

The Regents of the University of California



Construction Risks – Coverage Analysis

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NOTE: The descriptions, coverage examples and claims scenarios contained in this Coverage Analysis are intended to illustrate how insurance would apply in the event of a loss and provide examples of what may or may not be covered. The facts of how a loss occurred, what caused a loss, and other circumstances surrounding a loss will vary from claim to claim. Therefore, each claim is subject to its own set of facts and circumstances that will determine what is covered by insurance. This Coverage Analysis serves as a general guideline and any and all information contained herein is advisory and is not legal advice nor a guarantee of coverage for any single set of specific circumstances.

1. Introduction

This Coverage Analysis provides an overview of construction risks and insurance coverages that University projects are confronted with. As University projects proceed with utilization of various contract delivery methods, our coverage analysis accounts for the exposures presented in multiple selected delivery methods that span the life of a contract. In the past, the projects' contractors have been primarily responsible for procuring and providing the insurance coverages described herein. Recently, however, the University, as the project owner, has elected to procure construction risk insurance to cover both the University and the contractors working on our projects.

Each coverage overview will include:

- Description of coverage
- Insured Parties – Who is covered
- Projects Insured
- Coverage Examples

The Office of Risk Services is responsible for managing the University's insurance programs covering construction activities. While contractor-provided insurance can provide the University a source of recovery when a loss or lawsuit occurs, there is the risk that a contractor's insurance will not be available to the University. This can happen when:

- The contractor's insurance carrier is or becomes insolvent when the claim manifests.
- The contractor's limits of insurance are shared with other non-University projects, and the limits have been eroded or exhausted by claims from those other projects.
- The contractor's insurance has lapsed or been terminated and not renewed or replaced.
- The contractor's policy has Endorsements or Exclusions that limit the scope of coverage or do not extend coverage to the University in certain instances.
- The contractor's program has a self-insured retention layer, and the duty to defend the University is not triggered until the retention amount is paid.
- The University retains the liability giving rise to a claim or lawsuit regardless of the contractual risk transfer to a contractor or consultant and their obligation to indemnify the University.
- The contractor goes out of business or is acquired by another company that does not retain the liabilities of the contractor's past projects.

The following table includes the primary lines of insurance and the main construction risks these lines are intended to cover.

Coverage – Construction Risk Table

Risk Category	Builder's Risk	General Liability	Workers' Compensation	Professional E&O	Contractor's Pollution Liability	Surety Bonding	General Conditions
Contractor Employee Injury			✓				
Third Party Injury		✓					
First Party Property Damage	✓						✓
Third Party Property Damage		✓					✓
Construction Defects		✓					✓
Design Defects "Errors & Omissions"				✓			✓
Pollution Liability					✓		
Contractor Default						✓	✓
Warranty							✓

The above table correlates insurance coverages only to the primary risk category they are intended to cover. Some lines of coverage may respond more or less broadly depending upon the coverage trigger. For instance, when a pollutant discharge or design defect causes consequential property damage, the Professional Liability or the Contractor's Pollution Liability policies may also provide coverage for third party damage.

The Office of Risk Services negotiates and manages the University's insurance programs and has prepared this Coverage Analysis to provide you with basic information concerning the design and construction risks faced by the University and the insurance coverages available to respond to these risks. If you have further questions, contact Cynthia Low at (510) 987-9828 or email Cynthia.low@ucop.edu

2. Coverage – Builder’s Risk

Description: Builder’s Risk Insurance, also known as ‘all risk’ or ‘course of construction’ insurance, protects the University, contractors and subcontractors of all tiers from direct physical loss or damage to the project resulting from a covered peril such as fire or theft during the course of construction. The peril of interior water damage is included, and the policy contains some coverage (with lower sub-limits) for materials ‘in-transit’ and ‘offsite storage.’ Excluded perils include earthquake and flood, unless specifically procured as an option.

The Builder’s Risk insurance limits of liability are up to the full replacement value of construction including labor and materials, except in the case of specifically defined sub-limits. The contractor is responsible for the “per occurrence” deductible as stipulated in the University Construction contract documents.

The following optional coverages under the Builder’s Risk program are available to the University’s projects for an additional premium.

- Illegal Occupation covers the cost to enhance security, remove illegal occupants, and pay for expenses due to the resulting delays in construction.
- Flood covers direct physical loss or damage to the project caused by flood as defined to include flood, surface water, etc.
- Earthquake covers direct physical loss or damage to the project caused by an earthquake/earth movement.
- Hot Testing covers commissioning and expands the perils that are covered for boiler and machinery breakdown.
- Soft Costs provides coverage for extra expense or loss of income due to direct damage to the project. The University ordinarily does not elect to insure this risk, but this coverage can be requested on special joint projects of Non-University ownership.

Insured Parties: The University, contractors and subcontractors of all tiers.

Projects Insured: All projects with construction value over \$200,000.

Coverage Examples:

- Sparks from a welder cause a fire. The Builder’s Risk policy covers damage to the construction project regardless of fault. This would include costs of clean-up, remediation, restoration and rebuilding any completed work, and replacing damaged materials.
- A construction worker carrying drywall hits and activates a sprinkler head causing water to be released. The Builder’s Risk policy covers damage to the project caused by the water regardless of fault. This would include clean-up, dry-out and remediation, removal and replacement of drywall and damage to sprinkler head, and mold remediation activities due to the water release.

- Theft of building materials being stored on-site or off-site occurs when a door or fence is left unlocked overnight or when a window is broken to gain access. The Builder's Risk policy will cover the replacement cost of the stolen and broken materials.
- A construction project is vandalized by protestors, who damage materials that have been installed on the not-yet-completed building. The Builder's Risk policy will cover the cost of cleaning up and repairing or replacing the damaged material.

Non-Coverage Examples:

- A fire started by a welder spreads to an adjacent building or an adjoining wing that is not part of the project area under construction, and the adjacent building or adjoining wing and its contents sustain damage. The fire also damages the contractor's tools and equipment. The Builder's Risk insurance will not provide coverage for these damages because the "existing property" and the contractor's tools and equipment are not part of the project under construction.

Available Coverage: Coverage of the adjacent building or adjoining wing and its contents would be available under the contractor's General Liability policy, which covers third-party property damage unless the "Care, Custody and Control" exclusion applies. Or if the project is enrolled in UCIP (see Section 3. of this Coverage Analysis), this would be covered under the UCIP's General Liability policy. Coverage for the contractor's tools and equipment would be available under the contractor's Property insurance or Equipment Floater policy.

- A sprinkler head is struck by a worker causing water to be released. The water not only damages the area under construction, but also flows down and damages floors that are not part of the project. The floors below sustain damage to drywall, ceiling tiles, furniture and personal property of occupants. The Builder's Risk will not provide coverage for any damages sustained to the floors below as "existing property" is excluded under the Builder's Risk policy.

Available Coverage: The contractor's General Liability policy would provide coverage of third-party property damage, including the occupants' personal property. Or if the project is enrolled in UCIP, this would be covered under the UCIP's General Liability policy.

Exclusions commonly found in the Builder's Risk policy include the following:

- Land and Land Values
- Contractors' tools and equipment
- Vehicles
- Existing Property
- Pollution
- Wear, tear, mold, corrosion, oxidation, and deterioration
- Normal subsidence or settling, and cracking, expansion or contraction of walls, floors or foundations
- Flood, surface water, tidal water, overflow of streams, rivers or lakes
- Earthquake, earth movement, landslide, mudslide, volcanic eruption, sinkhole or sudden subsidence
- Cost of making good an error, omission or deficiency in design, plans or specifications
- Cost of making good faulty or defective workmanship

3. University Controlled Insurance Program (UCIP) – Tower 1

Description: The University sponsors a wrap-up insurance program, termed **UCIP**, to provide coverage to the University and enrolled construction managers, general contractors, and contractors and subcontractors of all tiers. The UCIP is a single insurance program for construction projects providing:

- Worker’s Compensation & Employer’s Liability insurance
- General Liability insurance
- Excess Liability insurance

The rationale behind the UCIP is cost savings and better control over insurance the University will rely upon to protect its interests. The UCIP provides coverage for enrolled parties’ employees and construction activities at or emanating from the project site locations as defined in the University construction contract documents. If a University project would like to include any off-site locations that are 100% dedicated to the University’s project, these locations must be coordinated with the UCIP Administrator prior to the inception of coverage.

Insured Parties: The University for General and Excess Liability and all enrolled parties for Workers’ Compensation, General and Excess Liability coverages.

Projects Insured: All projects with a construction value budget over \$25,000,000 (total for all phases), and is available to other projects upon request.

Coverage – Workers’ Compensation

Description: Workers’ Compensations insurance is statutorily required and provides coverage to employees for bodily injury and disease sustained in the course of employment. The UCIP’s Workers’ Compensation policy provides coverage to employees of enrolled contractors and subcontractors of all tiers while working on the project site. (NOTE: University employees remain insured under the University’s Workers’ Compensation Program) The limits of liability and benefits paid out under any Workers’ Compensation policy are statutorily defined. The policy has a \$250,000 deductible for the University, which is completely pre-funded by each project at inception. There is no deductible for enrolled contractors and subcontractors.

Part B of the Workers’ Compensation policy is Employer’s Liability coverage, and its limit of liability is \$2,000,000.

Coverage Examples:

- An enrolled subcontractor’s employee falls while working on the project site and sprains his wrist. The UCIP’s Workers’ Compensation policy will respond to a claim and cover the employee’s medical costs. Additionally, the Workers’ Compensation coverage will provide other statutorily-defined benefits to the employee such as short term disability payments in the case where an employee cannot work due to the injury.

Non-Coverage Examples:

- An enrolled subcontractor's employee cuts his finger with a table saw while doing millwork for the interior finish of a campus building and required immediate medical attention and several stitches. The employee was not working on the project site, but at the subcontractor's headquarters workshop. The UCIP's Workers' Compensation policy will not provide coverage because the UCIP only provides coverage while working ON the project site.

Available Coverage: This employee would be covered through his/her employer's Workers' Compensation policy.

Coverage – General Liability

Description: General Liability insurance provides coverage of bodily injury and property damage to third parties resulting from construction activities at or emanating from the project site. This coverage includes ten (10) years of completed operations extension for work performed by enrolled contractors, which includes coverage of bodily injury and property damage as the result of construction defects. The limit of liability for the policy is \$2,000,000 per occurrence with a \$4,000,000 aggregate limit per year, which is reinstated annually. The policy has a \$250,000 deductible for the University, which is completely pre-funded by each project at inception. Enrolled contractors and subcontractors are contractually required to pay a fee that the University uses to offset the deductible.

The University is covered under this program for its actions, and the actions of the contractors when the University is named in a claim as a responsible party.

Coverage Examples:

- A pedestrian trips over a protrusion in the project's perimeter fence and suffers a sprained ankle. The UCIP's General Liability policy will respond to a claim filed by the pedestrian and cover medical costs and potentially other damages, either confirmed by the insurance company's adjuster or upheld in a court of law, in the case of a lawsuit. The General Liability policy will also provide a defense to the University and all contractors named in the lawsuit.
- A vehicle is parked outside of the project's perimeter fence. While pouring concrete on an upper level of the project, overspray falls outside of the perimeter fence and lands on the vehicle, cracking its windshield. The UCIP's General Liability policy will respond to a claim filed by the owner of the vehicle for the damaged windshield.
- A pipe bursts two years after completion of the project. The resultant release of water damages personal effects of a tenant. Additionally, in order to repair the pipe, crews are required to tear out a portion of the drywall housing the pipe. The UCIP's General Liability policy, under the completed operations extension, will respond to a claim for the repair or replacement of the damaged personal effects. Additionally, the completed operations extension will cover the cost of the resultant damage and repair to other work. The policy will not cover the burst pipe itself.

Non-Coverage Examples:

- A contractor applying sealant coatings to the underground concrete portions of the project inadvertently starts a fire that damages the project's drywall above. Even though a separate contractor installed the drywall, both contractors' work is considered the project's Work. The UCIP's General Liability policy would not respond because it only covers third-party claims.

Available Coverage: The University's Builder's Risk program would provide coverage for the project Work that was damaged.

- Five years following the completion of the project, a campus building shows signs of a mold infestation. The mold causes students to get sick and the affected drywall must be replaced. The UCIP's General Liability policy will not provide coverage because the policy contains a Fungus Exclusion.

Available Coverage: A Contractor's Pollution Liability (CPL) policy would provide coverage of affected students' medical costs and the costs of cleaning out the mold and replacing the infected drywall. The CPL policy must include a mold endorsement and contain an extended reporting period.

- A contractor, who is enrolled in the UCIP, is involved in a vehicular accident while in route to the project site and damages a civilian's car and severely injures a passenger. The UCIP will not provide coverage for any costs associated with a resultant claim or lawsuit. The UCIP does not cover Automobile Liability and only covers incidents at or emanating directly from the project site.

Available Coverage: All contractors under contract with the University are required to maintain their own Auto Liability insurance and other insurance coverage, as specified by the contract documents, to respond to Auto Liability claims and other claims that may occur away from the project site.

- An electrical contractor installs electrical sockets in a campus dormitory as part of the contract work. When the next semester term begins and students occupy the dorm rooms, it is discovered that the electrical sockets do not work. There is no apparent damage to the equipment itself or damage to any other area of the project. Because there is no damage to third party property, there is no trigger for coverage under the General Liability completed operations extension. Additionally, the defect is discovered within the one year term of the contractor's warranty.

Available Coverage: Either the electrical sockets are defective products or the electrical contractor did not install them correctly. There would be recourse or recovery available through the manufacturer's product warranty or the contractor's warranty, respectively.

Coverage – Excess Liability

Description: The UCIP's Excess Liability insurance provides coverage limits beyond that of the underlying General Liability insurance and it 'follows form' of the underlying General Liability coverage. It increases the General Liability limits from \$2,000,000 per occurrence to \$102,000,000 per occurrence, and its aggregate limit from \$4,000,000 per year to \$104,000,000 per year (one aggregate limit for the ten (10) years of completed operations extension period).

The University is covered under this program for its actions, and the actions of the contractors when the University is named in a claim as a responsible party

Coverage Example:

- Five years following the completion of the project, subsidence causes a tilting of the campus classroom building, rendering it uninhabitable to professors and students. The subsidence is a result of defective soil stabilization work by the original site contractor. Substantial work in excess of \$2 million is required to make the classroom building habitable and the University files a claim against the site contractor. The UCIP's General Liability and Excess Liability policies will respond to the claim to repair the building.

Non-Coverage Example:

- A pipe bursts at the project site and the resultant release of water damages a portion of a campus building that is not part of the project. The damages to the other campus building total \$1,400,000. The UCIP's General Liability policy will respond to a claim for the full cost of repairing the damages to the other campus building. No coverage would be provided by the Excess Liability policy because the costs do not exceed the General Liability policy limit of \$2,000,000 per occurrence.

Available Coverage: This claim would be handled solely through the primary General Liability coverage.

4. Coverage – Professional Liability (Errors & Omissions)

Description: Professional Liability insurance provides coverage of claims arising out of the “errors and omissions” of professional services firms including architects, engineers and other consultants. For projects with budgeted value of \$75,000,000 or more, the recommendation is professional services firms be required to provide Professional Liability coverage with limits of at least \$5,000,000.

University Professional Insurance Program (UPIP)

The University Professional Insurance Program, or **UPIP**, which is based on the Owner’s Professional Protective Indemnity (OPPI) policy, further protects the University from Professional Liability. This program provides the University with coverage for damages that exceed the design and engineering consultants’ and contractors’ primary Professional Liability coverage. The UPIP provides the University Excess and Difference in Conditions (DIC) coverage and defense against third party claims or lawsuits. The UPIP covers liability of loss or damage, including the cost to redesign and reconstruct, due to negligent design work on a project-specific basis.

The coverage is on a Claims Made form, which means the claim must be reported during the policy period. Due to the latency in detecting or incurring a claim, the UPIP extends the period to report a claim to ten (10) years after construction is complete.

Insureds: The University.

Projects Insured: Recommended for projects over \$75,000,000, but is available to other projects upon request.

Coverage Examples:

- The faulty design of an entryway causes rainwater to enter a recently-completed campus building. The UPIP will cover the cost excess of the architect’s professional liability policy to redesign and reconstruct the entryway and clean-up and repair any water damage to surrounding areas.
- Due to the faulty design of a utility piping system, a pipe ruptures and releases water into the building. The UPIP will cover the cost excess of the design consultant’s professional liability policy to redesign and reinstall utility pipe, and any other utility pipes that may be the subject of the design error, as well as any resulting water damage from the pipe rupture.
- An error in the ceiling design makes the HVAC inaccessible for maintenance. No loss or damage has occurred, but a correction is required to allow access to normal inspection and maintenance operations. Any costs to redesign and reconstruct the ceiling areas to make the HVAC accessible that are excess of the architect’s professional liability policy would be covered by the UPIP.
- After completion of a building, water intrusion resulting from poorly designed flashing results in damage to the building. Any costs to repair the building, including resulting water damages to the surrounding construction that are excess of the design consultant’s professional liability policy would be covered by the UPIP.

- Following completion of an interior remodel of a campus facility, the seismic hold-downs in the corner of a building appear to be improperly designed. No damage has yet occurred as there has not yet been an earthquake; however the fear is that the seismic hold-downs will not serve their purpose if an earthquake does occur. The costs to redesign and reconstruct the seismic hold-downs that are excess to the original design consultant's professional liability policy would be covered by the UPIP.

Discussion Question: In the above two scenarios, if there is a concern that the flashing or seismic hold-downs are poorly or improperly designed in other parts of the construction project, what party or what insurance coverage, if any, would pay to have consultants inspect and certify whether or not this is case?

Discussion: There is no simple answer to this question. Insurance generally pays out only when an actual, insured loss triggers the coverage, so the proactive steps to inspect additional areas of the project would generally have to be resourced as a construction or Quality Assurance/Quality Control cost.

In certain situations, if there is a reasonable suspicion on the part of the insurance company that proactive measures may be in their best interest financially, it may be possible for the professional services firm in question or the University to negotiate compensation for the additional inspection measure. The University's first recourse should be back to the architectural or design firms providing services or the contractors actually installing and performing the Work.

5. Coverage – Contractor’s Pollution Liability (CPL)

Description: Contractor’s Pollution Liability (CPL) provides coverage of third-party bodily injury, property damage, clean-up costs, and defense costs for claims that arise from operations performed by or on behalf of the contractor, or named insured, at the project site(s). Furthermore, the CPL policy provides coverage to the named insured for vicarious pollution liability from its subcontractors. The limit of the policy is available for the term of the project plus a completed operations extended reporting period following completion of construction activities of up to ten (10) years.

The University requires all contractors provide a minimum of \$1,000,000 of CPL coverage with a completed operations extended reporting period of three (3) years. Further analysis of the risks associated with each project will determine if additional CPL coverage is warranted on a particular project. The required limit can be increased up to \$10,000,000.

Insureds: The University, contractors and subcontractors of all tiers.

Projects Insured: Available to all University projects upon request.

Coverage Examples:

- Mold is discovered in a dorm building after the project has been completed and students are occupying the dorm. Several students contracted respiratory infections as result of the exposure. If the mold condition was determined to be the fault of the contractor or as a result of its operations, a CPL policy will provide coverage of affected students’ medical costs and the mold clean-up and remediation costs.
- A remediation contractor hired to remove an underground storage tank strikes the tank with a backhoe and 10,000 gallons of contaminant are released into the surrounding project soil. The clean up of the contaminated soil costs an additional \$5,000. The CPL policy will cover the additional remediation costs to return the project site to its original state.
- When preparing the site for construction, some existing contaminated soil is moved around the project site and spills over onto adjacent properties. CPL coverage would cover the costs to clean-up and remediate the adjacent properties.

Non-Coverage Examples:

- In the course of site work for the project an excavation contractor discovers a previously unknown area of soil contaminated by heavy metals. The clean-up of these materials costs \$500,000 and delays construction for a month while remediation of the contaminants is completed. A CPL policy will not cover the remediation and delay costs because the pollution liability was not caused by a contractor’s activities, but rather were only discovered during the course of those operations. Additionally, there is no third-party claim of damage.

Available Coverage: A Pollution Legal Liability (PLL) insurance policy could provide first- and third-party coverage for pre-existing pollution conditions on, under, or emanating from the project site.

- Three years following completion of a campus library, mold is discovered in concealed spaces resulting in claims for bodily injury, property damage and clean-up. Further investigation indicates the problem was caused by an improperly designed HVAC system that allowed moisture to develop on the outside of concealed ducts. This moisture ran down the duct, contacted drywall and other porous materials, and allowed the development and propagation of mold. A CPL policy will not provide coverage because the conditions leading to the mold were caused by a faulty design, not the contractor's activities.

Available Coverage: A Professional Liability policy would provide coverage for errors and omissions of design professionals. In this case, if the consulting HVAC design engineer's Professional Liability policy limits were insufficient to pay the total costs claimed, the UPIP would act as an excess layer of coverage to the design professional's primary Professional Liability insurance.

Exclusions commonly found in the Contractor's Pollution Liability policy include the following:

- Known Pollution Conditions
- Intentional Non-Compliance
- Product Liability – excludes claims arising out of the sale, distribution, design or manufacture of a product unless installed as part of a Covered Operation.
- Contractual Liability - excludes liability of others assumed under the provisions of a contract or agreement, unless the liability would arise in the absence of the contract, where the agreement is an Insured Contract or arising out of Covered Operations performed by subcontractors where such liability is assumed in a written agreement executed prior to the loss.
- Workers' Compensation and Employer's Liability
- Professional Liability
- Insured vs. Insured Exclusion – excludes claims brought by one insured against another insured, with exceptions for claims initiated by third parties and cross claims or counterclaims filed in response to claims initiated by third parties.
- Property Damage – claims arising out of property damage to the products of the named Insured or to property on which the Named Insured or others acting on its behalf are performing Covered Operations.

6. Coverage – Pollution Legal Liability (PLL)

Description: Pollution Legal Liability (PLL) insurance provides first party coverage including clean-up of unknown pre-existing, and new pollution conditions on, under, or emanating from the project site, and bodily injury and property damage to third parties arising from an unknown pre-existing and/or new pollution condition caused by the sudden or gradual release of pollutants.

A PLL policy can be designed to include coverage for microbial matter and legionella as pollutants. PLL insurance may provide coverage for transportation risks associated with hazardous materials being removed from or brought to a University property, and for liability arising from disposal of materials at non-owned disposal sites. In addition, PLL coverage may include business interruption that pays for loss of rents, loss of income or extra expenses associated with an interruption caused by an insured pollution condition.

There are three possible triggers for coverage:

- Discovery of concentrations that exceed regulatory action levels.
- Third-party claims.
- Government order only (but not third-party claims).

The discovery trigger is the broadest trigger for coverage, and typically is provided only when the insured property has no history of contamination or where it has been cleaned up to satisfaction of regulators, as evidenced by a written no-further-action determination issued for one or more specific pollutants.

Insureds: The University

Projects Insured: This policy is “project specific”, so coverage would need to be specifically requested to insure a project. . An assessment of the risk factors on a particular project would need to be conducted to determine if coverage is warranted.

Coverage Examples:

- A site is known to contain an underground storage tank (UST). When preparing the site for construction, it’s discovered the underground storage tank is leaking which is contaminating the soil and the groundwater that flows into a nearby creek and adjacent third party properties. The leak was not caused by any contractor work. Several third parties claim damages to their properties totaling \$750,000. In addition, costs to clean-up the creek amounted to \$900,000.

In order for a known UST to be covered by the PLL policy, it must be disclosed to the insurance company and scheduled to the policy, otherwise there usually is a standard exclusion for known USTs. If the known UST is disclosed and scheduled, then clean-up costs and third-party claims would be covered.

NOTE: And if there was no prior knowledge of the UST, it typically would be covered by the PLL policy as it would constitute an unknown pre-existing condition.

- During excavation a contractor punctures a fuel pipe causing fuel to leak and contaminate soil and groundwater. The clean-up costs associated with this incident would be covered by a PLL policy (or potentially the CPL policy or both) if “new conditions” coverage was purchased and there are no applicable exclusions.

NOTE: New conditions (as compared to known or unknown conditions) is when a covered operation (such as contractor activity) changes the site characteristics which creates the “new condition”.

- While excavating the project site and as more soil is being removed, it’s discovered there is some soil and groundwater contaminated by pollutants which the University had no prior knowledge of. This would be considered a pre-existing unknown pollution condition and the PLL policy would respond if this coverage was purchased and there are no applicable exclusions. The coverage would extend to contamination that is discovered to have migrated off-site.
- Vandals open a valve on a fueling vehicle parked at a project site overnight, releasing 3,000 gallons of gasoline onto the site. The pollutant runs into a storm drain that discharges into a nearby stream. The clean-up costs for the site and stream can be covered by a PLL policy.
- During the course of construction toxic fumes are accidentally released into the community. As a result, several residents had to be evacuated and others rushed to the hospital. Several third parties suffer bodily injury and property damage for contingent business loss. The PLL policy would respond to clean-up, bodily injury, and property damage claims.

Non-Coverage Examples:

- Some pre-existing contaminated soil is being moved around the site and some of the soil migrates beyond the boundaries of the construction site onto third party surrounding properties. A PLL may exclude clean-up for pre-existing “known” conditions which may also apply to off-site, and any third-party bodily injury and property damage. If the pre-existing “known” condition is excluded, coverage would not apply under the PLL policy.
- **Available Coverage:** A Contractor’s Pollution Liability (CPL) policy could provide coverage for third party bodily injury and property damage if the contractor's activities caused the condition (called ‘new conditions’) to migrate off-site if the pre-existing condition is not excluded for third-party liabilities. A CPL policy could also provide coverage for on-site and/or off-site clean-up as long as the pre-existing condition is not excluded from clean-up coverages.
- After construction is completed on a student housing building, a mold condition arises due to the faulty installation of roof flashings, which has allowed an incursion of rainwater throughout concealed spaces of the building. Students and food service vendors filed claims for bodily injury and lost income due to interruption of operations while mold is being remediated. In addition, the University will incur the costs to remediate the mold. The PLL policy would not provide coverage for these claims because they arise from faulty materials or construction defects related to the activities of contractors.
- **Available Coverage:** As long as mold coverage is included, a CPL policy would respond to the students’ bodily injury claims. If appropriate coverage is included, the CPL policy could also respond to food service vendors’ claims. In addition, the CPL policy will cover the cost to remediate the mold condition and repair the damage necessary to correct the building to its rightful state. The cost to correct the actual flashing, however, may not be covered.

Exclusions commonly found in the Pollution Legal Liability policy include the following:

- Pre-Existing Known Pollution Conditions
- Material change in use – restricts coverage to the current/future uses disclosed at binding/when the scheduled location is added to the policy
- Faulty materials/construction defects
- Contractual Liability
- Criminal Fines, Penalties, Assessments
- Intentional Noncompliance
- Clean-up of Lead or Asbestos in/on buildings or structures
- Workers' Compensation and Employer's Liability
- Damage to Property of Insured – claims arising out of property damage to property owned, occupied or in the care, custody or control of an Insured.
- Liability of Others Assumed under Contract – excludes liability of others assumed under the provisions of a contract or agreement, unless the liability would arise in the absence of the contract or where the agreement is an Insured Contract. Construction contracts where an owner agrees to indemnify the contractor will not be scheduled as Insured Contracts.
- Insured v. Insured Exclusion – excludes claims brought by one insured against another insured, with exceptions for cross claims or counterclaims filed in response to claims initiated by third parties.

7. Coverage – Surety Bonding

Description: Surety Bid and Performance & Payments Bonds are financial instruments that assure project owners (obligees), in this case the University, that the contractor will perform a duty as declared. Bid bonds assure the University that if the contractor is the low responsive, responsible bidder on a project, the contractor will enter into a contract with the University based on its bid. Otherwise, the bid bond assures the University that the guarantor, or Surety, will pay the University up to the penal sum of the bid bond to award a contract to the second low bidder.

The contractor's Performance and Payment bond guarantees to the University that the contractor will perform its contract in accordance with the contract documents. Conversely, the University has an obligation to uphold its duties under the contract to the contractor, including payment in accordance with the contract terms. When a claim is made under a Performance and Payment bond, a Surety has an obligation to investigate the allegation of default. If a Surety determines that a claim is valid, the following are options a Surety may take:

- provide financial or technical assistance to the contractor
- arrange for a replacement contractor
- re-bid the project for completion, or
- pay the penal sum of the bond to the University

Obligee: The University. All contractors are required to provide Performance and Payment bonds on individual contracts awarded to them by the University.

Projects Insured: All University projects on a contract by contract basis.

Coverage Example:

While under contract with the University, a contractor files bankruptcy during a construction project. Bankruptcy is typically an event of default under a construction contract. The University would contact the Surety providing the Performance and Payment bond to arrange for completion of the project in accordance with the contract documents.

8. Claims Scenarios

Scenario I

A portion of a building under construction collapses and causes injuries to workers on the project site; damages an adjacent building owned by a third party; injures occupants in that building; damages an adjacent University structure, as well as the one under construction; demolishes the project site trailer offices of the general contractor; injures University project employees, damages building materials being stored onsite; damages cars parked on a nearby public street; and injures pedestrians walking past.

- Injuries to workers on project site – UCIP (Workers’ Compensation)
- Damages to adjacent building owned by third-party – UCIP (General Liability)
- Injuries to third-party building occupants – UCIP (General Liability)
- Damages to adjacent University structure – UCIP (General Liability)
- Damages to University structure under construction – Builder’s Risk
- Demolished project site trailer offices – Builder’s Risk
- Injuries to general contractor’s employees in trailer – UCIP (Workers’ Compensation)
- Injuries to University project employees – University Workers’ Compensation program
- Damages to building materials stored onsite – Builder’s Risk
- Damages to cars parked on the nearby street – UCIP (General Liability)
- Injuries to pedestrians walking past – UCIP (General Liability)

With an incident of this magnitude, the UCIP provides a distinct benefit – there is no finger pointing among parties as to who was at fault in order to determine which insurer should respond. It could be the general contractor’s fault, the concrete subcontractor’s fault, or the University project manager’s error. Because there is only one insurance provider covering all parties, the question of fault is largely irrelevant and will not delay the adjusting and payment of claims.

Scenario II

A Contractor’s Pollution Liability (CPL) policy is purchased to provide coverage of a student housing construction project. The policy is in effect for the term of the work and for a completed operations period of five years. Four years after completion of the work, it is discovered that all 250 bathrooms in the project have defective traps on the showers that have allowed water to leak and mold to develop in concealed spaces. No claims for bodily injury have been filed, but the University must replace all of the showers in order to get to the areas affected by mold and to stop the continuing damage caused by the defective product. Is this property damage claim covered by the CPL policy?

The claim will be insured in part by the CPL Policy, but not all of costs will be covered. If the mold coverage endorsement was purchased, the costs incurred to clean up the mold condition will be insured. The costs to restore the areas affected by the clean-up will also be insured to the extent they were necessary to put the property into the same condition it was in before the loss occurred. The costs to replace the showers may not be insured since the policy pays for pollution conditions, but not to replace the shower traps.

Scenario III

The University purchases a Contractor's Pollution Liability (CPL) policy to cover the University, the general contractor, and all subcontractors performing work on a construction project. No pollution conditions are discovered during the course of construction, but two years following completion of the project a neighboring property files a claim that solvents from the project site migrated onto its property. It is determined that the source of the chlorinated solvents is a previously undiscovered tank and piping system that were not removed or disturbed during the construction process. Is this claim covered by the CPL Policy written for the project?

This claim is most likely not covered by the CPL Policy since the pollution condition was not caused or exacerbated by the operations/activities of the contractors. If the release was caused by the construction activities, the claim would be covered even though the contaminants involved were a pre-existing condition. A Pollution Legal Liability (PLL) policy would provide coverage in this case. University projects generally does not purchase PLL insurance, therefore this potential liability is uninsured.

Scenario IV

At a University construction project site the welder of a subcontractor ignites a fire damaging the project site and building materials being stored onsite. The fire spreads across the project site's fence and damages a portion of an adjacent building before fire fighters are able to extinguish the flames. The tenants of the adjacent building file claims against the University for bodily injury, property damage to the building and personal property of the tenants, and loss of business income.

The damage to the project site and the stored building materials would be covered by the Builder's Risk insurance policy. The third party claims for bodily injury, damage to the adjacent building and personal property, and business income loss would be covered by the subcontractor's General Liability insurance policy. If the project is enrolled in the UCIP, these third party claims would be covered under the UCIP's General Liability policy.

NOTE: The descriptions, coverage examples and claims scenarios contained in this Coverage Analysis are intended to illustrate how insurance would apply in the event of a loss and provide examples of what may or may not be covered. The facts of how a loss occurred, what caused a loss, and other circumstances surrounding a loss will vary from claim to claim. Therefore, each claim is subject to its own set of facts and circumstances that will determine what is covered by insurance. This Coverage Analysis serves as a general guideline and any and all information contained herein is advisory and is not legal advice nor a guarantee of coverage for any single set of specific circumstances.