

Professional Liability Update



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A/E Risk Review

How to Report A Claim

The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.

Claims

They are why you buy professional liability insurance. Make an error or omission carrying out your professional services and chances are your client or some other party to the project will make a demand on you for money or services to correct the situation and make them whole again. And making them whole and the project right can sometimes leave a gaping hole in your finances.

But when does a project trouble spot officially become a claim? When is it time to raise a red flag? Who do you tell, what do you do? Taking swift and appropriate action at the first sign of a project upset is critical to minimizing damages and triggering the full extent of your professional liability coverage.

Understanding Professional Liability Insurance

Professional liability (also known as "errors and omissions") insurance works differently than most types of insurance you are familiar with. Rather than being an "occurrence" policy that comes into effect the time damages occur, professional liability is a "claims-made-and-reported" policy that comes into effect at the time a claim is made and reported to the insurer -- even if the alleged error or omission occurred years prior.

For example, your auto insurance is an occurrence type of policy. The policy you have in place at the time of an automobile accident would be the one to pay for any damages resulting from your actions. Your general liability policy is likely the same. If someone slips and falls in your office tomorrow, the coverage you have in effect that day applies.

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With professional liability insurance, the coverage that takes affect may not be with the policy you had in place when the error or omission occurred. For example, say you designed an office building in 2007 when you were insured by ABC Insurance. In 2010 you switched from ABC to XYZ Insurance and have maintained continuous coverage with them ever since. If in 2013 you receive a claim regarding your 2007 design services, you are covered by the XYZ policy in effect at the time the claim is made and reported.

Why is "continuous coverage" an important distinction? Suppose you let your PL insurance lapse in 2009 because you felt you couldn't afford it. When you sought a new policy in 2011, that carrier may not provide "tail" coverage and you could be uninsured for all of your projects prior to the 2011 inception date of your new policy. In the above example, the 2013 claim on your 2007 project may not be covered.

However, as long as you maintain continuous professional liability insurance coverage -- even if you change carriers -- you are typically granted tail coverage all the way back to the earliest date of your continuous coverage. Let that coverage lapse, and all bets are off. In a tight insurance market, you might not be able to find a carrier offering affordable tail coverage for your previous projects.

So, lesson number one is do not let your PL insurance coverage lapse.

Report All Incidents Promptly

As an insurance agency specializing in professional liability services for architects and engineers, we hear stories like these all the time from our A/E insureds:

- "My client suddenly stopped returning my phone calls and emails, and then cancelled our monthly meetings. I sensed he was upset with me but I didn't know why."
- "Our client's accountant paid our bills like clockwork. But all of a sudden our invoices were becoming 30, 60, even 90 days past due."
- "We received a phone call to put our design work on hold until further notice. I figured they may be in a cash crunch but now the project has been idle for a month."
- "I was surprised to find that the client hired another design professional to help him oversee our work. They're now asking for copies of every document we produce and yesterday the client requested rather substantial changes to our design."
- "The client's attorney threatened to file a claim against us. But that was the contractor's error, not ours."

- "I had no idea that this little detail would evolve into a claim."

Regardless of how inconsequential a project upset may seem, consider it a red flag worth bringing to our attention. It is always wise to act on the side of caution when deciding whether to report an incident or potential claim to the insurance company. "When in doubt, do it" is a good rule of thumb.

Why report an incident or circumstance before it becomes a claim? Because it helps lock in your PL insurance coverage. If an incident is reported to the insurance carrier during the policy year, chances are great that you have coverage if it does turn into a real claim. If the incident never materializes into a formal demand for damages, no harm, no foul.

Some architects and engineers fear that reporting an incident will automatically put them in line for a premium rate increase the following year. That is simply not the case. Most insurance companies do not consider an incident report as a claim unless a formal demand for money or services are made. Smart insurance carriers understand it is in their best interest to encourage early reporting. Forewarned is forearmed. The carriers' claims department -- and when deemed necessary, legal counsel -- can begin providing consultation and advice to help you avoid having the incident escalate into a claim. For most carriers, the cost of providing consultation and legal services are not applied against your policy limits or deductibles unless a claim develops.

A Prudent Policy

All architect and engineering firms would be wise to put a claims-reporting policy in place and communicate it to all employees. This is not just an insurance issue to be handled by your accounting, legal and risk management staff. It is a client-relation issue that involves all employees, from receptionist to top executive, who come in contact with your customers.

The claims-reporting procedure begins with educating your employees on the early warning signs of a potential claim. Any contact with a client that indicates dissatisfaction with your services should be documented and reported to the appropriate design team leader and/or top management. Cancelled client meetings, late payments, angry phone calls, negative correspondence, work stoppages -- these are all warning signs of impending trouble that should not be ignored.

Sometimes client complaints are anything but subtle. An angry project owner or representative may flat out accuse a member of your design team of an error or omission that has resulted in damages. How your staff responds to such complaints is critical. Instruct employees to listen closely and empathetically to the client and fully

document the complaint. Bear in mind, employees should never admit to any fault nor try to place blame on others. They should assure the client that the complaint has been

heard, the incident will be investigated and an appropriate member of the firm will report back to the client with its findings.

The complaint should be fully documented and reported to appropriate members of management. Management should initiate an investigation of the matter, meeting with appropriate design team members and gathering all relevant documents including the consulting agreement. Employees should be told not to discuss the matter with anyone outside of the firm and have any inquiries or additional complaints from the client in question directed to the design team leader or alternate point of contact.

Once the basics of the complaint are understood, it's time to contact us, your professional liability agency. We can help you analyze the situation and determine whether it is appropriate to report the incident to the insurance carrier. Obviously, if you receive any formal demand letters or lawsuit papers we need to report that immediately to your carrier.

What to Expect From Your Carrier

Once an incident or claim is reported to your insurance carrier, the company will likely appoint a claim supervisor to handle the case. The claim supervisor will meet with you to discuss the situation, review your client contract and other documentation, pinpoint the issues that could lead to a claim and provide advice on how you should proceed. Based on the specifics of the situation, the claims supervisor may advise you to take no specific actions other than to keep open communications with your client and report any further signs of trouble. In other instances, the supervisor may assign legal counsel or subject matter experts to assist further with the investigation. Each situation is different and the appropriate response can run the gamut from doing nothing more than soothing ruffled feathers to aggressively building a strong defense team.

Where appropriate, your claims supervisor may wish to contact your client to gather further information or begin to seek resolution to their complaint. However, rest assured that you and members of your firm will be actively involved in any such decisions and subsequent dispute resolution efforts. Your knowledge of the situation and of the client will be key in determining how best to resolve the issue. It may be best for you to keep communicating directly with your client, with the claims supervisor providing you advice in the background. Other times it will be more effective to begin direct dialog between your claims supervisor or legal counsel and your client's representatives.

Prevention the Best Medicine

Early reporting of a potential claim situation can go a long way toward resolving the dispute quickly and effectively. Of course, taking proactive efforts to avoid claim situations in the first place is the preferred course of action. Our tried-and-true loss prevention advice includes:

- Adequate and continuous professional liability insurance coverage.
- Loss prevention education for your entire staff.
- Careful client and project selection.
- Written client agreements that include limitation of liability and mediation provisions.
- Open and honest communication with your client throughout the length of the project.

And should a project upset raise its head, call upon your professional liability agent and insurance carrier for support and advice at the first sign of trouble. It is critical to report a potential claim situation in a timely manner so that your coverage is locked in should the situation turn into a formal demand.

Can We Be of Assistance?

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.

***STUCKEY INSURANCE** is the leading provider of Professional Liability to design professionals in Arizona. Please call us if you like to schedule a consultation for your insurance needs.*



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