



PROFESSIONAL LIABILITY UPDATE

A LOSS PREVENTION NEWSLETTER FOR THE DESIGN PROFESSION

MSP PL 07/2009 'Reporting Claims and Locking in Your PL Coverage'

July, 2009

Reporting Claims and Locking in Your PL Coverage

Article courtesy of Professional Liability Agents Network (PLAN)

It's a fact. The chances of you facing a professional liability (PL) claim increases during difficult economic times. Your client can easily get into a financial bind when a project turns south and begin to cut corners on construction quality. Then, when things go wrong, the client may look to your insurance limits as a resource for cutting its losses, regardless of whether you are a cause of the troubles.

Likewise, you may be forced to lay off staff during an economic downturn and find yourself stretching your employees too thin, resulting in increased errors and omissions. If you've reduced your insurance coverage or, worse yet, allowed your coverage to lapse, you could soon be facing a financial quagmire that threatens your professional future.

It is critical that you and your staff understand this increased risk during hard times and learn how to lock in your insurance protection in the event of a claim. Keeping your PL policy up to date and in force and 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 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 when damages occur, professional liability is a "claims-made-and-reported" policy that comes into effect only when a claim is made and reported to the insurer – regardless of when the alleged error or omission occurred.



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 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.

With professional liability insurance, the coverage that applies may not be the policy you had in place when the error or omission occurred. For example, say you designed an office building in 2004 when you were insured by ABC insurance. In 2006 you switched from ABC to XYZ insurance and have maintained continuous coverage with them ever since. If in 2007 you receive a claim arising from your 2004 design services, you will be covered by the policy in effect at the time the claim is made and reported (XYZ's policy).

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Due to the "claims-made" trigger of professional liability coverage, it is critical to avoid a lapse in coverage. Suppose you let your professional liability insurance cancel in 2006. Two years later, in 2008, you buy coverage again, but your new company is not willing to provide prior acts coverage. Any work done **before** the inception date of the new policy would **not** be covered.

So, lesson number one in a tough economy is don't let your PL insurance coverage lapse. Even if your active projects have shrunk to zero you still need continuous professional liability coverage to ensure that your previous projects are covered.

Report All Incidents Promptly

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



- *"All of a sudden my client stopped returning my phone calls and then cancelled our monthly meeting. I sensed he might be upset with me but I had no idea why. I just figured he was in a bad mood."*
- *"Typically, their accountant paid our bills like clockwork. But all of a sudden our invoices were becoming 30, 60, 90 days past due."*
- *"We got a call to put our design work on hold until further notice. I figured they were in a cash crunch but now it's been three months."*
- *"I was surprised to find that the client hired another design professional to help him manage our project. They're now asking for copies of everything and the client has requested changes to our design."*
- *"The guy threatened to file a claim but I knew it was bogus. That was the contractor's error, not ours."*
- *"I had no idea that this little issue would evolve into a claim."*

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Web Site www.cavnac.com



2009 Risk Management Series

- **7 Habits of Frequently Sued Managers**
Thursday, August 27, 2009
Registration: 8:00 am
Program: 8:30 am - 10:30 am
- **Sexual Harassment Prevention Training**
Satisfies AB1825 requirements
Friday, September 11, 2009
Registration: 8:00 am
Program: 8:30 am - 10:30 am

All training sessions available to our clients
*** Reserve early / seating is limited!**

Register for upcoming seminars

Contact Darcee Nichols at dnichols@cavnac.com or call 619-744-0596

*** NOTE:** Due to the popularity of our seminars and limited space available, we regret we cannot provide refunds or credits with less than 72 hours advance notice of cancellation.

Regardless of how inconsequential a problem may seem at the time, consider it a red flag worth bringing to our attention. Claims need to be reported to your broker as soon as you become aware of them. A claim is defined as a "demand for money or services." Circumstances that "may" give rise to a claim also should be reported. "Why?" you may ask.

Every year when you sign your professional liability application you answer a question similar to this: "Are you aware of any claims that have not yet been reported, or are you aware of any circumstances that may give rise to a claim?" If you answer no to this question and it turns out that a subsequent claim was actually known to you at the time you signed the application, the insurance company can deny the claim.

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 not the case. Most insurance firms will not consider an incident as a claim until a demand for money is made. Smart insurance carriers understand that it is in their best interest to encourage early reporting. Forewarned is forearmed. The carriers' claims department – and where 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 consulting and legal services are not applied against your policy limits or deductibles unless a claim develops.

A Prudent Course of Action

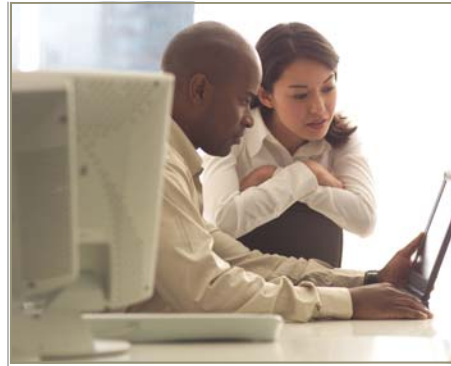
All architect and engineering firms would be wise to put a claims-reporting procedure in place and communicate it to all company employees. This is not just an insurance issue to be handled by your accounting, legal or risk management staff. It is a client-relation issue that relates to all employees, 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. How your staff responds to that complaint is critical. Instruct employees to listen closely and empathetically to the client and fully document the complaint. However, 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. Sometimes it may be best to keep correspondence between you and 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 Is 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 problem arise on a project, 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. ✂

Disclaimer: *This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*



Cavignac & Associates has been a member of The Professional Liability Agents Network (PLAN) since its inception in 1992. PLAN is a nationwide group of select insurance agencies specializing in risk management and loss prevention programs for architects, engineers and environmental consultants.

PLAN is a nonprofit organization covering the United States, Canada and Puerto Rico with more than 50 member firms. What this means to our clients is that we have direct access to risk management and insurance experts all across the country. We are kept up to date on what is going on in the insurance marketplace relative to the design profession, and we can provide referrals to other professionals or other local expertise wherever you work in North America.

Jeff Cavignac is a past PLAN President and currently serves on the Board of Directors. ✂



in the Spotlight...

The San Diego Architectural Foundation (SDAF) is a 501c3 non-profit organization whose mission is to educate students, emerging professionals and the community at large about the value of design excellence.

The SDAF recognizes that we are all affected, positively or negatively, by the man-made environment in which we live. Our homes, workplaces, schools and the communities in which they exist, profoundly shape our mental and spiritual well-being. Our power to create, to produce, to utilize our physical and cognitive skills, and even our susceptibility to stress and mental illness are demonstrably influenced by our physical environment.

San Diego is consistently growing, densifying and redeveloping. It is easy to assume that the quality of our buildings and urban design is beyond our control or in someone else's hands. But the reality is that we all play a role in shaping our built environment. We must be aware, appreciative and involved in the design of our environment in order to ensure that the ongoing transformation of our city and our region preserves a heritage worthy of future generations.

By educating the community and encouraging awareness of the importance of architecture and urban design, the SDAF strives to improve our quality of life. Continued effort will mean an even better understanding of the relationship between our natural and built environments.

To learn more about the SDAF's programs and quarterly newsletter, click on the logos, visit its Web site at www.sdarchitecture.org, or visit its Facebook page.

Cavignac & Associates proudly sponsors the SDAF. Jeff Cavignac is currently a Director. ✂





Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Away, Foodborne Illness!

As a wise food consumer and citizen, what can you do to protect yourself and your family against foodborne illnesses this summer *and* all year-round? Here are some suggestions:

- Purchase American and/or Canadian produce when available. Though inspections are not top-notch, they are far better and more frequent as compared to other parts of the world.
- Purchase irradiated foods. These are perfectly safe to eat, and irradiation kills pathogens that can make you sick in meat, poultry, eggs, vegetables and fruit.
- Refrigerate perishable foods, prepared foods and leftovers within two hours of buying, cooking or serving them.
- Wash all produce several times and use separate cutting boards and utensils from the ones you use for meat.
- Limit how long you leave raw meat in the refrigerator – only 1-2 days for ground meats, sausage and poultry; 3-5 days for beef, pork and veal. If you want to keep them longer, put them in the freezer, which prevents bacteria from growing quicker. ✨

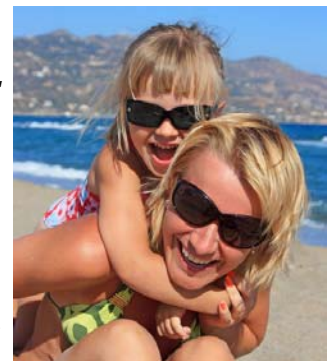
Watch the Clock!

Refrigerate perishable foods
within 2 hours of purchase
to avoid foodborne illness!



Hitting the Road?

If you're planning to take a family vacation this summer, you are probably wondering if you need a new suitcase or who will watch your pets and get your mail. However, keep your children in mind; some get anxious about leaving home, even if it's with family. If your child is one of them, try these tips:



- If your children are old enough, ask them to help you plan the vacation. They will be pleased they helped and feel excited when their portion of the trip arrives.
- Get your children books, pictures, or brochures about where you are headed if it is an unfamiliar location. Explain why you chose this site and what types of things you plan to do upon arrival.
- Ensure everyone gets a good night's sleep the night before a trip. It will lessen the stress of the morning rush.
- If you are going on a long road trip, keep your children busy. Bring food, games, books, etc. to keep their minds off the length of the car ride.
- Let your children bring something familiar from home, such as a blanket, stuffed animal, or picture of their friends or pet.
- On the trip, don't force your children to endure adult-oriented activities such as formal dinners, long museum visits or plays in languages they don't understand. Stick with trips to the zoo, beach, park, or souvenir shop.
- Pack extra food made especially for kids, such as juice boxes, fruit snacks and granola bars. Your children may be picky in certain restaurants.
- If you will be away from home for an extended period of time, allow your children to call their friends or the person who is pet-sitting so that they can hear a familiar voice and find out what is going on back in their world. ✨

Community Bulletin Board

"Neighbors helping neighbors in San Diego"



- ✧ Web Site
- ✧ Orchids & Onions Awards
- ✧ Questions? E-mail
info@SDArchitecture.org



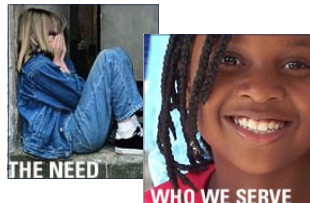
Society for Design Administration
An affiliate of The American Institute of Architects

- ✧ Connect with SDA on LinkedIn
- ✧ Web Site
- ✧ For more information, e-mail
vicepresident@sdasandiego.org



Monarch Schools

- ✧ 5th Annual Diamond in the Rough Gala
- ✧ Web Site



Senior Community Centers

Mission:

To provide quality and compassionate services for the survival, health and independence of seniors living in poverty

- ✧ Stand Up for Seniors
- ✧ Web Site



- ✧ Web Site
- ✧ Summer Special
- ✧ Summer Night on the Midway
- ✧ Questions?

Contact **Alicia Gettys** by phone at **619-232-7451** or e-mail agettys@ymca.org



San Diego Humane Society and SPCA

- ✧ 23rd Annual Fur Ball
- ✧ Web Site

