



APOLLO



PNC LEARNING

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**CE Accredited Professional Liability Webinar**

# Today's Agenda

1. Introduction
2. Professional Errors & Omissions
3. CGL / E&O – Mind the Gap
4. Eligible Classes
5. Cyber Liability
6. Privacy Issues
7. How to use APOLLO
8. Q&A



# Jacques Wong



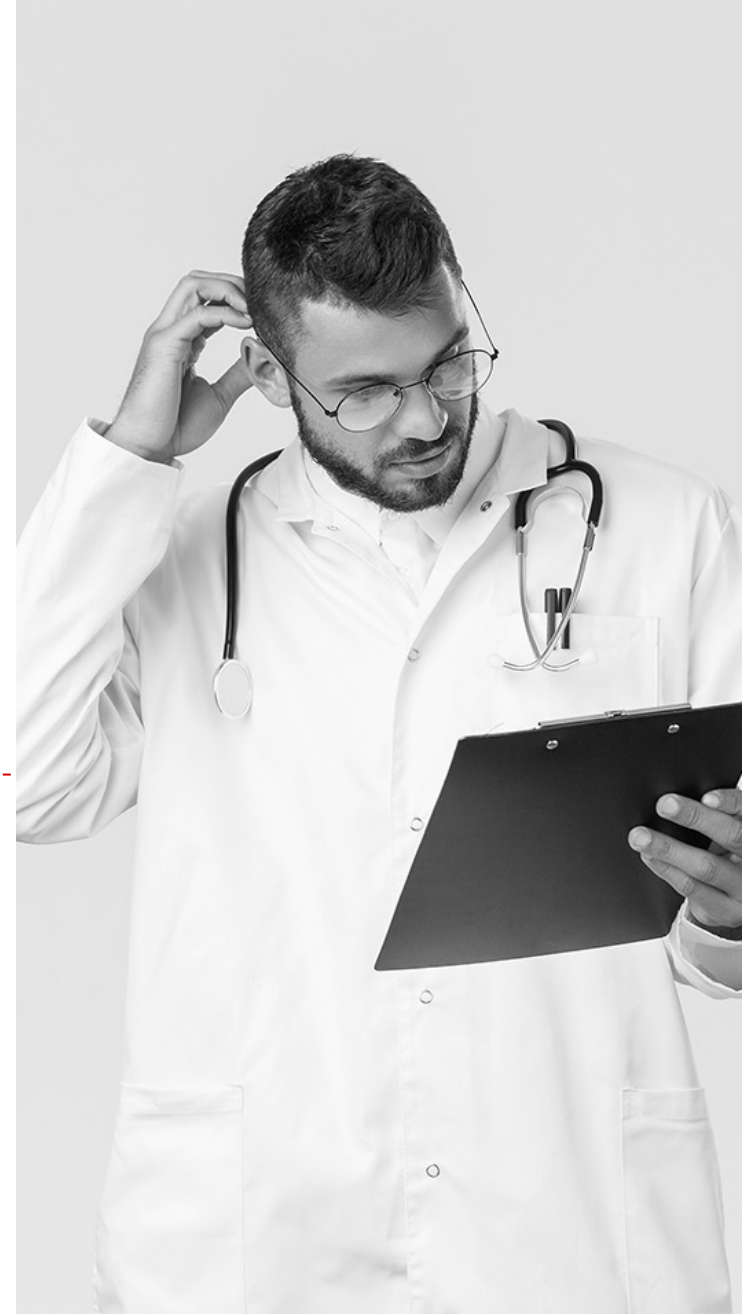
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As part of his work in the insurance industry, Jacques helps prospective insurance professionals get licensed with pre-licensing courses, and current professionals stay compliant with accredited CE courses.

He also writes for various insurance publications in Canada and around the world.

# Professional – errors and omissions and medical malpractice

**Professional coverage**







## INSURING AGREEMENT

- **Insuring Agreement** – intent of coverage
- Will pay those sums that the insured becomes legally obligated to pay as “compensatory damages” as a result of “claims” first made against the insured during the policy period and reported to us pursuant to Claim Reporting Provision –by reason of a “wrongful act” undertaken in the course of rendering “professional services”,
- **The object of claims** made policies is a potential financial loss due to the results of a “wrongful act”.
- **The CGL indemnities** the insured for their legal liability as a result of their activities that causes Property Damage and/or Bodily Injury for compensatory damages.
- **Both exclude** Punitive and Exemplary Damages

## DIFFERENCES

- **Trigger** – the event that causes a claim is an act within the policy period.
- **Retroactive Date** – the wrongful act must happen after the date set in the policy for the service or expertise that was provided.
- **Discovery Period and Extended Reporting Period** – must be reported within the policy period and/or the reporting period shown on the policy.



## DUTY, RESPONSIBILITY

- The language under the standard CGL reads “the Insurer may investigate and settle any claim or “action” at the Insurer's discretion; and the Insurer's right and duty to defend.
- We will have the right and duty to defend the insured against any “action” seeking those “compensatory damages”.

## RIGHT AND DUTY

- Agreement to pay claims
- We have the right and duty to take control of and conduct in your name the investigation settlement or defence of any claim.
- We shall also pay on your behalf costs and expenses incurred with our prior written consent (subject to the Limits of Liability shown in the Declarations) provided that we shall not
- **a)** pay for the costs and expenses of any part of a claim that is not covered by this Policy.
- **b)** incur any costs and expenses in the defence of any claim unless there is a reasonable prospect of success, taking into account the commercial considerations of the costs of defence.



## PAY ON BEHALF - INDEMNIFY

- **Pay on behalf and defend**, even if groundless or false
- **Indemnify, investigate and defend**, if found at fault it will pay
- Indemnify, investigate and defend, if found at fault, **reimburse any amounts paid by the insured**



## CONSENT

- **The application of this clause gives the Insurer the final decision on settlement.** If an Insurer chooses to offer a payment to a third party to avoid a lengthy litigation and costs and the Insured disagrees with their position, the Insurer will opt out at this point and the cost to settle and any additional damages, must be paid by the Insured.

## CONSENT TO SETTLE CLAUSE

- **We** shall always endeavour to settle any **claim** through negotiation, mediation or some other form of alternative dispute resolution and shall pay on **your** behalf the amount so agreed by us and the claimant. If **we** cannot settle by such means, **we** shall pay the amount which **you** are found liable to pay either in court or through arbitration proceedings, subject always to the Limit of Liability shown in the Declarations.
- If **you** refuse to consent to a settlement that **we** recommend and that the claimant will accept, you must then defend, investigate or settle **the claim** at **your** own expense. As a consequence of your refusal, **our liability** for any claim shall not be more than the amount that we could have settled the claim for had you consented, plus any **costs and expenses** incurred prior to the date of such refusal.



## CONSENT TO SETTLE

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## INSURING AGREEMENT

- Intent of coverage;
- will pay those sums that the insured becomes legally obligated to pay as “compensatory damages” as a result of "claims" first made against the insured during the policy period and reported to us pursuant to Claims Reporting Provision –by reason of a "wrongful act" undertaken in the course of rendering "professional services”;
- The object of claims made policies is a potential financial loss due to the results of a “ wrongful act “.



## EXTENDED REPORTING PERIOD

- In respect of **INSURING CLAUSES 1 and 2 only**, an Extended Reporting Period of **60 days** following the Expiry Date as shown in the Declarations shall be automatically granted hereunder at no additional premium. Such Extended Reporting Period shall cover claims first made and reported to us during this 60 day Extended Reporting Period but only in respect of any act, error or omission committed prior to the date of cancellation or nonrenewal, and subject to all other terms, conditions and exclusions of the policy. No claim shall be accepted by us in this 60 day Extended Reporting Period if you are entitled to indemnity under any other insurance, or would have been entitled to indemnity under such insurance but for the exhaustion thereof.

## EXTENDED REPORTING PERIOD

- **The Extended Reporting Period** does not reinstate or increase the policy's limits of insurance.
- **"Claims"** which are first received and recorded during the Extended Reporting Period will be deemed to have been made on the last day of the policy period.
- **The quotation by Underwriters** of a different premium, deductible, limits of insurance or changes in policy language for the purpose of renewal shall not constitute a refusal to renew or cancellation by the Underwriters.

## OPTIONAL EXTENDED REPORTING PERIOD

**In respect of INSURING CLAUSES 1 and 2 only, in the event of:**

- **a)** cancellation or non-renewal of this Policy by us, or
- **b)** cancellation or non-renewal of this Policy by you because you have ceased to trade as the direct result of the retirement or death of all of your directors, officers or partners; then you shall have the right, upon payment of the Optional Extended Reporting Period Premium shown in the Declarations in full and not proportionally or otherwise in part, to have issued an endorsement providing a 365 day Optional Extended Reporting Period from the cancellation or non-renewal date. Such Optional Extended Reporting Period shall cover **claims** first made against the company named as the Insured in the Declarations or any **subsidiary** and notified to us during this Optional Extended Reporting Period but only in respect of any claim arising out of any act, error or omission committed prior to the date of cancellation or non-renewal, and subject to all other terms, conditions and exclusions of the policy.

## DISCOVERY PERIOD

- **Discovery Clause -**
- **If during the policy period,** the insured first becomes aware of a specific "wrongful act" which is reasonably expected to result in a "claim" within the scope of coverage of this policy, then the insured may provide written notice to us containing the information listed below. If such written notice is received by us during the policy period, then any "claim" subsequently made against the insured arising out of such "wrongful act" shall be deemed for the purpose of this insurance to have been made on the date on which such written notice is received by us.

## INDEMNITY / WRONGFUL ACT

### SECTION A: PROFESSIONAL LIABILITY

We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim first made against the company named as the Insured in the Declarations or any subsidiary and notified to us during the period of the policy arising out of any:

- a)** negligent act, error or omission, negligent misstatement or negligent misrepresentation;
- b)** breach of any contractual term implied by law concerning necessary quality, safety or fitness, or your duty to use reasonable care and skill;
- c)** breach of warranty of authority, breach of duty, breach of trust, breach of confidence, misuse of information or breach of privacy;
- d)** libel, slander or defamation;

- e)** dishonesty of your directors, partners, officers or employees provided that we maintain all rights of subrogation to recover such legal costs and expenses from any director, partner, officer or employee if they are found guilty of such a dishonest act; or
- f)** other act, error or omission giving rise to civil liability to your clients but not any breach of contract save as specified above; committed by you or on your behalf in the course of your business activities. We will also pay costs and expenses on your behalf.



## CONT'D

- **a)** in respect of **INSURING CLAUSES 1** (SECTIONS A to F only) and 2,
- **i)** your legal costs and expenses in the defence or settlement of any claim made against you, and
- **ii)** your legal costs and expenses in the defence of any criminal claim made against you, provided that we maintain all rights of subrogation to recover such legal costs and expenses from any director, officer, partner or employee if they are found guilty of such a criminal act, and
- **(iii)** the cost of bonds to release attachments but without any obligation to furnish these bonds, and
- **iv)** interest on that part of any judgment we pay that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the limit of liability.

## RETROACTIVE DATE

- Retroactive Date in respect of INSURING CLAUSES 1 and 2 only, arising out of any actual or alleged wrongful act or negligent act, error or omission committed before the date specified as the Retroactive Date in the Declarations – standard conditions



## CGL / E & O – MIND THE GAP

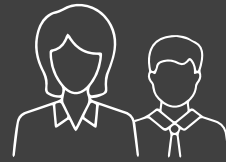
- Where possible, combining the General Liability and the Errors and Omissions coverage under one policy may be advantageous if there is a dispute in the determination of the cause of a loss.
- Although the trigger for the GL portion remains an “occurrence” and the E & O side is “claims made”, having the two together with the same Insurer increases the odds of a non adversarial settlement which can occur when two Insurers are holding their position.

## ELIGIBLE CLASSES



### MEDICAL

- Massage Therapist
- Therapy Counselling
- A wide variety of "new age" remedies
- Yoga Instructors
- Personal Trainers
- Fitness Instructors



### PROFESSIONALS

- Tutors
- Accountants
- Wide Variety of Media sectors - film, PR, Social
- Wide variety of consultants
- Photographers
- Employment Placement Agencies
- Private Detectives

# PROFESSIONAL LIABILITY CLAIMS EXAMPLE

## THE MISSING BACKGROUND CHECK

- A placement agency provided a group of potential candidates to a client.
- The client made a hire based on the recommendation, but the candidate was fired shortly after.
- The ex-employee then sued the company for wrongful dismissal, and the company sued the placement agency.
- Although it was not the placement agency's usual business practice to do background checks on any potential candidates it forwarded to its clients, the agency did not disclose this in writing to the client, and the case became the professional's word against that of their client.
- The professional liability insurer worked with both parties to come to an amicable resolution.

Taken from: <https://www.trisura.com/wp-content/uploads/2018/06/Claims-EO-18.01.11-1.pdf>



## PROFESSIONAL LIABILITY CLAIMS EXAMPLE

### MANAGEMENT ACCOUNTANT'S SERVICES LEAD TO TAX REASSESSMENT

- A management accountant prepared financial statements for a client who operated two small construction businesses.
- Revenue Canada seized the client's records and reassessed the preceding five years, resulting in the client being liable for additional taxes and interest charges.
- A large part of the tax reassessments derived from incorrect source entries made by bookkeepers employed by the client.
- The client sued the accountant, alleging that he should have identified the errors which caused the reassessments. Damages claimed included the additional tax, interest, and professional fees paid.
- The action was defended under the accountant's professional liability policy.

Taken from: <https://www.trisura.com/wp-content/uploads/2018/06/Claims-EO-18.01.11-1.pdf>

## CYBER LIABILITY

- We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim first made against you (regardless of who caused the claim) and notified to us during the period of the policy for any:
  - **a)** third parties' financial losses arising directly from a hacking attack or virus that has emanated from or passed through your computer systems; or
  - **b)** third parties' financial losses arising directly from their inability to access your computer systems in the way in which you have authorized them to as a direct result of your computer systems' failure or impairment due to a hacking attack or virus; or
  - **c)** third parties' financial losses arising directly from the loss or theft of your data or data for which you are responsible or held to be responsible arising directly from a hacking attack or virus.
- We will also pay costs and expenses on your behalf.

# PRIVACY ISSUES

## PRIVACY LIABILITY

- We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim first made against you (regardless of who caused the claim) and notified to us during the period of the policy for:
- **a)** a breach of any individual privacy rights, unintentional disclosure of personal information, failure to maintain the security of personally identifiable data including credit card information for which you are responsible, violation of any legal obligation relating to the security of personal information, or failure to warn of an actual or potential theft of personal information; or
- **b)** a breach of any rights of confidentiality, including a breach of any provisions of a non-disclosure agreement or breach of a contractual warranty relating to the confidentiality of data; or
- **c)** any fines, penalties or contractual damages you are legally obliged to pay as a direct result of a breach of privacy obligations where insurable under the applicable law.
- We will also pay costs and expenses on your behalf.

# PRIVACY ISSUES

## PRIVACY BREACH NOTIFICATION COSTS

- We agree to reimburse you for privacy breach costs, subject to our prior written agreement (such agreement not to be unreasonably withheld):
  - **a)** that you are legally obliged to incur, or
  - **b)** that you are not legally obliged to incur, but where the reimbursement of these privacy breach costs will effectively mitigate or avoid a claim for which you would have been entitled to indemnity under SECTION B of INSURING CLAUSE 2 had such privacy breach costs not been incurred.

## INFRINGEMENT

We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim first made against the company named as the Insured in the Declarations or any subsidiary and notified to us during the period of the policy arising out of your infringement of any intellectual property right in the course of your business activities. We will also pay costs and expenses on your behalf.





## INTELLECTUAL PROPERTY RIGHTS

### INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT

- We agree to pay on your behalf all sums which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim first made against the company named as the Insured in the Declarations or any subsidiary and notified to us during the period of the policy arising out of your infringement of any intellectual property right in the course of your business activities. We will also pay costs and expenses on your behalf.

## THIRD PARTY ABUSE

### SEXUAL MISCONDUCT / DISCRIMINATION AND PHYSICAL ABUSE LIABILITY

- **We** agree to pay on your behalf to the extent the law allows all sums which the company named as the Insured in the Declarations or any **subsidiary** becomes legally obliged to pay (including liability for claimants' costs and expenses) as a result of any **claim** first made against you and notified to us during the **period of the policy** arising out of **sexual misconduct or physical abuse** in the course of your business activities. Where an act of sexual misconduct or physical abuse occurs more than once, the sexual misconduct or physical abuse shall be deemed to have occurred when the first occurrence took place.
- **We will also pay costs and expenses on your behalf.**

## MORE SPECIAL

### LOSS OF DOCUMENTS

- We agree to pay on **your behalf all sums** which you become legally obliged to pay (including liability for claimants' costs and expenses) as a result of any claim first made against the company named as the Insured in the Declarations or **any subsidiary** and notified to us during the period of the policy arising out of destruction of, damage to, loss or mislaying of your **documents or documents in your care**, custody or control. We will also pay costs and expenses on your behalf.

### LOSS MITIGATION

- We agree to pay any reasonable costs necessarily incurred by you with our prior written consent in respect of measures taken by you for the sole purpose of avoiding or mitigating a claim or potential claim for which you would be entitled to indemnity under any of **INSURING CLAUSES 1 to 7 of this Policy** had such measures not been taken.

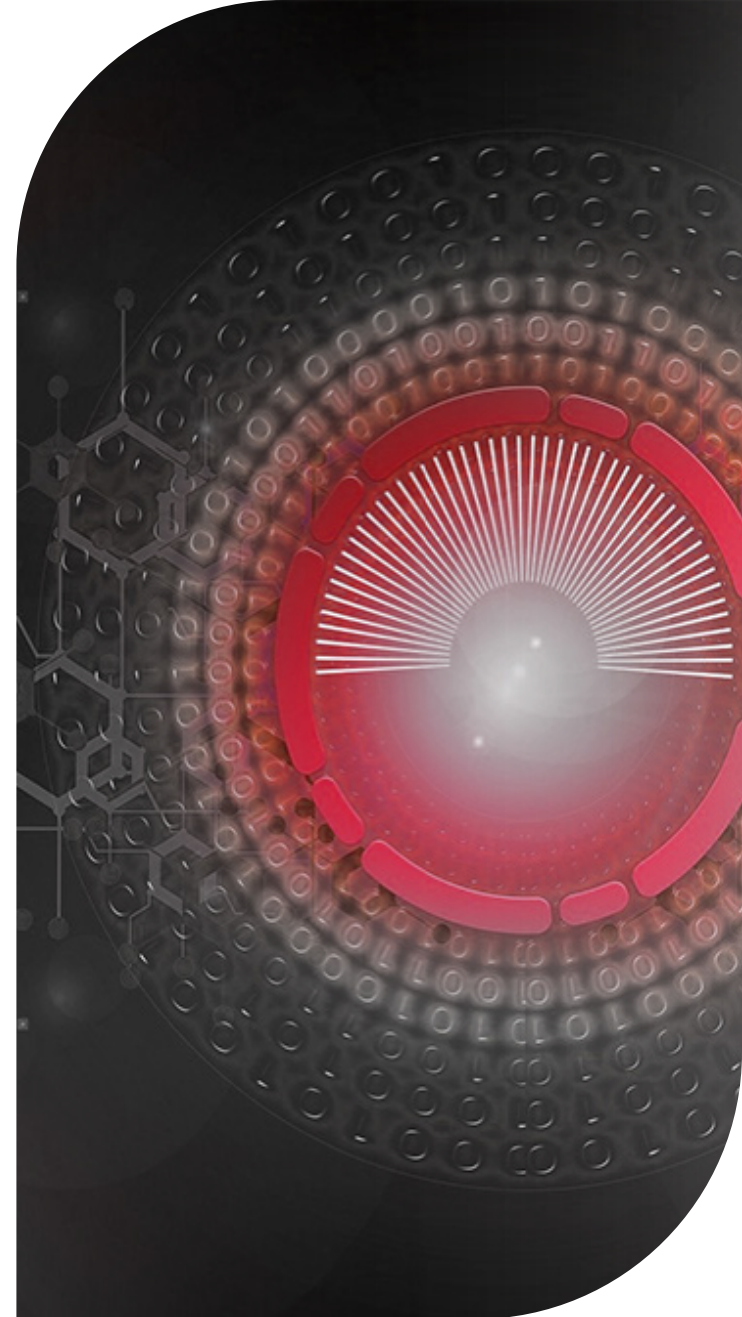
## SUMMARY

- The coverages outlined and the various extensions are part of a specialized program offered through specialized insurance companies.

- Their non conventional coverage approach means the Brokers need to be informed of new products in the market to advise their clients of new possibilities.

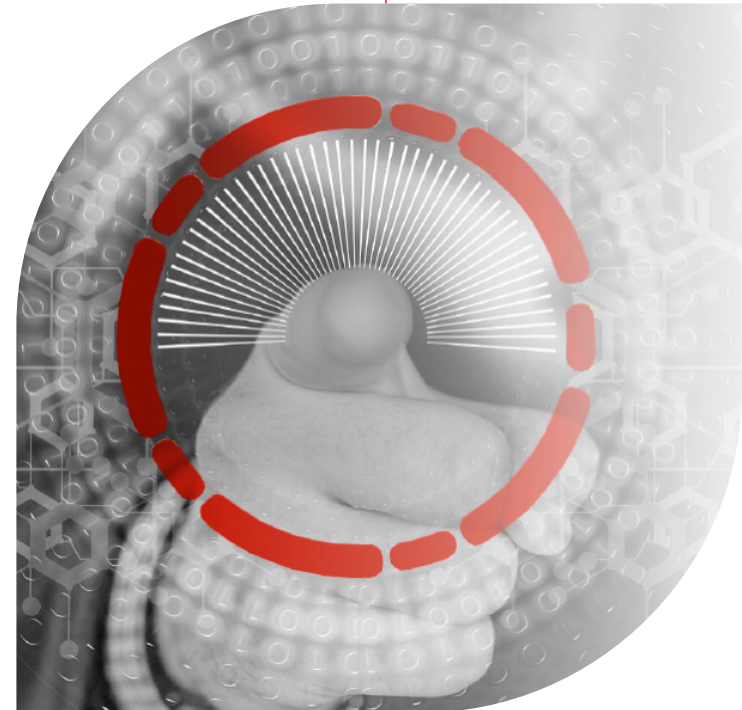
## Use the APOLLO broker portal to easily quote existing clients or new business

- Get a quote and bind in minutes
- Covers hundreds of classes of business with revenues up to \$2M
- Monthly pay option available



# How to get started on APOLLO

- Visit [www.exchange.apollocover.com](http://www.exchange.apollocover.com) and log in or create an account — it's free for brokers
- Bookmark the website so it's easy to find when you need it
- Click 'Apply Now' and see how easy it is
- Additional information including policy wordings are available on the Product Details page



# Questions ?





# APOLLO

# PNC LEARNING

**Reach out to us with any questions:**

Livechat (Mon – Fri: 9AM EST – 9PM EST)

[support@apollocover.com](mailto:support@apollocover.com)

604-351-3211

**Start binding today at:**

[Exchange.apollocover.com](http://Exchange.apollocover.com)

