

A/E RISK REVIEW

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Adding Value to Your Professional Liability Insurance

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.

Commercial insurance; it's a cost of doing business. It's added security for you and your company in the event something goes wrong and you're left with a significant financial liability. Nobody likes to buy insurance, but everyone is happy to have it when they need it.

For design firms, professional liability (PL) insurance provides protection from financial liabilities resulting from their errors and omissions on projects that damage clients or other parties. Sometimes called errors and omissions (E&O) insurance, it's virtually a requirement for today's design firms. Some sole proprietors who hang out their shingle and perform limited services may try to "go bare" without PL insurance coverage. But virtually all growing and thriving design businesses now carry this coverage. Not only does it provide needed protection from potentially catastrophic losses, it is usually required by clients who are shopping for design services. If you don't have adequate professional liability coverage, you very likely won't be considered for the job -- unless you can prove you have the substantial financial wherewithal needed to self-insure your practice.

So if you have to purchase PL insurance in order to protect your growing business, you might as well try to get the greatest value you can from your expenditure, right? And by value, we mean more than just getting the greatest policy coverage limits for the dollar. In fact, buying the cheapest

PL insurance you can find is often a recipe for getting the least value from your insurance. It is important to consider the total package of coverages, resources and services that not only protects you when losses occur, but helps you avoid those losses in the first place.

When shopping for PL insurance, here are 10 "value-added" you should consider that can deliver great bang for your buck and can actually help you avoid professional liability claims.

1. Select A Specialist Agent/Broker

Begin by choosing an agent or broker that truly understands the design business and the architect and engineering professions. They will be familiar with the PL insurance marketplace and be able to match you to an appropriate insurance company.

As a member of the Professional Liability Agents Network (PLAN) we not only have relations with a wide range of insurance companies, we can call upon other members of our network to help meet your needs. This can be a great benefit to you if you take on projects in a different state or province in the U.S., Canada or Puerto Rico. Often, we can help familiarize you with the rules and regulations of a new jurisdiction as well as introduce you to other design firms in that territory. If all your agent or broker can do is get you a policy, you're missing out on some substantial benefits.

2. Select A Specialist Carrier

Similarly, you'll want an insurance carrier who knows the design industry inside and out. You'll want them to understand your liabilities and how to provide adequate and appropriate coverage in their policy language. You'll

want sufficient limits and minimal exclusions for the services you render. You'll want an insurance company that keeps current on new exposures, such as cyber or drone liabilities. You'll want underwriters who know how to price your coverage and claims representatives who know how to represent your best interests should a dispute arise. Look for an insurance carrier with a dedicated design professional program. Ask about the experience of the folks running those programs too. The insurance industry, like many sectors in today's economy, has seen a plethora of acquisitions and mergers over the past decades. So while the name of an insurer may not be familiar to you, the folks running its design firm program may have years and years of experience. Consider asking your agent or broker to provide you with a policy and program comparison between its top two or three recommendations. Finally, ensure that the recommended carriers have strong financial ratings from A.M. Best and other rating agencies.

3. Consider Your Design Discipline

Architects and engineers who run generalist practices will likely find a variety of insurance carriers who can provide them with adequate services and coverages. But if you're in a niche discipline, you may need to shop around a bit further to find the right program to match your specific exposures. Structural engineers, for example, may find that insurers have varying appetites for insuring their considerable risks. The same goes for geotechnical engineers. Design firms that do a lot of condominium work may have limited options because of the track record of condo claims. Your specialist agent/broker should be able to help you find the best option for your niche.

4. Consider Your Size

Shopping for professional liability insurance is not a one-size-fits-all proposition. Design firms large and small should seek coverage limits and programs that fit their particular size.

A growing number of insurance carriers have developed small firm programs. These are typically highly automated programs that provide small firms with up to \$1 million in policy limits and a full package of loss prevention and claims management programs geared toward small firms. Some offer value-added services such as zero deductibles on defense

costs and enable small firms to earn full prior acts coverage after a few years in the program.

Large firms may be interested in joining a risk control group made up of their peers with annual fees of \$5 million or more. In addition to offering PL insurance limits of \$2 million or more, these groups provide a platform for sharing risk management knowledge and learning from keynote speakers at annual convocations. Actual claims case studies are often examined. Members find that one of the greatest benefits is the ability to meet and network with similar-sized design firms of all disciplines who have similar risk management philosophies.

5. Investigate Alternative Methods to Increase Your Limits

It's not unusual for design firms to come across potential clients who demand higher professional liability limits than they currently carry. To increase your practice policy limits from, say, \$1 million to \$5 million would be a significant expense.

Fortunately, there are alternatives that enable you to increase your limits to meet the potential client's demand without changing your underlying practice policy limits. Consider:

Specific job excess (SJX). With an SJX policy, you can purchase additional limits that apply only to a single project. This is typically an umbrella policy that only comes into effect if your underlying practice policy limits are exhausted. Because of the limited exposure, the SJX policy can be significantly less costly than raising your practice policy limits.

Specific client excess (SCX). Similar to SJX, SCX provides a higher limit for all of the projects performed for a particular client. These can be very valuable if you perform multiple projects for a single client looking for added financial security.

6. Use Contract Language Offering Discounts/Credits

Professional liability insurance carriers are well aware of the importance of using appropriate contract language to manage risk and control losses. In fact, some carriers even provide deductible discounts and credits to design firms

that consistently use recommended language in their client and subconsultant contracts.

To reduce losses and lower costs, you and your attorney should do your best to negotiate the following clauses into your next contracts:

- A limitation of liability (LoL) clause that caps your liability for damages and claims costs to less than a given amount; for example, \$500,000.
- A waiver of your liability for consequential damages.
- A mediation clause that specifies that mediation will be the first dispute resolution technique applied to disputes between parties to the project.

Specialist agents, brokers and carriers should be able to provide sample contract language to use as a solid starting point.

7. Take Advantage of Early Reporting Programs

The sooner a professional liability carrier is aware of a project upset, the sooner it can begin applying loss prevention techniques and resolve the issue before it grows into a full-blown claim. That's why many insurers have instituted early reporting programs that encourage design firms to alert their agents and brokers at the first sign of trouble.

Design firms would be wise to take advantage of these programs. That's because reporting a pre-claim incident typically does not negatively impact your deductible, policy limits or premiums unless the dispute turns into a formal demand or claim. Plus, it serves to alert your insurer that a project upset has occurred and likely satisfies the reporting requirement that locks in coverage if a formal claim demand later develops.

8. Enroll Your Staff in Loss Prevention Programs

Specialist agencies, brokers and insurers have developed libraries of excellent loss prevention and practice management materials, including newsletters, seminars, webinars, and contract guides. But these materials are of little to no worth if you don't enroll your employees in these programs.

Many insurers offer attractive incentives to encourage companies to take advantage of loss prevention education. For example, some offer 10% premium credits annually if the company successfully completes the requirements of its risk management programs. So, not only do firms learn valuable lessons that can keep them out of costly claims, they save on their insurance premiums. That's real value.

9. Earn Your Continuing Education Credits

Some design disciplines are required to earn a certain number of continuing education credits annually in order to practice in their given states and provinces. Insurance carriers, agents and brokers are some of the largest providers of credit-earning education programs approved by the American Institute of Architects and other governing bodies. Many of these programs qualify for the often hard-to-get health safety and welfare (HSW) credits.

So, by completing these approved courses, companies can earn their education credits, qualify for premium reductions and improve their risk management acumen, leading to fewer claims and losses. Why wouldn't you complete these courses?

10. Have Clients Pay for Project PL Insurance

Sometimes, it's actually possible to get your client to pay for those high limits of professional liability coverage they demand on their large projects. And the fees you earn on the project don't count in determining your future professional liability premiums.

Next time you're looking to take on a big project, alert your agent or broker. They can help you investigate the feasibility of getting your client to purchase a PL "project policy." Why would the client agree to do so? Their benefits include the simplicity of dealing with a single PL policy for all design firms working on the project, control over policy limits dedicated to their project, a single point of claims responsibility should a project error or omission occur, and guaranteed coverage as long as the premiums are paid and policy conditions aren't breached.

If your client doesn't go for a project policy, perhaps you and your agent or broker can interest the firm in an owner protective professional indemnity (OPPI) policy. The OPPI serves as excess or "umbrella" coverage over the practice

policies of the design firms working on the project. That can enable you to retain your current policy limits while the owner gets the higher limits it wants for a substantially lower cost than that of a project policy.

It's a Value Proposition

If you're like many design firms who simply pay their PL insurance premium year after year, but don't take advantage of the value the insurer can provide, you're probably paying too much for your insurance. With a little effort, you can reduce your premiums, increase your protection against claims, and improve your overall practice. Talk with your agent or broker, and see what value you can add to your professional liability program.

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.