



**webber &
grinnell**
INSURANCE

Construction Risk Management

Mathew Geffin, CIC - Vice President

Peter Normand – Account Executive

Webber & Grinnell Insurance

mgeffin@webberandgrinnell.com

pnormand@webberandgrinnell.com

I LOVE INSURANCE



INSURANCE IS MY FAVORITE



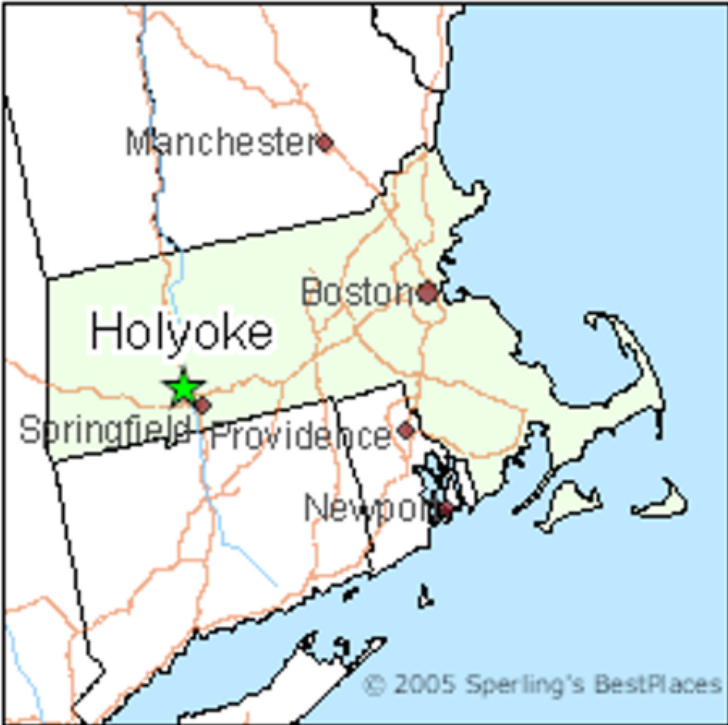
**webber &
grinnell**
INSURANCE

What we will cover

- Market Update
 - Hard market – what is driving rates?
- Pollution Coverage
 - Total pollution exclusions
 - Contractors pollution (mold)
 - Site Pollution
- General Liability vs. Professional Liability
 - Where does coverage end and begin on each policy
 - How to close the gaps
- Claims Management
 - workers compensation considerations (light duty, experience mods and how claims impact that, how to get claims closed, etc.)
 - GL Claims - statute of repose, on going and completed operations considerations, mold/water/see pollution
 - Claims process importance
 - (Look in N-Drive, experience Mods,
 - Why is it important

Who are we?

Massachusetts



Who are we?



LEGEND

Red	Buildings
White	Streets
Green	Fields
Blue	River
Black	Highways
Yellow	Churches
Grey	Factories
Orange	Warehouses
Purple	Public Buildings
Brown	Graves
Light Green	Parks
Dark Green	Woodlands
Light Blue	Water
Dark Blue	Ships
Black	Trains
Red	Fire Stations
White	Public Houses
Green	Schools
Blue	Waterworks
Yellow	Chapels
Grey	Factories
Orange	Warehouses
Purple	Public Buildings
Brown	Graves
Light Green	Parks
Dark Green	Woodlands
Light Blue	Water
Dark Blue	Ships
Black	Trains
Red	Fire Stations
White	Public Houses
Green	Schools
Blue	Waterworks
Yellow	Chapels

HOLYOKE, MASS.

Scale of Miles

0	1	2	3	4	5
---	---	---	---	---	---

Scale of Feet

0	100	200	300	400	500
---	-----	-----	-----	-----	-----

Which of the following are true about the grand old city of Holyoke, MA?

- A. Holyoke was the first planned industrial city in America with a booming Paper Business, hence the name the Paper City
- B. William Morgan invented volleyball at the YMCA in Holyoke
- C. At one time was the wealthiest place in America, per capita
- D. All of the above

Who are we?



Who are we?



**webber &
grinnell**
INSURANCE

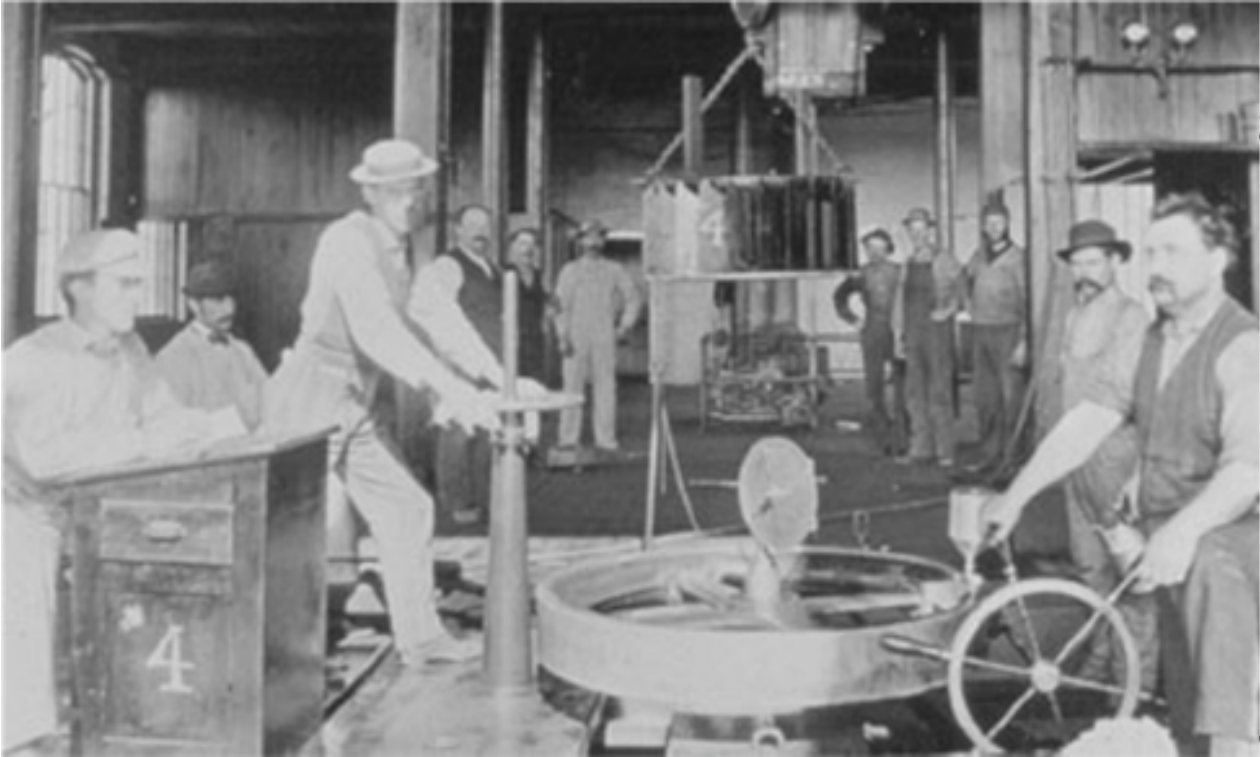
Who are we?



Who are we?



Who are we?



CATALOG NUMBER THIRTEEN

The Hercules Turbine Water Wheel



Red bridge screws
matched pair
exciter pulleys
TYPE AS
550RPM
600 AMPS
125 VOLTS
15" DIA.
75KW
(45'12")

STATE OF MASS.
WILLIAM KEVIN FAY
No. 5025
REGISTERED
PROFESSIONAL ENGINEER

Holyoke Machine Company
Holyoke, Massachusetts, U. S. A.

Who are we?



Who are we?



Who are we?



Who are we?



What we will cover

- **Market Update**
- **Pollution Coverage**
 - Total pollution exclusions
 - Contractors pollution (mold)
 - Site Pollution
- **General Liability vs. Professional Liability**
 - Where does coverage end and begin on each policy
 - How to close the gaps
- **Claims Management**
 - workers compensation considerations (light duty, experience mods and how claims impact that, how to get claims closed, etc.)
 - GL Claims - statute of repose, on going and completed operations considerations, mold/water/see pollution
 - Claims process importance
 - (Look in N-Drive, experience Mods,
 - Why is it important

Poll question

How do Insurance companies make money?

- A. Investment income**
- B. Interest income on “float”**
- C. Underwriting Profit**
- D. All of the above**

Market Update

Hard vs. Soft Market

Soft Market

- Extremely aggressive rate environment
- Companies willing to write outside of appetite
- Large amounts of capacity in the market
- Insurance companies making lots of profits

Hard Market

- Capacity dries up
- Rate's increase even on loss free accounts
- Appetite shrinks, companies become very picky

Market Update

What is driving the current hard market?

1. Losses

- a. Pandemic related losses including workers compensation and event cancellation coverages**
- b. Natural disasters in particular western U.S. wildfires**

2. Premium reduction industry wide

- a. Workers compensation premiums down due to pandemic job losses**
- b. Small business shutdowns due to pandemic**

3. Capacity

- a. Insurance companies do not have access to necessary reinsurance thus have to take on more of the risk and get rate in doing so**

Market Update

2018 Outlook

- Current rate environment is a soft market condition
- Market is well capitalized
- Insurance companies are hungry for new business and are aggressive in retaining current business
- Renewals are flat-5% on average, although companies will lower rates to retain the best accounts
- Natural Disasters providing some uncertainty
 - Hurricanes Harvey and Irma have an expected cost of \$100 Billion, \$30-40 Billion of which are insurable losses
 - Hurricane Katrina cost \$176B, with \$86B in insurable losses

Poll question

What are the total estimated insurance losses from the California Wildfires in 2020?

- A. \$250 Million**
- B. \$10 Billion**
- C. \$100 Billion**
- D. \$1**

Market Update

What can you expect in Nantucket?

1. More stringent underwriting
2. Rate increases
 - a. Loss free - single digits
 - b. Surplus - low double digits
 - c. Overall - increases will be passed along unless you are proactive
3. Cancellations/changing of appetite
4. Large property increases
5. Opportunity in the workers compensation space for companies with good safety programs

Market Update

You must have a strategy!

- 1. Underwriting / marketing strategy**
- 2. Safety / Loss Control strategy, depending on the type of risk**
- 3. Risk Transfer strategy - must have strong sub agreements and a system in place**

What we will cover

- **Market Update**
- **Pollution Coverage**
 - **Total pollution exclusions**
 - **Contractors pollution (mold)**
 - **Site Pollution**
- **General Liability vs. Professional Liability**
 - **Where does coverage end and begin on each policy**
 - **How to close the gaps**
- **Claims Management**
 - **workers compensation considerations (light duty, experience mods and how claims impact that, how to get claims closed, etc.)**
 - **GL Claims - statute of repose, on going and completed operations considerations, mold/water/see pollution**
 - **Claims process importance**
 - **(Look in N-Drive, experience Mods,**
 - **Why is it important**

Pollution



**webber &
grinnell**
INSURANCE

Pollution



**webber &
grinnell**
INSURANCE

Pollution



Pollution



Pollution



Pollution

First let's talk about... what we're talking about!!

1. What is Pollution with respect to commercial insurance and what are the exposures?
1. What are some potential loss examples?
1. Isn't this covered by my General Liability Policy?
1. Where can coverage be found?

Pollution

SECTION V — DEFINITIONS

15. “Pollutants” mean 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.

Pollution

With regards to liability this means pollution conditions for which your business may be held responsible.

These conditions could include

- **a discharge of pollutants brought to the work site**
- **release of pre-existing pollutants at the site**

They can be

- **sudden**
- **gradually occur over time**

Types

- **Site Pollution**
- **Contractors**

Pollution

What does a loss scenario look like?

- **small, imperceptible hole in a water pipe is accidentally cut when repairing drywall resulting in slow leakage lead to respiratory illness due to mold**
- **renovation work by a contractor exposes unknown lead or asbestos hazard in a home (release of pollutants) - need to remediate**
- **Excavation contractor - damage to unknown oil underground oil tank results in need for soil remediation**

Pollution

The Problem

2. Exclusions

2. Exclusions

2. Exclusions

Pollution

2. Exclusions

This insurance does not apply to:

f. Pollution

(1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutants”:

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

Pollution

2. Exclusions

This insurance does not apply to:

- (i) “Bodily injury” if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building’s occupants or their guests;
- (ii) “Bodily injury” or “property damage” for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
- (iii) “Bodily injury” or “property damage” arising out of heat, smoke or fumes from a “hostile fire”;

Pollution

2. Exclusions

This insurance does not apply to:

- (b)** At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c)** Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i)** Any insured; or
 - (ii)** Any person or organization for whom you may be legally responsible; or

Pollution

2. Exclusions

This insurance does not apply to:

- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

Pollution

2. Exclusions

This insurance does not apply to:

- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, “pollutants”; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, “pollutants”.

However, this paragraph does not apply to liability for damages because of “property damage” that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or “suit” by or on behalf of a governmental authority.

Pollution

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverages – Bodily Injury And Property Damage Liability

2. Exclusions

This insurance does not apply to:

Pollution

- (1)** "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
- (2)** Any loss, cost or expense arising out of any:
 - (a)** Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

- (b)** Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

The following definition is added to the Definitions Section:

"Pollutants" mean 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.

Pollution



It is a parade of **EXCLUSIONS!**

Pollution

Pollution exclusion in standard CGL excludes BI and PD but gives back some coverage

- 1. Total Pollution Exclusion**
- 2. Total Pollution Exclusion with give-back of hostile fire**
- 3. Total Pollution Exclusion with give-back of...**

...but the give-backs are small

Be on the lookout for what your policy excludes and what your operations are...

Pollution

The CGL policy has a gap in coverage for a pollution exposures.

How do we fill the gap and find coverage?

Pollution

Solutions: Contractors Pollution Liability or CPL

- contractor-based policy
- offered on a claims-made or occurrence basis
- provides third-party coverage for bodily injury, property damage, defense, cleanup, and related defense costs as a result of pollution conditions (sudden/accidental or gradual) arising from contracting operations performed by or on behalf of the contractor.
- some carriers bundle CPL with E&O policies

Pollution

Solutions: Contractors Pollution Liability or CPL

- Policies can be offered on a project or blanket program basis
- Project policies provide coverage for all operations performed by the insured during the construction period
- can include "tail" coverage (extended reporting period for claims made policies and completed operations for occurrence policies)

Pollution

Solutions: Site Pollution

- **Also known as Premises Pollution, Environmental Site Liability, Pollution Legal Liability**
- **Covers claims specific to scheduled location**
 - **Pollution released at**
 - **Pollution emanating from**
- **Examples of locations**
 - **Specific job site**
 - **Contractors equipment yard**
 - **Contractors storage**
 - **Workshop**

Pollution

Solutions: Site Pollution

- **coverage can be modified to cover only new conditions occurring from policy inception onward, only unknown pre-existing conditions, or both.**
- **Coverage may be provided for mold, fungus and legionella.**
- **Coverage may include waste disposal activities, as well as emergency response costs.**

Pollution

Solutions: Site Pollution

- Coverage can be constructed to apply only to on-site bodily injury, property damage, and clean up; only to off-site, or to both.
- Coverage is very flexible.
- Coverage is almost always Claims Made
- Tank specific liability (fuel cell at jobsite or yard)

Now that we've got that all cleaned up...



What we will cover

- **Market Update**
- **Pollution Coverage**
 - **Total pollution exclusions**
 - **Contractors pollution (mold)**
 - **Site Pollution**
- **General Liability vs. Professional Liability**
 - **Where does coverage end and begin on each policy**
 - **How to close the gaps**
- **Claims Management**
 - **workers compensation considerations (light duty, experience mods and how claims impact that, how to get claims closed, etc.)**
 - **GL Claims - statute of repose, on going and completed operations considerations, mold/water/see pollution**
 - **Claims process importance**
 - **(Look in N-Drive, experience Mods,**
 - **Why is it important**



Poll Question

What is covered under the General Liability Policy?

- A. Non bodily injury or property damage claims
- B. Damage to your work
- C. Work performed on your behalf from an uninsured sub-contractor
- D. None of the above
- E. All of the above

General Liability Coverage:

- Coverage provided is for property damage or bodily injury as a result of your products or completed operations
- Your Work is EXCLUDED

Example:

- Plumber installs whole house plumbing. The work he installs is faulty and subsequently leaking pipes damage house. Coverage for the damage to the house would be paid by the plumbers insurance, but the leaking pipes would need to be fixed/re-installed at the plumbers cost!

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.



k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a sub-contractor.

General Liability Considerations:

What about if the work was performed on your behalf by a subcontractor? Is the “work” still excluded?

- NO – work would be covered if the work was performed on your behalf by a subcontractor (provided they are an insured sub)

Be aware of endorsements to your policies for sub contractor exclusions OR sub contractor provisions that stipulate minimum insurance requirements for sub contractors

I. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - CONTRACTORS AND SUBCONTRACTORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability and Coverage C - Medical Payments:

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" or medical payments arising out of work performed by any contractor or subcontractor whether hired by or on behalf of any insured, or any acts or omissions in connection with the general supervision of such work.

All other terms and conditions of this policy remain unchanged.



Poll question

Do I have coverage if my subcontractor provides me a certificate of insurance and I am the certificate holder?

- A. Yes**
- B. No**

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is added to **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:**

Subcontractor Special Conditions

1. Certificates of Insurance with Limits of Liability equal to or greater than the Limits of Insurance provided by this policy (underwritten by an insurance company with at least an "A-7" Best rating as defined by AM Best) will be obtained from all "subcontractors" prior to commencement of any work performed for you. (Note: If this policy provides a per location or per project aggregate, "subcontractors" policy must also provide the same.)
2. You will obtain written hold harmless agreements from "subcontractors" indemnifying you and the owner against all losses for work performed for you by any and all subcontractors.
3. You will be named as an Additional Insured on all "subcontractors" General Liability policies.

Your failure to comply with the conditions listed above will not invalidate this insurance or alter our obligation to you under the terms of this policy except:

1. If any of the above conditions are not satisfied, a deductible equal to an amount twice the amount listed in the Declarations page of this policy will apply to any claim or "suit" under this policy seeking damages for "bodily injury," "property damage" and/or "personal and advertising injury" arising out of the work performed by the "subcontractor" for the insured. The deductible amounts apply to damages and all legal and loss adjustment expenses. Provisions for the application of deductibles under this policy are set forth in the DEDUCTIBLE LIABILITY ENDORSEMENT.

Commercial General Liability coverage maintained by the subcontractors shall be primary and this policy shall be excess of Limits of Liability of such insurance, notwithstanding the language of the Other Insurance provisions of this policy.

B. The following is added to **SECTION V – DEFINITIONS:**

"Subcontractor" or "subcontractors" means any person or entity that is not your employee of an insured and does work or performs services for or on behalf of an insured.

All other terms and conditions of the policy remain unchanged.



General Liability Coverage:

- What about if the claim is not for bodily injury or property damage?
- What if someone is alleging a financial loss due to a bad design or a change you made in the construction process?

This is where General Liability will not provide coverage....again, we must look to what the insuring agreement is for General Liability...

SECTION I - COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.



COVERAGE C - MEDICAL PAYMENTS

1. Insuring Agreement

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent;
or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

General Liability Coverage:

Where do I pick up coverage in the liability policy for non bodily injury or property damage claims?

Is their coverage?

Typically, the answer is no....due to the insuring agreements and also some exclusions...

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - PROFESSIONAL SERVICES -
CONTRACTORS, ENGINEERS, ARCHITECTS, SURVEYORS AND
CONSTRUCTION MANAGEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is **added** to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability, Coverage B - Personal And Advertising Injury Liability and Coverage C - Medical Payments:

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" or medical payments arising out of the rendering of or failure to render any professional services by you or on your behalf.

Professional services include:

- a. Any error, omission, defect or deficiency in any test performed; or
- b. Any evaluation, consultation or advice; or
- c. The reporting of or reliance upon any such test, evaluation, consultation or advice; or
- d. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, designs, or drawings and specifications; or
- e. Supervisory, inspection, or quality control activities performed as part of any related architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED EXCLUSION – CONTRACTORS –
PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you, but only with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

Professional services include:

1. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
2. Supervisory or inspection activities performed as part of any related architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

This exclusion does not apply to your operations in connection with construction work performed by you or on your behalf.



Professional Liability Coverage:

Where General Liability provides for Bodily Injury and Property damage coverage, Professional Liability policies (or Errors & Omissions policies) can pick up “other stuff” ...

Let's look at the coverage....

Artisan Subcontractors Professional Liability Coverage Part: WCLANE P0004 CW (05-20)

Covered work: drywall contractor
Professional Liability (PL): \$ 3,000,000 Each Claim / \$ 3,000,000 Aggregate

	<u>Limit of Liability</u>	<u>Retention</u>	<u>Retroactive Date</u>	
Defense of Licensing Proceedings:	\$ 10,000	None		(Separate Limit)
FHA/OSHA/ADA Regulatory Proceedings:	\$ 25,000	None		(Separate Limit)
Pre-Claim Assistance:	\$ 50,000	None		(Separate Limit)
Subpoena Assistance:	\$ 10,000	None		(Separate Limit)
Supplementary Payments:	\$ 10,000	None		(Separate Limit)
Faulty Workmanship:	\$ 1,000,000 Each Claim and Aggregate	\$ 15,000	07/16/2020	Covered (Shared with PL)
Contractors Pollution Liability (CPL):	\$ 3,000,000 Each Claim and Aggregate	\$ 15,000	07/16/2020	Covered
Mold Liability:	\$ 3,000,000	\$ 15,000	07/16/2020	(Shared with CPL)
Non-Owned Disposal Sites:	\$ 3,000,000	\$ 15,000	07/16/2020	(Shared with CPL)
Rectification Coverage:	\$ 1,000,000 Each Claim and Aggregate	\$ 15,000	07/16/2020	Covered (Shared with PL)
Media and Advertising Activities:	\$ 3,000,000 Each Claim and Aggregate	\$ 15,000	07/16/2020	Covered (Shared with PL)
Crisis Management:	\$ 50,000 Each Claim and Aggregate	\$ 15,000	07/16/2020	Covered (Shared with PL)



Professional liability

- A. **We** will pay up to the Professional Liability **coverage part limit** stated in the Declarations for **damages** and **claim expenses** in excess of the **retention** for covered **claims** against **you** alleging a negligent act, error, or omission in **your professional services** performed by **you** or on **your** behalf on or after the **retroactive date**, provided the **claim** is first made against **you** during the **policy period** and is reported to **us** in accordance with Section V. Your obligations.

Claim

means any written assertion of liability or any written demand for financial compensation or non-monetary relief.

For **clean-up costs** and **restoration costs** only, **claim** also means any request, demand, order, or other proceeding brought by or on behalf of a governmental entity to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize **pollutants**.

Professional services

means only the following services performed for others for a fee:

1. those services requiring specialized knowledge, skill, training, experience, education, certification, or licensing rendered in the capacity of an architect, engineer, landscape architect, land surveyor or planner, program manager, project manager, owner's representative, LEED accredited professional, interior designer, scientist, technical consultant, design consultant, environmental consultant, construction consultant, forensic consultant; and
2. ordinary technology services rendered in the course of any of the services in part 1 above, including **your** use of a drone and the design, development, programming, analysis, training, use, hosting, management, support, or maintenance of any software, database, internet service, or website.

Professional services also includes the above services **you** perform pro bono with the prior knowledge and consent of the **named insured**.

Professional services does not include any services regarding construction means, methods, techniques, sequences, procedures, or job site safety obligations in connection with **your** operations as a construction contractor, except for stamping, sealing, or any other services as a licensed architect or engineer.

For purposes of this definition, "drone" means any unmanned aircraft system without a human pilot onboard that: (i) is controlled by an operator on the ground; and (ii) weighs 55 pounds or less.



Faulty workmanship liability

- B. **We will pay up to the Faulty Workmanship limit stated in the Declarations for faulty workmanship damages and claim expenses in excess of the retention for covered claims against you alleging faulty or inadequate skill, quality, or craftsmanship in your covered work, or the use of defective materials or products in your covered work, on or after the retroactive date, provided the claim is first made against you during the policy period and is reported to us in accordance with Section V. Your obligations.**

Any payment we make under this Insuring agreement B. will be a part of, and not in addition to, the coverage part limit.



**Faulty workmanship
damages**

means:

1. **damages** for property damage to your covered work, provided such damage is included in the **products-completed operations hazard**;
2. **damages** for loss of use or diminution of value of **impaired property** arising out of a defect, deficiency, inadequacy, or dangerous condition in **your covered work**, but not for the loss of use of other property arising out of sudden and accidental physical injury to **your covered work** after it has been put to its intended use; or
3. reasonable and necessary costs or expenses incurred by **you** for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal, or disposal of **your covered work** or **impaired property**, if such work, product, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy, or dangerous condition in it.

Property damage

means physical damage to or destruction of any tangible property which directly results from **your** performance of **professional services**, **construction activities**, or **covered work**, and any resulting loss of use of that property.

Covered work

means the operations or work performed by **you** and identified as Covered Work under the Artisan Subcontractors Professional Liability Coverage Part section of the Declarations, including **your** installation of goods or products, including containers (other than vehicles) or materials, as well as any equipment furnished in connection with such operations, work, or installation of goods or products.

Covered work includes warranties and representations made at any time regarding the fitness, quality, durability, performance, or use of **your covered work**; the providing of or failure to provide warnings or instructions; and services regarding any Building Information Modeling (BIM) systems. **Covered work** does not include the installation of vending machines or other property rented to or located for the use of others but not sold.

Impaired property

means tangible property, other than **your covered work**, that cannot be used or is less useful because it incorporates **your covered work** that is known or thought to be defective, deficient, inadequate, or dangerous, if such property can be restored to use by the repair, replacement, adjustment, or removal of **your covered work**.



Products-completed operations hazard

means all **property damage** taking place away from premises owned, occupied by, loaned, or rented to **you** and arising out of **your covered work**, except:

1. products that are still in **your** physical possession; or
2. work that has not yet been completed or abandoned. However, **your covered work** will be deemed completed at the earliest of the following times:
 - a. when all of the work called for in **your** contract or agreement has been completed;
 - b. when all of the work to be performed at the site has been completed, if **your** contract or agreement calls for work at more than one site; or
 - c. when that part of the work completed at a site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair, or replacement, but which is otherwise complete, will be treated as completed.

Products-completed operations hazard will not mean **property damage** arising out of:

- a. the transportation of property, unless the injury or damage results from a condition in or on a vehicle not owned or operated by or loaned or rented to **you** and that condition was created by the loading or unloading of that vehicle by **you**; or
- b. the existence of tools, uninstalled equipment, or abandoned or unused materials.



I. INSURING AGREEMENTS

(A) Professional Services Liability Coverage

(1) Contractors Professional Liability

The Company shall pay **Loss** and **Claim Expenses**, in excess of the Deductible and subject always to this Policy's Limit of Liability, that an **Insured** shall become legally obligated to pay as a result of a **Claim** made against an **Insured** for a **Wrongful Act** arising from **Professional Services**, provided always that:

- (a) the **Claim** is first made against an **Insured** during the **Policy Period** or an Optional Extended Reporting Period (if applicable) and reported to the Company in writing during the **Policy Period**, within sixty (60) days after the end of the **Policy Period** or during an Optional Extended Reporting Period (if applicable);
- (b) an **Insured's** partners, principals, officers, directors or managers of the insurance, legal or risk management department had no knowledge of any circumstance, dispute, situation or incident that gave rise to such **Claim** or could reasonably have been expected to give rise to such **Claim** prior to the Effective Date stated in the Declarations of this Policy; and,
- (c) the **Wrongful Act** takes place on or after the Retroactive Date stated in the Declarations of this Policy and prior to the end of the **Policy Period**.

(C) **Claim**

“**Claim**” shall mean:

- (1) a demand made against any **Insured** for monetary damages or services including a request to waive or toll a statute of limitations; or,
- (2) any civil, judicial, administrative, regulatory or arbitration proceeding commenced against any **Insured** by the service of a complaint or similar pleading.

A **Claim** will be deemed to have been first made against an **Insured** when any **Insured** first receives notice of such **Claim**.

(T) **Wrongful Act**

“**Wrongful Act**” shall mean any actual or alleged negligent act, negligent error, negligent omission, negligent misstatement, negligent misleading statement or negligent breach of duty committed or allegedly committed by any **Insured** or by an individual or entity for whom an **Insured** is legally liable.

(R) **Professional Services**

“**Professional Services**” shall mean:

- (1) those services performed for others for a fee, by or on behalf of an **Insured**, as an architect, engineer, land surveyor, landscape architect, interior designer, LEED consultant, environmental consultant, expert or forensic witness, land planner, space planner or scientist;
- (2) those services performed for others for a fee, by or on behalf of an **Insured**, as a professional qualified to perform sprinkler design, electrical design, mechanical design, HVAC design, plumbing design, fire protection design, life safety design, security system design, acoustical design, materials testing, laboratory testing, Building Information Modeling (BIM), custom software design used for the sole purpose of operating or maintaining systems, building commissioning, value engineering, constructability review or design-assist;
- (3) those services performed for others for a fee, by or on behalf of an **Insured**, as a construction manager, project manager, program manager, or owner's representative, but only to the extent such services are specifically defined by a written contract; or,
- (4) the management, by an **Insured**, of an **Insured's** subconsultants in their capacity as an architect, engineer, land surveyor, landscape architect, interior designer, LEED consultant, environmental consultant, expert or forensic witness, land planner, space planner, scientist, construction manager, project manager, or program manager.

Beware of exclusions....

(A) **Breach of Warranty / Guarantee**

based upon or arising out of any warranty or guarantee made by any **Insured**. This exclusion shall not apply to the warranty or guarantee that **Professional Services** adhere to the generally accepted standard of care applicable to those **Professional Services**;

(B) **Construction Procedures**

based upon or arising out of the design, construction or failure of any falsework, formwork, shoring, scaffolding, rigging, crane erection or any other construction means, methods, techniques, sequences or procedures;

(C) **Contractual Liability**

based upon or arising out of any liability of others assumed by any **Insured** under any oral or written contract or agreement, unless such liability would have attached to that **Insured** even in the absence of such contract or agreement;

(D) **Faulty Workmanship**

based upon or arising out of any cost to repair or replace faulty workmanship due to the performance or the failure to perform **Contracting Activities** by any **Insured**, its subcontractors, or on any **Insured's** behalf. This exclusion shall not apply to the portion of the **Claim** arising from a **Pollution Incident**;

Professional Liability Coverage Summary:

Covers:

- Wrongful acts due to professional services performed for a fee
- Excludes faulty workmanship UNLESS you buy back that exclusion
- Can pick up suits that are not alleging property damage or bodily injury in your capacity as a construction manager or a subcontractor doing design work
- MUST be tailored to your business which is accomplished via your broker and the supplemental application....and a discussion with the underwriter as to what your exposure is that you are trying to cover for



What we will cover

- **Market Update**
- **Pollution Coverage**
 - **Total pollution exclusions**
 - **Contractors pollution (mold)**
 - **Site Pollution**
- **General Liability vs. Professional Liability**
 - **Where does coverage end and begin on each policy**
 - **How to close the gaps**
- **Claims Management (pete)**
 - **workers compensation considerations (light duty, experience mods and how claims impact that, how to get claims closed, etc.)**
 - **GL Claims - statute of repose, on going and completed operations considerations, mold/water/see pollution**
 - **Claims process importance**
 - **Why is it important**

Claims Management

- What is it?
- workers compensation considerations
 - light duty
 - experience mods and how claims impact that
 - how to get claims closed
- GL Claims
 - statute of repose
 - on-going and completed operations considerations,
 - mold/water/see pollution
- Importance of the claims process
- Why is it important



Claims Management

First, what is a claim?

A claim is a formal request to an insurance company asking for a payment based on the terms of an insurance policy (contract).

Then what happens?

The insurance company investigates the claim (for validity and coverage) and then pays out to the policy holder (insured) or the the requesting party (on behalf of the insured) once the claim is approved.



Claims Management

What is claims management?

Following a pre-determined process to reduce the amount or size of a loss

Claims management advocates for the insured:

- keeps a claim moving
- offers interpretations of coverage
- works with adjusters
- helps close claims quickly
- reduces cost
- maximizes/minimizes claim

Claims Management

Workers Compensation Considerations

Workers Compensation is a “No-fault” system

- Employer is responsible for injuries/illnesses that arise out of and are in the course of employment
- Doesn't matter who caused it or how
- Employee is limited to the benefits specified in the workers compensation law
- Employee has no right to tort action (lawsuit)



Claims Management

Workers Compensation Considerations

What does it cover?

- Reasonable medical expenses (unlimited, no limit)
- Prescription reimbursements
- Mileage reimbursements for travel to and from medical visits
- 60-66% of your gross average weekly wages (starts on the 6th day of being out of work)
- Based on your gross average weekly wage of the 52 weeks prior to your injury

Claims Management

Workers Compensation Considerations

Experience Modification Factor and ARAP

EFF DATE	EXP DATE	FACTOR	ARAP	RATING RESULT	RATING STATUS	STATUS DATE	RATING TYPE
03/01/2021	03/01/2022	1.12	1.18	CAL	ISS	09/14/2020	N
03/01/2020	03/01/2021	1.20	1.25	CAL	ISS	09/23/2019	N
03/01/2019	03/01/2020	1.17	1.25	CAL	ISS	06/03/2019	N

Claims Management

Workers Compensation Considerations

Experience Modification Factor

- a calculation of actual losses incurred divided by expected losses
- calculation is driven by claims
- Credit or debt system

ARAP

- All Risk Adjustment Program
- purpose of this program is to provide a revised pricing mechanism for experience rated risks to share in the underwriting losses they generate.
- never less than 1.00, can be up to 1.25

Claims Management

Workers Compensation Considerations

Experience Modification Factor and ARAP

EFF DATE	EXP DATE	FACTOR	ARAP	RATING RESULT	RATING STATUS	STATUS DATE	RATING TYPE
03/01/2021	03/01/2022	1.12	1.18	CAL	ISS	09/14/2020	N
03/01/2020	03/01/2021	1.20	1.25	CAL	ISS	09/23/2019	N
03/01/2019	03/01/2020	1.17	1.25	CAL	ISS	06/03/2019	N

Claims Management

Workers Compensation Considerations

Experience Modification Factor (Debt) and ARAP

\$10 rate x \$1,000,000 in payroll:

\$100,000 premium

1.12 experience modification factor

1.18 ARAP

$100,000 \times 1.12 \times 1.18 =$

\$132,160 net annual premium

Claims Management

Workers Compensation Considerations

Experience Modification Factor and ARAP

EFF DATE	EXP DATE	FACTOR	ARAP	RATING RESULT	RATING STATUS	STATUS DATE	RATING TYPE
07/26/2021	07/26/2022	0.90	1.00	CAL	ISS	01/05/2021	N
07/26/2020	07/26/2021	0.87	1.00	CAL	ISS	04/02/2020	N
07/26/2019	07/26/2020	1.01	1.15	CAL	ISS	02/22/2019	N

Claims Management

Workers Compensation Considerations

Experience Modification Factor (Credit) and ARAP

\$10 rate x \$1,000,000 in payroll:

\$100,000 premium

0.90 experience modification factor

1.00 ARAP

$100,000 \times 0.90 \times 1.00 =$

\$90,000 net annual premium

Claims Management

Workers Compensation Considerations

Experience Modification Factor and ARAP

\$132,160 net annual premium

VS

\$90,000 net annual premium



Claims Management

Workers Compensation Considerations

Importance of Managing Workers Compensation Claims

How a Workers Compensation Claim Impacts your Business

- Loss of key employee
- Loss of productivity
- Additional stress on work force
- Lower moral
- Hiring costs
- Training costs
- **Higher Work Comp Premiums**



Claims Management

Workers Compensation Considerations

Components to a Claims Management Plan

- Identify and develop your “team” for accident investigation and claims management
- Provide written policies and procedures to follow when an accident occurs
- Effectively communicate your plan to your workforce. Make it a part of your culture
- Execute your plan

Claims Management

Workers Compensation Considerations

Supervisor Responsibilities:

- Direct injured employee to occupational clinic
- Immediate notice of work comp. loss to HR Dept.
- Initial Accident Investigation (complete form)
- Initial follow up with injured employee
- Participate in ongoing communication with injured employee and HR Dept.
- **Coordinate light duty return to work plan**

Claims Management

Workers Compensation Considerations

Importance of Occupational Health Clinics

- Employees and Employer's interests in mind when treating an injury
- They understand the importance of **returning to work**
- They understand the concept of **modified duty**
- Their billing rates are in accordance with workers compensation pay rates
- They refer patients to specialists that are also attuned to **getting an employee back to work**

Claims Management

Workers Compensation Considerations

Occupational Health Clinics:

Nantucket Cottage Hospital

1-508-825-1066

Non-emergency / By appointment

Cape and Islands Occupational Medicine, PC

1-508-771-5770

Pre-employment Physicals

Pre-employment Drug Screens

Claims Management

Workers Compensation Considerations

What is Modified / Light Duty?

- Working part time
- Working the same job with accommodations
- Working for a lower wage at a different position - written offer
- Should try and make the work meaningful in nature
- Describe and offer your modified duty position in writing to the injured employee
- **Make it a formal job offer - in writing - critical to do**
- **Modified duty - described in employee handbook that employees signed - as part of return to work program if injured on the job**

Claims Management

General Liability Considerations

Things to be aware of with General Liability claims

- o Statute of Repose
- o Completed Operations
 - AKA: Products-Completed Operations Hazard”
- o Ongoing operations
- o Mold and Water

Claims Management

General Liability Considerations

Statute of Repose

- o 6 years in Massachusetts for construction and design claims
- o When can a claim be made on a policy?
- o What constitutes notice?
- o Who can notice be made to to trigger notice of a claim?
- o What to watch out for:
 - notice
 - 6 year statute

Claims Management

General Liability Considerations: Completed Operations

Does my policy have Products-completed Operations coverage?

- Is there coverage when I am “done” working and I have delivered my “product” to my client?

Definitions

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or

Claims Management

General Liability Considerations: Completed Operations - Definitions

- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

Claims Management

General Liability Considerations- Completed Operations - Definitions

- b. Does not include "bodily injury" or "property damage" arising out of:
 - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
 - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
 - (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.



Claims Management

General Liability Considerations- Ongoing Operations

Ongoing operations:

- work that is still being performed and is active
- work that has not been abandoned
- work that has not been completed

Claims Management

General Liability Considerations - Mold and Water (Pollution)

Mold and Water

- Recall pollution coverage
- what is included and what is excluded in a policy
- total pollution exclusion - See Pollution slides in presentation

Claims Management

General Liability Considerations

Understanding the

- Who - notice
- What - constitutes notice
- Where - location of claim
- When - ongoing or completed ops
- Why - what is the cause of claim?

Claims Management

Process

Have a PLAN, execute, and document

- Identify and develop your “team” for accident investigation and claims management
- Provide written policies and procedures to follow when notification of a claim or an accident occurs
- Effectively communicate your plan to your workforce
- Execute your plan every time
- Document all activities

Claims Management

Why

- control premiums due to losses
- minimize loss size
- retain employees
- reputation
- time management



Questions?

Thank you

Mat Geffin

mgeffin@webberandgrinnell.com

413-570-1973

Peter Normand

pnormand@webberandgrinnell.com

413-570-1964