Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP

Policy No: POLSYM POLNUM Policy Effective Date: PTEFFDAT Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

- i. on the **knowledge date**, none of the **Insured's** officers, directors, principals, partners, or insurance managers knew of any act, error, omission or event that could reasonably be expected to become the basis of such **claim**; and
- ii. such **claim** is first made against the **Insured** during the **policy year** and reported to the Insurer in accordance with the Section of the Policy entitled **CONDITIONS**, the condition entitled **The Insured's Duties if There is a Claim**. Except as set forth in the Section of the Policy entitled **CONDITIONS**, the condition entitled **The Insured's Rights and Duties In the Event of a Circumstance**, a **claim** is considered first made on the earlier of the **Insured's** or the Insurer's receipt of notice of the **claim**.

B. **SUPPLEMENTAL INSURING AGREEMENT - RECTIFICATION EXPENSE**

The Insurer will reimburse the **Named Insured** for **rectification expense** in excess of the Deductible and up to the applicable **design defect circumstance** Limit of Liability, provided that:

- 1. the **Insured** reports the **design defect circumstance** as soon as practicable during the **policy year** and in accordance with the Section of the Policy entitled **CONDITIONS**, the condition entitled **The Insured's Rights and Duties in the Event of a Circumstance**; and
- 2. the **Insured** demonstrates to the Insurer's satisfaction that there is a **design defect** which is reasonably likely to give rise to a **claim** covered under this Policy; and
- 3. the **Insured** provides the Insurer with details of the action being contemplated by the **Insured** to minimize any potential liability arising out of such **design defect circumstance** and the amount of **rectification expense** that is contemplated in connection with such action:
 - a. as soon as practicable during the **policy year** or within sixty (60) days of the expiration of the **policy year**; and
 - b. prior to incurring any **rectification expense**, except in the event of an **emergency response**; and
- 4. prior to incurring any **rectification expense**, the Insurer consents in writing to such **rectification expense** (such consent not to be unreasonably withheld); and
- 5. in the event a **claim** is made arising out of a **design defect circumstance**, then the Insurer may, at its sole discretion, cease paying further **rectification expense** associated with such **design defect circumstance**; and
- 6. such **design defect circumstance** does not arise out of the same or similar **design defect circumstances** for which reimbursement expenses have been requested or paid.

Such **rectification expense** will be reimbursed within ninety (90) days of the **Insured's** submission of a proof of loss of such **rectification expense**.

In the event that the Insurer and the **Named Insured** do not agree that the **Insured's** proposed **rectification expense** is reasonable, then the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Named Insured** and the Insurer be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its [ConstructionCommercial](#) Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

C. **DEFENSE AND SETTLEMENT**

- 1. The Insurer has the right and duty to defend any **claim** against the **Insured** seeking amounts that are payable under the terms of this Policy, even if any of the allegations of the **claim** are groundless, false or fraudulent. The Insurer will designate or, at its option, approve counsel to defend the **claim**. The Insurer is not obligated to defend any **claim** or pay any amounts after the applicable Limit of Liability has been exhausted.

Comment [JLD12]: NEW

Comment [JLD13]: COMPARISON:
 Not provided under the following carrier's forms:
 RLI-RDP 101 (01/09)
 Beazley - F00120 (08/09)
 ACE-PF-14373 (07/03)
 Travelers DPL-1001 (11/08)
 Berkley BDP0713001

Form No: CNA79034XX (09-2014) [FORMTYPE] ; Page: a of b Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP	Policy No: POLSYM POLNUM Policy Effective Date: PTEFFDAT Policy Page: x of y
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Professional Liability and Pollution Incident Liability Insurance Policy

2. The Insurer will not settle any claim without the informed consent of the first Named Insured.

Comment [JLD14]:
COMPARISON:
RLI -RDP 101 (01/09) - hammer clause (50%)
Beazley - F00120 (08/09) - hammer clause
ACE-PF-14373 (07/03) - hammer clause
Travelers DPL-1001 (11/08) - no hammer clause; 'such consent not to be unreasonably withheld'
Berkley BDP0713001 - hammer clause (50%)

3. If a claim results in a punitive, exemplary, or multiplied damage award, the Insurer will pay such award, up to the applicable Limit of Liability, to the fullest extent permitted by law.

Comment [JLD15]:
COMPARISON:
RLI -RDP 101 (01/09) - insurable by law under which the policy is construed
Beazley - F00120 (08/09) - definition of damages specifically excluded multiplied damages; punitive or exemplary damages are excluded unless insurable by law which the policy is construed
ACE-PF-14373 (07/03) - definition of loss specifically excluded multiplied damages; punitive or exemplary damages are excluded unless insurable under the 'internal law of any jurisdiction which has substantial relationship to Insureds, Insurer, this Policy or such Claim'
Travelers DPL-1001 (11/08) - definition of damages specifically excluded multiplied damages; punitive or exemplary damages are insurable by the applicable law most favorable
Berkley BDP0713001 - covered unless uninsurable by law

II. SUPPLEMENTARY PAYMENTS

Except as noted in subparagraph D. below, payments made under this section are the Insurer's costs, are not subject to the Deductible, and are in addition to the Limit of Liability shown on the Declarations.

Comment [JLD16]:
COMPARISON:
Berkley BDP0713001 also provides:
- Fee Dispute Mitigation Reimbursements subject to submit
- Peer Review Reimbursement subject to submit
- Cyber Security Breach Response Reimbursement

A. Crisis Event Expenses

The Insurer will reimburse the Named Insured up to 50% of \$30,000 per crisis event, subject to a maximum reimbursement by the Insurer of \$50,000 per policy year for all crisis events, for crisis event expenses incurred as a result of a crisis event that occurs during the policy term.

Comment [JLD17]: NEW
Comment [JLD18]:
COMPARISON:
Not found under the following forms:
RLI -RDP 101 (01/09)
ACE-PF-14373 (07/03)
Berkley BDP0713001
Provided in the following forms:
Beazley - F00120 (08/09) = 50% of \$30,000; 'in connection with a Claim' which is not as broad as 'crisis event'
Travelers DPL-1001 (11/08) - \$10k each crisis event; \$30,000 all crisis events

B. Pre-claims Assistance

Until the date a claim is made, the Insurer may pay for all costs or expenses it incurs, at the Insurer's sole discretion, as a result of investigating a circumstance that the Insured reports in accordance with the Section of the Policy entitled CONDITIONS, the condition entitled The Insured's Rights and Duties in the Event of a Circumstance.

Comment [JLD19]:
COMPARISON:
Provided under the following forms:
RLI -RDP 101 (01/09)
Beazley - F00120 (08/09)
ACE-PF-14373 (07/03)
Travelers DPL-1001 (11/08)
Berkley BDP0713001

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP
Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y
3



Professional Liability and Pollution Incident Liability Insurance Policy

C. Defendant Reimbursement

If the Insurer requests the Insured's presence at a trial, hearing, deposition, mediation or arbitration, the Insurer will pay up to \$500 a day per person, subject to a maximum amount of \$15,000 per claim.

Comment [JLD20]:
COMPARISON:
RLI -RDP 101 (01/09) = \$500 a day per person / \$12.5k agg per policy year (shared agg with Disciplinary Proceedings)
Beazley - F00120 (08/09) = \$500 a day agg for all insureds / \$10k agg per claim; coverage available after 3 days of attendance required for each claim
ACE-PF-14373 (07/03) = \$300 per day; \$5,000 max per claim
Travelers DPL-1001 (11/08) = \$500 per insured per day; \$15,000 agg per policy year
Berkley BDP0713001 - \$400 a day max for all insureds / \$15K policy agg
Comment [JLD21]: WAS \$300
Comment [JLD22]: WAS \$7,500

D. ADA, FHA, and OSHA

The Insurer will reimburse the Insured for legal fees and expenses up to \$35,000 per policy year in responding to regulatory or administrative actions brought directly against the Insured by a government agency under the Americans with Disabilities Act of 1990 (ADA), the Fair Housing Act (FHA), or the Occupational Safety and Health Act (OSHA), provided that the regulatory or administrative actions:

- 1. are first commenced during the policy year;
2. arise out of the performance of professional services; and
3. are reported to the Insurer prior to any legal fees or expenses being incurred.

After the Insurer has paid \$35,000 under this provision, any additional amounts the Insurer agrees to pay will be treated as claim expenses and will be subject to the Insured's Deductible and be included in the Limit of Liability for the policy year in which the action was commenced. The Insurer will not be responsible for any fines or penalties.

Comment [JLD23]:
COMPARISON:
RLI -RDP 101 (01/09) = \$10k per action; \$12.5k max.
Beazley - F00120 (08/09) = \$30,000
ACE-PF-14373 (07/03) = \$5,000
Travelers DPL-1001 (11/08) = Provides a combined limit for 'Disciplinary or Regulatory Proceeding Expenses' of \$25,000 each; \$50,000 all
Berkley BDP0713001 = Provides a combined limit for 'Disciplinary, Regulatory or Administrative Expense Reimbursement' of \$30,000 max
Comment [JLD24]: WAS \$25,000
Comment [JLD25]: WAS \$25,000
Comment [JLD26]: NEW

E. Disciplinary Proceedings

The Insurer will reimburse the Insured up to \$25,000 in the aggregate per policy year, regardless of the number of disciplinary proceedings, for attorney fees and other reasonable costs, expenses or fees incurred by the Insured with the Insurer's prior written consent in responding to a disciplinary proceeding commenced against the Insured during the policy year, provided that such disciplinary proceeding is reported to the Insurer during such policy year.

Comment [JLD27]:
COMPARISON:
RLI -RDP 101 (01/09) = \$5,000 (subj. to \$12,500 max)
Beazley - F00120 (08/09) = \$10,000
ACE-PF-14373 (07/03) = not provided
Provides a combined limit for 'Disciplinary or Regulatory Proceeding Expenses' of \$25,000 each; \$50,000 all
Berkley BDP0713001 = Provides a combined limit for 'Disciplinary, Regulatory or Administrative Expense Reimbursement' of \$30,000 max
Comment [JLD28]: NEW

F. Dodd-Frank Fees and Expenses

The Insurer will reimburse the Insured for legal fees and expenses up to \$50,000 per policy year in responding to regulatory or administrative actions brought directly against the Insured by a government agency under the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank), provided that the regulatory or administrative actions:

- 1. are first commenced during the policy year;
2. arise out of the performance of professional services;
3. do not arise out of services performed by the Insured as a "municipal advisor" as defined in Dodd-Frank; and

Comment [JLD29]:
COMPARISON:
Not provided under the following carrier's forms:
RLI -RDP 101 (01/09)
Beazley - F00120 (08/09)
ACE-PF-14373 (07/03)
Berkley BDP0713001
Travelers DPL-1001 (11/08) = Provides a combined limit for 'Disciplinary or Regulatory Proceeding Expenses' of \$25,000 each; \$50,000 all



Professional Liability and Pollution Incident Liability Insurance Policy

4. are reported to the Insurer prior to any legal fees or expenses being incurred.

The Insurer will not be responsible for any fines or penalties.

III. DEFINITIONS

Bodily injury means bodily injury, sickness, disease, mental anguish, or emotional distress sustained by a person, including death resulting from any of these at any time.

Comment [JLD30]: REMOVED DEFINITIONS FOR: AUTO MOBILE EQUIPMENT

Circumstance means an event reported to the Insurer during the policy term from which the Insured reasonably expects that a claim could be made.

Claim means a demand for money or services, naming the Insured and alleging a wrongful act or pollution incident.

Comment [JLD31]: ACE-PF-14373 (07/03) – requires a 'written' demand Travelers DPL-1001 (11/08) = definition also includes civil proceeding and a written request to toll or waive a statute of limitations relating to potential civil or administrative proceeding Berkley BDP0713001 – requires 'written notification' demanding compensatory money damages or services

Claim expenses means:

- 1. fees charged by an attorney designated or approved by the Insurer to represent the Insured;
2. all other fees, costs, and expenses resulting from the investigation, adjustment, defense, and appeal of a claim, if incurred by:
a. the designated attorney,
b. the Insurer, or
c. the Insured, with the Insurer's prior written consent; and
3. premiums for bonds posted in connection with an appeal. However, the Insurer is not obligated to apply for or furnish any such bonds.

Claim expenses do not include fees and expenses of independent adjusters or salaries of the Insurer's officials or employees, other than fees and expenses charged by the Insurer's employed attorneys who may be designated to represent the Insured with the Insured's prior consent.

Covered location means a location owned, rented, or leased by the Named Insured, provided that such location is scheduled onto this Policy as a covered location by endorsement issued by the Insurer. Covered location does not include a location that has been sold, given away or abandoned by the Named Insured or that has been condemned.

Comment [JLD32]: NEW

Crisis event means any:

Comment [JLD33]: NEW

- 1. wrongful act or pollution incident;
2. death, departure, or debilitating illness of a partner, officer, director or member of the Named Insured;
3. potential dissolution of the Named Insured for any reason other than bankruptcy; or
4. violent act, kidnapping, sexual assault, criminal firearm use or workplace accident resulting in negative local or national media coverage of the Named Insured;

that the Named Insured reasonably believes will have a material adverse effect upon the Named Insured's reputation.

Crisis event expenses means reasonable fees, costs and expenses incurred by the Named Insured for consulting services provided by a public relations firm to the Named Insured in response to a crisis event, but only for up to sixty (60) days following a crisis event.

Comment [JLD34]: NEW

Design defect means a wrongful act, but does not include any actual or alleged negligence in the review of shop drawings and submittals, issuance of change orders, observation of construction or review of any contractors' requests for payment.

Comment [JLD35]: NEW



Professional Liability and Pollution Incident Liability Insurance Policy

Design defect circumstance means a circumstance arising out of a design defect for which the Insured has requested reimbursement of a rectification expense from the Insurer.

Comment [JLD36]: NEW

Disciplinary proceeding means any pending matter, including an initial inquiry, before a state or federal licensing board or a peer review committee to investigate charges alleging a violation of any rule of professional conduct in the performance of professional services.

Comment [JLD37]: NEW

Domestic partner means any person qualifying as such under any federal, state or local laws or under the Insured's employee benefit plans.

Emergency response means an action taken by the Insured to rectify a design defect that prevents imminent bodily injury and/or material physical injury to or destruction of tangible property due to that design defect, which is otherwise insured under this Policy.

Comment [JLD38]: NEW

Extended reporting period means the period of time after the end of the policy term for reporting claims to the Insurer that are made against the Insured during the applicable extended reporting period arising out of:

1. a wrongful act that took place prior to the end of the policy term that is otherwise covered by this Policy; or
2. activities that took place prior to the end of the policy term that result in a pollution incident that is otherwise covered by this Policy.

Fungi means any form of fungus including but not limited to yeast, mold, mildew, rust, smut or mushroom, and including any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of the current or past presence of fungi.

Comment [JLD39]: NEW

Hostile fire means a fire that becomes uncontrollable or breaks out from where it was intended to be.

Insured means the Named Insured, a newly acquired subsidiary and:

Comment [JLD40]: WAS 'YOU' AND 'YOUR'

1. any past or present partner, officer, director, member, stockholder or employee of the Named Insured or newly acquired subsidiary or leased personnel under the direct supervision of the Named Insured or newly acquired subsidiary, but only while acting within the scope of their duties for the Named Insured or newly acquired subsidiary;
2. a retired partner, officer, director, member, stockholder or employee of the Named Insured or newly acquired subsidiary, but only for professional services or activities performed for or on behalf of, at the request of, and for the benefit of the Named Insured or newly acquired subsidiary.

Insured does not include the estates, heirs, legal representatives, assigns, spouses, and any domestic partner of any natural person within the definition of Insured. However, coverage is afforded to such persons or entities under this Policy as provided in the Section of the Policy entitled CONDITIONS, the condition entitled Estates, Legal Representatives and Spouses.

Comment [JLD41]: NEW

Insured client means a client for whom the Named Insured performs activities, but only if there is in place an insured client contract.

Comment [JLD42]: NEW

Insured client contract means a written contract or agreement that is in effect between the Named Insured and a client under which the Named Insured assumes the tort liability of the client or owner of the project to pay compensatory damages to a third party for a pollution incident, but only to the extent that such pollution incident is caused by the Named Insured's activities, or the activities of any person or entity for whom the Named Insured is liable, and provided that such written contract or agreement is placed in effect prior to the pollution incident and:

Comment [JLD43]: NEW

1. incorporates an enforceable indemnity provision pertinent to the pollution incident; or

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP

Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

- requires the client or the owner of the project to be made an additional insured under the Policy that insures the **Named Insured** against **pollution incidents**.

For purposes of this definition only, "tort liability" means liability for a civil or private wrong imposed by law in the absence of any contract or agreement.

Knowledge date means the date set forth on the Declarations as the Knowledge Date.

Comment [JLD44]: WAS NOT PREVIOUSLY A DEFINED TERM

Microbe means any non-fungal microorganism or non-fungal, colony-form organism that causes infection or disease. **Microbe** includes any spores, mycotoxins, odors, or any other substances, products, or byproducts produced by, released by, or arising out of current or past presence of **microbes**. But **microbe** does not mean **microbes** that were transmitted directly from person to person.

Comment [JLD45]: NEW

Named Insured means the persons or entities identified on the Declarations as the Named Insured.

Newly acquired subsidiary means any entity, newly formed or acquired by a **Named Insured** during the **policy term**, in which such **Named Insured** has more than a 50% legal or beneficial interest. However, no such entity will be deemed a **newly acquired subsidiary** beyond 90 days after the **Named Insured** acquires or forms it. For coverage to continue beyond the first 90 days, the following conditions apply:

- within 90 days of such formation or acquisition, the **Named Insured** must provide the Insurer with full particulars of such **newly acquired subsidiary**;
- after receipt of such notice, the Insurer must agree to endorse this Policy to insure such **newly acquired subsidiary**; and
- the **Named Insured** must pay the additional premium, if any, and agree to any amendment of the provisions of this Policy by reason of such formation or acquisition.

Coverage exists for **claims** made against a **newly acquired subsidiary** only if, prior to the acquisition date or formation date, none of the **Insured's** officers, directors, principals, partners, or insurance managers of the **Named Insured** or such **newly acquired subsidiary** knew of any act, error, omission, or event that could reasonably be expected to become the basis of that **claim**.

Non-owned disposal site means a location not owned, operated, leased or rented by the **Insured** that is used by the **Named Insured** for the treatment, storage or disposal of wastes or materials that are generated by activities performed by or on behalf of the **Named Insured**, provided that:

Comment [JLD46]: NEW

- such location is permitted or licensed by the applicable authority to accept such wastes or materials as of the date such wastes or materials are treated, stored or disposed of at the location; and
- such location is not listed on a proposed or final Federal National Priorities List or any equivalent National Priority List, Superfund or Hazardous Waste List prior to the treatment, storage or disposal of such wastes or materials at such location.

Nuclear facility means the site where a nuclear reactor is located or where nuclear waste or material is disposed.

Policy term means the period of time from the effective date and time of this Policy to the date and time of termination as shown on the Declarations, or its earlier cancellation date. **Policy term** does not include any **extended reporting period**. If the length of the **policy term** is the same as the **policy year**, the terms **policy term** and **policy year** are used interchangeably herein.

Policy year means the period of one year following the effective date of the **policy term** or any subsequent one-year anniversary thereof. As permitted by individual state law, a **policy year** may be extended or reduced by endorsement or by termination of the Policy.

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP

Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

Pollutants means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed. Pollutants does not mean heat, smoke, vapor, soot, or fumes from a hostile fire or explosion.

Pollution incident means the actual or alleged:

- 1. discharge, dispersal, seepage, migration, release or escape of pollutants into or upon land, the atmosphere, or any watercourse or body of water; or
2. inhalation of, ingestion of, contact with, exposure to, existence of, growth or presence of fungi or microbes;

Comment [JLD47]: NEW

which results in bodily injury or property damage. However, a pollution incident cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by the Insured or at the Insured's direction or with the Insured's prior knowledge.

Professional services means those services that the Insured performs for others on behalf of a Named Insured in the Insured's practice as an architect, engineer, interior designer, land surveyor, LEED green building program consultant, landscape architect, construction manager, scientist, or technical consultant.

Comment [JLD48]: COMPARISON: RLI-RDP 101 (01/09) also includes space planner and expert witness; the definition ties to insured being 'legally qualified' Beazley - F00120 (08/09) also includes project manager, forensic consultant and construction or project consultant; does not include technical consultant ACE-PF-14373 (07/03) - also includes land planner, space planner and expert witness; the definition ties to insured being 'legally qualified' Travelers DPL-1001 (11/08) = does not include interior designer or LEED green building program consultant

Comment [JLD49]: NEW

Comment [JLD50]: NEW COMPARISON: RLI-RDP 101 (01/09), Beazley - F00120 and Berkley BDP0713001 - use environmental consultant which is broader ACE-PF-14373 (07/03) and Travelers DPL-1001 (11/08) = does not include

Property damage means the following:

- 1. physical injury to, damage to, or destruction of tangible property, electronic data, soil, surface water, groundwater, plants, or animals, including the resulting loss of use thereof;
2. clean-up costs incurred by a third party or mandated by any governmental entity; or
3. loss of use of tangible property that has not been physically injured or destroyed.

Rectification expense means reasonable and necessary fees, costs and expenses incurred by the Named Insured for rectification of a design defect caused by professional services in any part of the construction works or engineering works for any project upon which the Insured is responsible for both design and construction.

Comment [JLD51]: NEW

Form No: CNA79034XX (09-2014) [FORMTYPE]; Page: a of b Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP 8 Policy No: POLSYM POLNUM Policy Effective Date: PTEFFDAT Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

Related claims means all claims made against the Insured and reported to the Insurer during any policy year arising out of:

1. a single wrongful act or related wrongful acts that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision;
2. a single design defect or related design defects that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision; or
3. an activity or related activities that result in a single pollution incident or multiple pollution incidents that are logically or causally connected by any common fact, situation, event, transaction, advice, or decision.

Comment [JLD52]: NEW

Technology based services means professional services that utilize electronic information technology, including custom software development, modification or integration; provided, however, that such technology based services are provided solely to a specific client of the Named Insured.

Comment [JLD53]: NEW

Totally and permanently disabled means that the Insured is so disabled as to be wholly prevented from rendering professional services, provided that such disability:

Comment [JLD54]: NEW

1. has existed continuously for not less than six (6) months; and
2. is reasonably expected to be continuous and permanent.

Wrongful act means an error, omission, or other act that causes liability in the performance of professional services for others by the Insured or by any person or entity, including joint ventures, for whom the Insured is liable. A wrongful act cannot arise from dishonest, fraudulent, malicious, or criminal conduct committed by the Insured or at the Insured's direction or with the Insured's prior knowledge.

Comment [JLD55]:
COMPARISON:
RLI -RDP 101 (01/09) - ties to negligence Beazley - F00120 (08/09) - not a defined term but the insuring agreement for Professional Liability coverage ties to negligence ACE-PF-14373 (07/03) - not as broadly defined in to include 'or other act' Travelers DPL-1001 (11/08) - also includes PI and Network and Info. Security Offense Berkley BDP0713001 - essentially the same wording

Comment [JLD56]:
COMPARISON:
Exclusion applies to following carrier's forms: RLI -RDP 101 (01/09); Beazley - F00120 (08/09); ACE-PF-14373 (07/03) HOWEVER, they provide defense until final adjudication Travelers DPL-1001 (11/08) = exclusion applies

EXCLUSIONS

The Insurer will not defend or pay under this Policy for any claim:

Comment [JLD57]:
COMPARISON:
The below exclusions also apply to the following carrier's forms:
RLI -RDP 101 (01/09) = Securities Violation / Asbestos / Employer's Liability / Insurance and Suretyship / Employment Liability / War / Nuclear Facility / WC
Beazley - F00120 (08/09) = Outside Positions / Asbestos / Employers Liability and WC / Patent Infringement / Products Liability
ACE-PF-14373 (07/03) = WC and Wrongful Employment Practices
Berkley BDP0713001 = any type of employee benefit / EPL/WC

A. Claims by Insureds

brought by the Insured or on the Insured's behalf against another Insured covered by this Policy;

Comment [JLD58]:
COMPARISON:
Exclusion applies to following carrier's forms: RLI -RDP 101 (01/09); Beazley - F00120 (08/09); ACE-PF-14373 (07/03) (ACE forms covers cross-claims or 3rd party claim for contribution or indemnity --- refer to exclusion for exact wording; Travelers DPL-1001 (11/08); Berkley BDP0713001

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP
9

Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

B. Contractual Liability

arising out of:

1. the Insured's actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. any actual or alleged liability of others that the Insured assumes under any oral or written contract or agreement.

However, this exclusion shall not apply to the Insured's liability that exists in the absence of such contract or agreement.

In a foreign jurisdiction where the Insured's liability to a client is predicated only on contractual liability, subparagraph 1. of this exclusion does not apply except to the extent that the Insured has agreed to pay consequential or liquidated damages.

This exclusion does not apply to liability assumed by the Insured in an insured client contract;

Comment [JLD59]: COMPARISON: Exclusion applies to following carrier's forms: RLI -RDP 101 (01/09); Beazley - F00120 (08/09); ACE-PF-14373 (07/03); Travelers DPL-1001 (11/08); Berkley BDP0713001

Comment [JLD60]: NEW

Comment [JLD61]: COMPARISON: CNA's exclusion is broader RLI -RDP 101 (01/09), Beazley - F00120 (08/09), ACE-PF-14373 (07/03) and Travelers DPL-1001 (11/08) = exclusion does not apply to warranty or guarantee that services are in conformity with the standard of care applicable

Comment [JLD62]: NEW

Comment [JLD63]: NEW

Comment [JLD64]: COMPARISON: RLI -RDP 101 (01/09); Beazley - F00120 (08/09); ACE-PF-14373 (07/03);Travelers DPL-1001 (11/08) and Berkley BDP0713001 = Not included in the exclusion wording

C. Faulty Workmanship

arising out of any actual or alleged cost to repair or replace faulty workmanship the Insured performs on any construction, erection, fabrication, installation, assembly, manufacture or remediation, including any materials, parts, or equipment furnished in connection therewith;

Comment [JLD65]: COMPARISON: Exclusion applies to following carrier's forms: RLI -RDP 101 (01/09) has carve outs for drilling, excavation, or other sampling or testing procedures or the supplying of furnishings as part of the interior design services Beazley - F00120 (08/09) ACE-PF-14373 (07/03) Travelers DPL-1001 (11/08) Berkley BDP0713001 – similar carve outs to RLI

Comment [JLD66]: NEW

D. Liquidated Damages

for liquidated damages in excess of the Insured's liability caused by a wrongful act or a pollution incident; for fines and penalties imposed on the Insured; or for the failure or refusal of a client to pay money due the Insured; or for return of fees paid to the Insured;

Comment [JLD67]: COMPARISON: RLI -RDP 101 (01/09) – No exclusion for liquidated damages – refer to definition of Damages for comparison Beazley - F00120 (08/09) – exclusion applies within the definition of Damages ACE-PF-14373 (07/03) - No exclusion for liquidated damages – refer to definition of Loss for comparison Travelers-DPL-1001 (11/08) – definition of damages exclude liquidated damages; civil or criminal fines; penalties; and any return, withdraw, restitution or reduction of professional fees Berkley BDP0713001 – No exclusion for liquidated damages

Form No: CNA79034XX (09-2014) [FORMTYPE] ; Page: a of b Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP 10 Policy No: POLSYM POLNUM Policy Effective Date: PTEFFDAT Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

E. Nuclear

arising out of any actual or alleged nuclear reaction, radiation, or contamination, under any circumstances and regardless of cause, within or originating from a nuclear facility;

Comment [JLD68]: COMPARISON: Exclusion applies to following carrier's forms: RLI-RDP 101 (01/09) Beazley - F00120 (08/09) Travelers-DPL-1001 (11/08) Berkley BDP0713001 Exclusion not found in ACE-PF-14373 (07/03) Comment [JLD69]: NEW

F. Owned Entity

made against the Insured by any entity:

- 1. which is operated, managed, or controlled by the Insured;
2. in which the Insured has an ownership interest in excess of 49%; or
3. which wholly or partly owns, operates, or manages the Insured;

Comment [JLD70]: COMPARISON: Exclusion applies to following carrier's forms: RLI-RDP 101 (01/09) Beazley - F00120 (08/09) = 25% Insured; 15% NI ACE-PF-14373 (07/03) Travelers DPL-1001 (11/08) Berkley BDP0713001

G. Owned, Leased or Rented Property

arising out of any actual or alleged:

1. ownership, rental or leasing of any real or personal property including damage to property at any time owned by or rented or leased by or to the Insured or by any person or entity for whom the Insured is legally liable; or

Comment [JLD71]: COMPARISON: Exclusion applies to following carrier's forms: RLI-RDP 101 (01/09); Beazley - F00120 (08/09); ACE-PF-14373 (07/03); Berkley BDP0713001 (roll in similar exclusion to J. Transportation) Not excluded under Travelers DPL-1001 (11/08) Comment [JLD72]: NEW

2. pollution incident at, onto or from any real or personal property owned, leased or rented by the Insured or by any person or entity for whom the Insured is legally liable; however, this exclusion shall not apply to:

Comment [JLD73]: NEW
Comment [JLD74]: NEW

a. temporary storage of equipment or material at any staging or storage area that is associated with the Insured's activities; or

b. pollution incidents at, onto or from a covered location of a Named Insured;

Comment [JLD75]: NEW

H. Prior Notice

arising out of any actual or alleged:

- 1. wrongful act, pollution incident or any matter, fact, situation, transaction, or event, for which notice was given by the Insured under any professional liability or pollution insurance coverage prior to the effective date of this Policy; or

Comment [JLD76]: See RLI, Beazley and ACE forms for their wording

Form No: CNA79034XX (09-2014)
[FORMTYPE]; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP
Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y
11



Professional Liability and Pollution Incident Liability Insurance Policy

- 2. other wrongful act or pollution incident whenever occurring, which is logically or causally connected by any common fact, situation, transaction, or event to the wrongful act or pollution incident specified in paragraph 1. of this exclusion;

I. Sale or Distribution of Goods

arising out of any actual or alleged sale or distribution of goods or products by the Insured, or by others under license from the Insured. This exclusion does not apply to furniture, furnishings or equipment created or modified specifically for a client in connection with the Insured's professional services for that client or to software created or modified specifically for a client in connection with technology based services for that client;

Comment [JLD77]:
COMPARISON:
 Exclusion applies to following carrier's forms: RLI -RDP 101 (01/09) but only has carve out for software designed or modified for client
 Beazley - F00120 (08/09) – exclusion applies to pollution liability coverage only; no carve outs
 ACE-PF-14373 (07/03) and Travelers DPL-1001 (11/08) - but only has carve out for computer software sold or supplied by the Insured in its provision of Professional Services
 Berkley BDP0713001 – applies to multiple sale or mass production; no carve outs

J. Transportation

arising out of any actual or alleged ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock. However this exclusion shall not apply to a pollution incident arising out of the ownership, entrustment, maintenance, use, operation, loading or unloading of any automobile, aircraft, watercraft or rolling stock or arising from wastes or materials transported by or on behalf of the Named Insured:

Comment [JLD78]: NEW
Comment [JLD79]: NEW
Comment [JLD80]: WAS 'PROFESSIONAL SERVICES'

- 1. by an automobile, aircraft, watercraft or rolling stock during the course of activities; or

Comment [JLD81]:
COMPARISON:
 RLI -RDP 101 (01/09) has similar exclusion but no carve out for pollution incident
 Beazley - F00120 (08/09) – separate exclusions in form; Exclusion K. Property Liability and Exclusion N. Transportation, Shipment or Delivery... and this only applies to pollution liability coverage and pertains to loss beyond the boundaries of a site at which professional services are being rendered or contracted services are being performed.
 ACE-PF-14373 (07/03) exclusion also applies to motor vehicles and mobile vehicles; no carve out for pollution incident
 Berkley BDP0713001 = exclusion is rolled in real and personal property exclusion
 Travelers DPL-1001 (11/08) = no exclusion

- 2. to a non-owned disposal site;

Comment [JLD82]: EXCLUSION WAS REVISED AND NOW PROVIDES LTD. POLLUTION COVERAGE RELATING TO TRANSPORTATION AND NON-OWNED DISPOSAL SITES

Form No: CNA79034XX (09-2014)	Policy No: POLSYM POLNUM
[FORMTYPE] ; Page: a of b	Policy Effective Date: PTEFFDAT
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP	Policy Page: x of y
12	



Professional Liability and Pollution Incident Liability Insurance Policy

K. Unlawful Discrimination

arising out of any actual or alleged unlawful discrimination by the Insured against the Insured's personnel or employment applicants or any obligation the Insured has under any employment, workers' compensation, employers' liability, unemployment compensation, disability benefits, or other similar law.

Comment [JLD83]: NEW
Comment [JLD84]: COMPARISON: RLI -RDP 101 (01/09) and Beazley - F00120 (08/09) = exclusion also excludes humiliation, harassment or misconduct because of age, color, race, sex, creed, national origin, marital status, sexual preference or orientation, religion or disability; the exclusion does not apply to ADA, and the Federal Fair Housing Act.
ACE-PF-14373 (07/03) - exclusion also excludes humiliation, harassment or misconduct; carve out for failure to award an y contract for Professional Services, or the Insured's advice to award or not award a contract for Professional Services
Berkley BDP0713001= similar exclusion to RLI and Beazley
Travelers DPL-1001 (11/08) = no exclusion

V. LIMITS OF LIABILITY/DEDUCTIBLE

A. Limits of Liability

- 1. Subject to paragraph 2. below, the Limit of Liability shown on the Declarations as the each claim Limit of Liability is the maximum the Insurer will pay for each claim first made against the Insured and reported to the Insurer during the policy year.
2. The Limit of Liability shown on the Declarations as the aggregate Limit of Liability per policy year is the maximum the Insurer will pay for all claims first made against the Insured and reported to the Insurer during the policy year.
3. Subject to paragraph 4. below, the each design defect circumstance Limit of Liability shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for each design defect circumstance reported by the Insured in accordance with the Section of the Policy entitled COVERAGE, the subsection entitled SUPPLEMENTAL INSURING AGREEMENT - RECTIFICATION EXPENSE. This limit is a sublimit of liability, which further reduces and in no way increases the applicable each claim and aggregate limits shown on the Declarations.
4. The aggregate design defect circumstance Limit of Liability per policy year shown on the Declarations is the maximum the Insurer will pay as reimbursement expense for all design defect circumstances reported by the Insured in accordance with the Section of the Policy entitled COVERAGE, the subsection entitled SUPPLEMENTAL INSURING AGREEMENT - RECTIFICATION EXPENSE. This limit is a sublimit of liability, which further reduces and in no way increases the applicable aggregate limit shown on the Declarations.
5. Notwithstanding anything to the contrary in paragraphs 1. and 2. above, the maximum the Insurer will pay for each claim first made against the Insured and reported to the Insurer during the policy year alleging a pollution incident arising out of liability that the Insured assumes from an insured client is the amount of insurance:
a. required by the insured client contract; or
b. available under the applicable limits of liability of this Policy;
whichever is less. This shall not increase the applicable per claim and aggregate limits shown on the Declarations.
6. All Limits of Liability set forth above apply on a policy year basis and are excess over any Deductible amount. The policy year Limits of Liability may not be aggregated or transferred, in whole or in part, so as to provide any additional coverage with respect to claims first made or deemed made, for any design defect circumstance reported by the Insured, during any other policy year. If the Limits of

Comment [JLD85]: NEW

Comment [JLD86]: NEW

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Comment [JLD87]: NEW

Comment [JLD88]: NEW



Professional Liability and Pollution Incident Liability Insurance Policy

Liability as specified above for any policy year are exhausted, the Insurer's obligation for that policy year shall be deemed completely fulfilled and extinguished.

67. All related claims, whenever made, shall be considered a single claim first made and reported to the Insurer within the policy year in which the earliest of the related claims was first made and reported to the Insurer.

Comment [JLD89]: NEW

78. Claim expenses are subject to and included within the applicable Limit of Liability.

B. Deductible

The Insured's obligation to pay up to the per claim Deductible amount shown on the Declarations and the aggregate Deductible per policy year shown on the Declarations, if any, including but not limited to claim expenses, shall apply to all Insuring Agreements and Supplemental Insuring Agreements under the Section of the Policy entitled COVERAGE.

Comment [JLD90]: REWODED

C. Reimbursement to the Insurer

If the Insurer has paid any amounts in excess of the applicable Limit of Liability, or within the amount of the Insured's Deductible, the Insured shall be liable to the Insurer for all such amounts, and, upon demand, shall pay such amounts to the Insurer.

D. More Than One Insured

Neither the applicable Limit of Liability nor the Insured's Deductible shall be increased because more than one Insured is included in a claim.

E. Risk Mitigation Incentives

The Insured may be eligible for a Risk Mitigation Credit or an Early Resolution Credit for each claim. In no way shall this section be construed to afford more than one such Risk Mitigation Incentive per claim.

Comment [JLD91]: NEW

1. Risk Mitigation Credit

The Insurer will reduce the Insured's Deductible obligation for a claim by 50%, up to \$25,000, if, within sixty (60) days of the date of the Insurer's request, the Insured provides the Insurer with a copy of the written agreement that was executed by the Insured and the Insured's client prior to the Insured's performance of the agreed-to professional services giving rise to such claim and the Insured demonstrates, to the Insurer's reasonable satisfaction, the existence of any three (3) of the following six (6) conditions:

Comment [JLD92]: COMPARISON: Not available in the following forms: RLI-RDP 101 (01/09), Beazley - F00120 (08/09), ACE-PF-14373 (07/03) or Travelers DPL-1001 (11/08) Berkley BDP0713001 = Risk Management Credit 50% up to \$25k max if a limitation of liability clause limiting liability to \$250k or less is included in a signed and enforceable contract

- a. The Insured's written agreement with the Insured's client specified payment terms, including a schedule of when payments were to be paid to the Insured, which the Insured consistently followed and enforced, or documented the Insured's attempt to do so.
b. Prior to the performance of the agreed-to professional services giving rise to the claim, the Insured executed a separate written agreement and obtained certificates of insurance evidencing both Professional Liability and General Liability insurance with each architect, engineer, landscape architect, land surveyor, contractor, or construction manager the Insured engaged or who engaged the Insured.
c. The Insured engaged with the Insured's client in a structured, contemporaneously documented, pre-project planning process that produced a project definition document or package that substantially addressed the following project parameters (only "i" through "iii" are required to satisfy this condition for study- and report-only contracts):
i. project objectives (e.g., business, economic, aesthetic, other);
ii. project constraints (e.g., budget, schedule, regulatory, other);



Professional Liability and Pollution Incident Liability Insurance Policy

- iii. the bases for the design/investigation (e.g., site data/requirements, utilities data/requirements, facility programming/requirements, equipment/technology requirements, alternatives to be considered);
 - iv. project execution approach (e.g. staging, procurement strategy, delivery method, other); and
 - v. project monitoring and control procedures (e.g. quality, cost, schedule, other).
- d. Prior to delivery to the Insured's client of the instruments or deliverables of the Insured's professional services, a documented, independent peer review was completed, internally or externally, by a qualified professional to assess the likelihood that such instruments or deliverables would satisfy the Insured's client's objectives and would be in conformance with good professional practice.
- e. The Insured engaged with representatives of the project owner, entities responsible for construction, and any other project stakeholders the Insured deemed appropriate in a structured, contemporaneously documented constructability review process that provided for the timely integration of construction input into project planning, design, and field operations.
- f. The Insured maintained a contemporaneously documented construction phase submittal log indicating the as-planned and actual dates the Insured received and responded to every submittal and the action taken.

2. Early Resolution Credit

If negotiation or mediation of a claim results in a resolution of such claim takes place within one hundred and eighty (180) days of the time it was reported to the Insurer of such claim, in accordance with the Section of the Policy entitled CONDITIONS, the condition entitled The Insured's Duties if There is a Claim, and such resolution includes and such claim is ultimately resolved by such negotiation or mediation resulting in an indemnity payment by the Insurer, the Deductible applicable to such claim will be reduced by 50%, up to \$10,000.

Comment [JLD93]: NEW

Comment [JLD94]:
COMPARISON:
 RLI -RDP 101 (01/09) – settled through mediation = 50% reduction; \$12,500 max.
 Beazley - F00120 (08/09) = settled through mediation = 50% reduction; \$25,000 max.
 ACE-PF-14373 (07/03) and Travelers DPL-1001 (11/08) = 50% reduction; \$25,000 max.
 Berkley BDP0713001 =50% reduction; \$15,000 max.

VI. CONDITIONS

A. The Insured's Rights and Duties as the First Named Insured on the Policy Declarations

The first Named Insured, on behalf of all Insureds, will be:

- 1. authorized to make changes in the terms of this Policy with the Insurer's written consent;
- 2. authorized to receive any amounts the Insurer refunds; and
- 3. responsible for:
 - a. the payment of all premiums and Deductible obligations due the Insurer;
 - b. keeping records of the information the Insurer needs for premium computation, and sending the Insurer copies as it may request; and
 - c. notifying the Insurer of any cancellation or non-renewal.

Comment [JLD95]: Participating Provision was removed (was G. under the 2005 form)

Comment [JLD96]: 'The payee of any amounts paid under Section VI. Conditions, Item G. Participating Provision' was deleted

B. The Insured's Duties if There is a Claim

If there is a claim, the Insured must do the following:

- 1. promptly notify the Insurer in writing. This notice must be given to the Insurer within the policy year in which the claim is made or within sixty (60) days after its expiration or termination. All claims reported during any extended reporting period shall be considered as having been made during the last policy year this Policy was in effect. If the claim is made during any applicable extended

Form No: CNA79034XX (09-2014)	Policy No: POLSYM POLNUM
[FORMTYPE] ; Page: a of b	Policy Effective Date: PTEFFDAT
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP	Policy Page: x of y
15	



Professional Liability and Pollution Incident Liability Insurance
Policy

reporting period, then notice must be given to the Insurer within such extended reporting period. Notice of a claim must be sent to the attention of either of the following:

a. CNA - Claim Reporting

P.O. Box 8317

Chicago, IL 60680-8317

fax: 866-773-7504

email: SpecialtyProNewLoss@cna.com

Comment [JLD97]: Change in contact

b. Attn: AE Claims

Victor O. Schinnerer & Company, Inc.

AE Professional Liability Claims

Two Wisconsin Circle, Suite 1100

Chevy Chase, Maryland 20815

fax: 301-951-5444

email: aeclaims@schinnerer.com;

Comment [JLD98]: NEW

2. specify the names and addresses of the persons making a claim against the Insured and provide the Insurer with information on the time, place and nature of the claim;
3. immediately forward to the Insurer all documents that the Insured receives in connection with the claim;
4. fully cooperate with the Insurer or the Insurer's designee in the defense of a claim, including but not limited to assisting the Insurer in: the conduct of suits or other proceedings, settlement negotiations, and the enforcement of any right of contribution or indemnity against another who may be liable to the Insured. The Insured shall attend hearings and trials and assist in securing evidence and obtaining the attendance of witnesses;
5. refuse, except solely at the Insured's own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense, without the Insurer's prior written approval; and
6. pay the Deductible amount when due.

After the Insured reports a circumstance or a claim is made and the Insured has the right under any contract to either reject or demand arbitration or other alternative dispute resolution process, the Insured shall only do so with the Insurer's prior written consent.

C. The Insured's Rights and Duties in the Event of a Circumstance

If the Insured reports a circumstance for which there may be coverage under this Policy, and the Insured gives the Insurer written notice containing as much detail as the Insurer can reasonably provide regarding:

1. what happened and the professional services or activities the Insured performed;
2. the nature of any possible injury or damages; and
3. how and when the Insured first became aware of such circumstance;

then any claim or related claims that subsequently may be made against the Insured arising out of such circumstance shall be deemed to have been made on the date the Insurer received written notice of the circumstance.

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP
16

Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance
Policy

The **Insured** will cooperate with the Insurer in addressing the circumstance, and refuse, except solely at the **Insured's** own cost, to voluntarily make any payment, admit liability, assume any obligation, or incur any expense without the Insurer's prior written approval.

D. Subrogation

If any **Insured** has rights to recover amounts from another, those rights are transferred to the Insurer to the extent of the Insurer's payment. The **Insured** must do everything necessary to secure these rights and must do nothing after a claim is made to jeopardize them. The Insurer hereby waives subrogation rights against the **Insured's** client to the extent that the **Insured** had a written agreement to waive such rights prior to a claim or circumstance.

E. Premium

All premium charges under this Policy will be computed according to the rules, rates and rating plans that apply at the effective date of the current **policy term**.

F. Examination and Audit

The **Insured** agrees to allow the Insurer to examine and audit the **Insured's** financial books and records that relate to this insurance. The Insurer may do this at any time during the **policy term** or any extensions, and up to three years after the end of the **policy term**.

G. Legal Action Limitation

1. The **Insured** agrees not to bring any legal action against the Insurer concerning this Policy unless the **Insured** has fully complied with all the provisions of this Policy.
2. If, after the final adjudication or settlement of a claim, there is any dispute concerning tort allegations against the Insurer regarding the handling or settlement of any claim, the **Insured** and the Insurer agree to submit such dispute to any form of alternative dispute resolution acceptable to both parties. Should the **Insured** and the Insurer be unable to agree on the form of alternative dispute resolution, then such dispute shall be submitted to binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

H. Changes to Policy

None of the provisions of this Policy will be waived, changed, or modified except by written endorsement to this Policy.

I. Transfer of Interest

For a transfer of interest or an assignment of this Policy to be effective, the first **Named Insured** must obtain the Insurer's written consent.

J. Other Insurance

If there is other collectible insurance, including but not limited to project specific insurance, that applies to a claim covered by this Policy, the other insurance must pay first, and this Policy is excess over the other insurance. This Policy applies to the amount of the claim that exceeds the available Limit of Liability and any Deductibles or retention amounts of the other insurance. Provided, however, that for liability assumed by the Named Insured in an insured client contract, this insurance is primary.

Comment [JLD99]: NEW

K. Cancellation/Non-Renewal

The **Insured's** and the Insurer's rights are stated below and in the attached State Provisions endorsement.

The Insurer will make the premium adjustment at the time that cancellation is effective, or as soon as practicable after that time. Premium return will be computed pro rata if the Insurer cancels or if the

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP
17

Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

Insured cancels at the end of a policy year. But if the Insured cancels at any other time, only 90% of the prorated premium will be returned.

L. Severability/Innocent Parties

Any Insured who did not commit, participate in, or have prior knowledge of dishonest, fraudulent, malicious, or criminal conduct, or who did not fail to comply with the Section of the Policy entitled CONDITIONS, the condition entitled The Insured's Duties if There is a Claim, paragraph 1., shall have the coverage otherwise provided by this Policy.

M. Estates, Legal Representatives, and Spouses

Coverage is afforded under this Policy to the estates, heirs, legal representatives, assigns, spouses, and any domestic partner of any natural person within the definition of Insured, but only for a claim arising solely out of their status as such. In the case of a spouse or domestic partner, coverage is also afforded under this Policy where such claim seeks damages from marital community property, jointly held property, or property transferred from any natural person designated in the definition of Insured to their spouse or domestic partner. No coverage is provided for any act, error, or omission of an estate, heir, legal representative, assign, spouse or domestic partner. All terms and conditions of this Policy, including without limitation the Deductible applicable to any claim, shall also apply to any claim made against such estates, heirs, legal representatives, assigns, spouses, and domestic partners.

N. Extended Reporting Periods

1. Automatic extended reporting period

If this Policy is canceled or non-renewed either by the Insurer or by the first Named Insured and the first Named Insured has not obtained similar coverage, the Insurer will provide an automatic, non-cancelable extended reporting period starting at the termination of the policy term. This automatic extended reporting period will terminate after sixty (60) days.

Comment [JLD100]: Berkley - BDP0713001 has 120 days

2. Optional extended reporting period

a. If this Policy is canceled or non-renewed either by the Insurer or by the first Named Insured, then the first Named Insured shall have the right to purchase a non-cancelable optional extended reporting period.

If purchased, the first sixty (60) days of the optional extended reporting period run concurrently with the sixty (60) days of the automatic extended reporting period.

b. The additional premium for the optional extended reporting period shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the policy term and shall be for one (1) year at 100% of the policy term premium divided by the total number of policy years in the policy term; three (3) years at 190% of the policy term premium divided by the total number of policy years in the policy term; and five (5) years at 250% of the policy term premium divided by the total number of policy years in the policy term.

c. The first Named Insured must provide the Insurer with written notice of its election to purchase the optional extended reporting period and pay the full payment for such period within sixty (60) days after the end of the policy term.

3. Death or disability extended reporting period

a. If an Insured dies or becomes totally and permanently disabled during the policy term, then, upon the latter of the expiration of: the policy term; any renewal or successive renewal of this Policy; or any automatic or optional extended reporting period, such Insured shall be provided with a death or disability extended reporting period, as provided below.

i. In the event of death, such Insured's estate, heirs, executors or administrators must, within sixty (60) days of the expiration of the policy term, provide the Insurer with written proof of

Comment [JLD101]: COMPARISON: Not available in the following forms: RLI -RDP 101 (01/09), Beazley - F00120 (08/09), ACE-PF-14373 (07/03), Travelers DPL-1001 (11/08) and Berkley BDP0713001

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP
18

Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance Policy

the date of death. This extended reporting period is provided to such Insured's estate, heirs, executors and administrators.

- ii. If such Insured becomes totally and permanently disabled, such Insured or such Insured's legal guardian must, within sixty (60) days of the expiration of the policy term, provide the Insurer with written proof that such Insured is totally and permanently disabled, including the date the disability commenced, certified by such Insured's physician. The Insurer retains the right to contest the certification made by such Insured's physician, and it is a condition precedent to this coverage that such Insured agrees to submit to medical examinations by any physician designated by the Insurer at the Insurer's expense. This extended reporting period is provided until such Insured shall no longer be totally or permanently disabled or until such Insured's death, in which case subparagraph i. hereof shall apply.

- b. No additional premium will be charged for any death or disability extended reporting period.

Comment [JLD102]: NEW PROVISION

4. Non-practicing extended reporting period

- a. If, during the policy term, an Insured retires from, or otherwise voluntarily ceases, permanently and totally, such Insured's practice as an architect, engineer or any other profession specifically listed in the definition of professional services, and has been continuously insured by the Insurer for at least ten (10) consecutive years, then such Insured shall have the right to purchase a non-practicing extended reporting period commencing upon the latter of the expiration of: the policy term; any renewal or successive renewal of this Policy; or any automatic or optional extended reporting period.
b. The additional premium for the non-practicing extended reporting period shall be fully earned at inception and based upon the rates for such coverage in effect at the beginning of the policy term and shall be for ten (10) years at 250% of the policy term premium divided by the total number of policy years in the policy term.
c. The Insured must provide the Insurer with written notice of such Insured's election to purchase the non-practicing extended reporting period and pay the full premium for such period within sixty (60) days after such Insured's date of retirement or sixty (60) days after the end of the policy term, whichever is earlier.

Comment [JLD103]: COMPARISON: Not available in the following forms: RLI -RDP 101 (01/09), Beazley - F00120 (08/09), ACE-PF-14373 (07/03), Travelers DPL-1001 (11/08) and Berkley BDP0713001

As used herein, the Insured's "practice as an architect, engineer or any other profession specifically listed in the definition of professional services" means such Insured's practice of any such profession for a fee, whether as a sole practitioner or as a partner, officer, director, member, stockholder or employee. The Insured's "practice as an architect, engineer or any other profession specifically listed in the definition of professional services" does not include any pro bono services performed by the Insured.

Comment [JLD104]: NEW PROVISION

5. Extended reporting periods limits of liability

- a. Automatic and optional extended reporting periods limits of liability

The Insurer's liability for all claims reported during any automatic and optional extended reporting periods shall be part of and not in addition to the remaining Limits of Liability for the final policy year.

- b. Separate death or disability and non-practicing extended reporting period limits of liability

- i. Limit of Liability - each claim

Subject to paragraph ii. below, the Insurer's limit of liability for each claim first made against the Insured, and reported to the Insurer during the death or disability extended reporting period or non-practicing extended reporting period, shall not exceed the amount shown on



Professional Liability and Pollution Incident Liability Insurance Policy

the Declarations as the each claim death or disability and non-practicing extended reporting period limit of liability.

ii. Limit of Liability - in the aggregate

The Insurer's limit of liability for all claims first made against the Insured, and reported to the Insurer during the death or disability extended reporting period or non-practicing extended reporting period, shall not exceed the amount shown on the Declarations as the aggregate death or disability and non-practicing extended reporting period limit of liability.

Comment [JLD105]: NEW PROVISION

6. Elimination of right to an extended reporting period

There is no right to any extended reporting period if the Insurer cancels or refuses to renew this Policy due to:

- a. non-payment of amounts due the Insurer ; or
b. non-compliance by the Insured with any of the terms and conditions of this Policy; or
c. any misrepresentation or omission in the application for this Policy.

Comment [JLD106]: COMPARISON: Not available in the following forms: RLI-RDP 101 (01/09) Beazley - F00120 (08/09) ACE-PF-14373 (07/03) Travelers DPL-1001 (11/08) Berkley BDP0713001

7. Extended reporting period limitations

No extended reporting period shall apply to:

- a. any claim or proceedings pending at the inception date of such extended reporting period;
b. any paid claim; or
c. claims that are covered under any subsequent insurance purchased by the Insured, or that would be covered but for exhaustion of the Limits of Liability applicable to such claims.

8. Extended reporting period not a new policy

It is understood and agreed that the extended reporting period shall not be construed to be a new policy and any claim submitted during such period shall otherwise be governed by this Policy.

Comment [JLD107]: Replacement 'Automatic and Optional Extended Reporting Periods Limits of Liability' provision from 2005 form

O. Liberalization

If the Insurer adopts any revision to this form during the policy term that would broaden coverage without additional premium, the broadened coverage will apply to this Policy at the inception date of the next policy year, but it will not apply to claims that were first made against the Insured prior to the effective date of such revision.

P. Economic and Trade Sanctions

This Policy does not provide coverage for any Insured, any transactions, or any part of a claim if uninsurable under the laws or regulations of the United States concerning trade or economic sanctions.

Q. Headings

The descriptions in the headings of this Policy are solely for convenience, and form no part of the terms and conditions of coverage.

IN WITNESS WHEREOF, the Insurer has caused this Policy to be signed by its Chairman and Secretary at Chicago, Illinois, but the same shall not be binding upon the Insurer unless signed by its duly authorized representative.

Thomas F. Helander

John M. Walker

Form No: CNA79034XX (09-2014) [FORMTYPE] ; Page: a of b Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP 20

Policy No: POLSYM POLNUM Policy Effective Date: PTEFFDAT Policy Page: x of y



Professional Liability and Pollution Incident Liability Insurance
Policy

Chairman

Secretary

Form No: CNA79034XX (09-2014)
[FORMTYPE] ; Page: a of b
Underwriting Company: UWCOMP, UWADDR1 UWADDR2, UWCITY, UWSTATE UWZIP
21

Policy No: POLSYM POLNUM
Policy Effective Date: PTEFFDAT
Policy Page: x of y