

Insurance Requirements Go Both Ways

*Article provided by Professional Liability
Agents Network (PLAN)*

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

Experienced clients often present a list of insurance requirements for their architects and engineers. Sometimes, these are presented in the form of mandatory, take-it-or-leave-it minimums. Either you agree to secure and maintain their minimum limits of coverage for one or more types of insurance or you won't be hired for the job.

Most clients focus their insurance requirements on professional liability insurance limits -- often called errors and omissions (E&O) insurance -- when hiring an A/E firm. Some present a laundry list of all types of mandatory coverages with confusing requirements. Design professionals must be prepared to address unrealistic or ambiguous insurance requirements in client-drafted contracts.

For example, unsophisticated clients may ask a design firm to provide the types of coverages they routinely demand of their contractors. These coverages can be difficult or even impossible for you to obtain and likely would not provide the protection your client is looking for. As an A/E insurance specialist, we can assist you in educating your clients regarding appropriate insurance policies for design firms and negotiating reasonable coverages and rates on your behalf.

Insurance 101

Specifications regarding types and limits of coverage can be mind-boggling. To make sense of and meet

these requirements, you'll need a basic understanding of the various types of policies and coverages clients typically ask for. You'll also need to know what each standard policy insures and what extra coverages can be obtained through added "endorsements" if needed.

Design firms also need to understand the types of insurance coverages they should demand from their clients. Insurance requirements are a two-way street, and you'll want to know your client and its project are properly covered. Again, we can help you identify the types of insurance coverages you should require of your clients before accepting a new project.



It is often best to take the initiative when dealing with insurance requirements for new clients, particularly if they are novices in construction project management. You and your attorney should offer your client an insurance agreement in simple, straightforward language that says you will attempt to maintain appropriate insurance with reasonable limits of coverage during the term of the agreement and that you will provide the client evidence of that coverage.

Never guarantee to maintain a given level of insurance coverage for an extended time. Because of the volatility of the insurance market, you may be making

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a promise you might not be able to keep. In that vein, it is wise to include an addendum to the contract that includes a qualifying statement such as:

“In accordance with the terms of this agreement, the consultant shall attempt to obtain and maintain for the period of design and construction of the project the following insurance policies with coverages and limits as indicated.”

Then list the individual coverages and limits, which will likely include the following.

Professional Liability Insurance

Most client insurance requirements begin with professional liability (PL) insurance, also called errors and omissions (E&O) coverage. PL insurance covers



design consultants from claims arising from alleged negligent acts, errors or omissions committed in the performance of their professional services. Professional liability policies have several unique features that both you and your clients should be aware of:

- Policies are written on a claims-made or a claims-made and reported policy form. Both of these policies cover claims made against a design firm during the policy term, and require that the claims be reported to the insurance carrier in accordance with policy terms.
- To be covered, PL claims must have arisen from acts, errors or omissions occurring after the retroactive date stated in the policy. For instance, if

your current policy has a retroactive date of 2010, it would typically not cover a claim for an incident that occurred in 2009 or earlier.

- The retroactive date is typically the date on which you originally obtained your professional liability insurance coverage. To keep its retroactive date in force and have prior acts coverage, a design firm normally must maintain continuous coverage. In other words, if you go uninsured for a period of time and then get a new PL policy, you could lose coverage for your acts prior to the new policy's inception date.
- Professional liability policies have annual aggregate limits. That means the yearly policy limit purchased is the total amount the insurer will pay for all defense costs and indemnity payments regardless of the number of claims made during the policy period.
- In most states, professional liability policies are expense within the limits policies. This means that after you meet your deductible, any additional defense costs paid by your insurer will decrease the policy limits available for payment of that claim or other claims. Check your state laws.

Be aware that clients may confuse professional liability insurance with general liability insurance. Thus, they may insist that you have the same coverage and stipulations they require of their contractors. For example a client may demand that they be included as an “additional insured” on your professional liability policy. This cannot be done for a number of reasons, and including such a stipulation could actually weaken your client's protection. If they were a named insured, they may not be able to file a claim against the policy since they would essentially be making a claim against themselves.

Commercial General Liability

Another frequently required type of insurance is commercial general liability -- also called comprehensive general liability, CGL, or public liability. This coverage insures your firm against liability claims for bodily injury and property damage arising out of your nonprofessional activities and business operations. For example, this policy provides coverage should a person slip and fall while visiting your offices.

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Many coverage endorsements that cannot be added to your professional liability policy can be provided under your general liability policy. You might be able to provide your clients with endorsements they believe will give them additional protection under your policies, such as waiver of subrogation or being named an additional insured.

General liability insurance is sometimes combined with property insurance (covering furniture, fixtures and real property) in what is called an “office package policy.” Also, business owner policies (BOPs) can provide added protection beyond that offered by standard property policies, including coverage for electronic data losses and interruption of computer operations. Package policies often represent an economical form of coverage for smaller firms with standard insurance needs.

Workers’ Compensation

Workers’ compensation is a no-fault insurance that protects employers and employees when workers are injured, become ill or are killed on the job as a direct result of their employment. Workers’ compensation insurance is paid for by the employer and provides benefits for medical costs and lost wages. Although workers’ compensation insurance is required by statute in every state, client contracts often require proof that the design firm carries such coverage.

Clients may ask that endorsements they typically require of their contractors be added to your workers’ compensation policy. Availability of endorsements such as waiver of subrogation and additional insureds varies from state to state and insurance carrier to carrier. We can help you educate your client regarding such endorsements and negotiate contract language that provides appropriate coverages that are available from your insurer.

Automobile Liability

Clients often require evidence of automobile liability insurance, whether or not you are likely to use vehicles on the project. If you have a business automobile insurance policy, this requirement can be met by providing certificates of insurance. However, if employees drive and insure their personal automobiles, private passenger auto insurance companies will not likely issue certificates of insurance or name a client as an additional insured.

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Risk Management Seminar Series



Sexual Harassment Prevention Training

Friday, September 5, 2014

7:30am Registration, 8:00am - 10:00am Program

Affordable Care Act (ACA) Update + Medicare for the Aging Workforce

Friday, September 19, 2014

7:30am Registration, 8:00am - 10:00am Program

Learn to Respond, Evaluate and Act to Incidents and Accidents

Friday, October 10, 2014

7:30am Registration, 8:00am - 10:00am Program

Reserve Early, Seating is Limited!

To register, click on the ‘register now’ button in the announcement email, or contact Bethany Mongold at mongold@cavignac.com or call 619-744-0540.

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.

(continued from page 3) **Insurance Requirements**

Because of this, a client may impose a contract requirement that you provide evidence of non-owned and hired auto coverage. This is insurance you would carry for automobiles your firm does not own -- such as employees' cars used on company business. This type of insurance provides liability coverage for your firm above and beyond the primary limits carried by the car owner. This coverage often is attached to a firm's owned automobile policy or its office package policy. In some states, it may be required to obtain a freestanding non-owned auto policy.

The Client's Insurance Requirements

Since clients require verification of insurance coverage maintained by design firms, it's only fair that architects and engineers receive similar verification of the insurance their clients maintain, as well as the coverage secured by the contractor. Consider having your attorney add to your contract language that requires the client to secure and maintain appropriate limits of the following insurance:

General Liability Insurance. This insurance provides coverage for bodily injury, property damage, and personal injury and should include contractual liability, personal injury liability, and advertising liability. Ask the owner to include you and your subconsultants as additional insured under their GL policy.

Owner and Contractors Protective (OCP) Liability Insurance. This type of insurance covers the named insured's liability for bodily injury and property damage caused by an independent contractor's work for the insured. Typically, the contractor purchases the policy to provide coverage for vicarious liability their clients incur as a result of the contractor's acts or omissions on the project. The OCP policy also covers liability arising out of the insured's own acts or omissions in connection with its supervision of the contractor's operations. Request that the client include you and your subconsultants as additional insureds under this policy.

Workers Compensation Insurance. Make sure the client's workers compensation policy includes employers liability coverage, secured and maintained on behalf of the client and its employees.

Builders Risk Insurance. This is a special type of property insurance that indemnifies against damage to buildings while they are under construction. Ask

that the client secure and maintain coverage on behalf of the client, you and your subconsultants as their interest may appear on this project with limits in accordance with the project value and policy conditions.

Contractors Comprehensive General Liability Insurance. Ask the owner to require that the contractor maintain ample comprehensive general liability insurance and that the client, you and your subconsultants all be named as additional insureds. Have the client require the contractor to forward certificates of insurance confirming this coverage to all appropriate parties.



Conclusion

It is crucial to review and negotiate the insurance terms of any contract entered into with a client. Design firms should not hesitate to specify the coverages they expect of the client, contractors and other parties in order to provide proper protection. We can be a valuable business partner when negotiating contracts and obtaining needed coverage. ■

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.

Cavignac & Associates is pleased to support the upcoming "10 BEST DRESSED AWARDS" GALA FUNDRAISER...



Join us! Be part of this year's highly anticipated gala, **Leonard Simpson's 10 Best Dressed Awards**. This evening of giving celebrates extraordinary philanthropists who dress every day with *Gloves of Compassion and a Coat of Courage*®. The evening features an awards ceremony, formal seated dinner, theatrical show, dancing and auction. Proceeds from this event will benefit **Dress for Success San Diego**, a non-profit organization focused on empowering disadvantaged women to succeed in job interviews, thrive in the workplace, build careers and improve the quality of life for their families.

THEME: "A Moment in Time"

HOSTED BY: Leonard Simpson of TV's Fashion Forward
Sally B. Thornton, Founding Chair
Kelly Emberg, Honorary Chair
Mina Kooklani, Event Chair
Kristi Pieper, Co-Chair

DATE: Thursday, November 13th 2014

LOCATION: Hilton La Jolla Torrey Pines

TICKETS/INFO: www.dressforsuccess.org/sandiego



For the past six years, **Leonard Simpson's 10 Best Dressed Awards** has received **rave reviews** as **one of San Diego's premier galas** with **unmatched style, experience** and **sold-out attendance!**

THE EVENING'S HIGHLIGHTS

- 5:30pm Royal Red Carpet
- 7:00pm Formal seated dinner and Fashion Forward® Theatrical Show
- 8:00pm Live Auction & Music
- 8:30pm Awards Ceremony
- 9:00pm Dancing till Midnight



**"A Moment In Time" – Leonard Simpson's 10 Best Dressed Awards
Celebration with a Purpose!**

WE NEED YOUR SUPPORT! WHAT'S IN IT FOR OUR SPONSORS?

- Generate **goodwill!**
- Get great **community exposure!**
- **Extend** the reach of Dress for Success San Diego to 100's of disadvantaged women!
- **Visibility** throughout the **pre-event** promotional campaign, **during** the event, AND in **post-event** publicity!

Please consider sponsoring and attending this fantastic fundraising evening in support of **Dress for Success San Diego** and its mission to empower disadvantaged women to succeed in job interviews, thrive in the workplace, build careers and improve the quality of life for their families.



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Camping Fun and Safety

For many people, a nice vacation means sandy beaches and exotic cultures. But not every trip can be a “dream vacation.” Fortunately, it’s possible to get away from it all without having to spring for hotels and airfare.

Camping is a great way to take in some much-needed rest and relaxation on a shoestring budget. A camping trip can provide the same sense of freedom a few hours from your home that you would get from visiting another country.

In addition to being low-cost, camping does not require much in the way of advance planning, and can easily be coordinated and undertaken with family or friends. Most campgrounds will even allow you to bring a pet along, freeing you from another vacation-related hassle.

Despite the benefits, camping also has some risks. Observe the following safety tips from the Centers for Disease Control and Prevention and the U.S. Forest Service to ensure that your trip goes off without a hitch.

- Get vaccinated. Check with your medical provider to make sure you’ve had all of the recommended vaccines.
- Be mindful of food storage and preparation. Pack food in tight, waterproof bags or containers, and keep it in an insulated cooler. Do not mix cooked and raw foods. Wash hands and surfaces often. Use hand sanitizer if water is not available.
- Build fires in a safe area. Fires and fuel-burning appliances must be far enough away from the tent to prevent ignition from sparks, flames and heat. Make sure your fires are always attended.

- Wear appropriate clothing for the conditions and season.
- Think before you drink! No matter how clean or pure water looks, it’s likely to contain parasites and microorganisms that can cause discomfort and sometimes serious illness. Purify it with chemical treatment, or bring bottled water.
- Watch out for bugs. Insects can be an issue at many campsites. Avoid attracting stinging insects by wearing light-colored clothing and avoiding perfumes or colognes. Keep a good supply of bug spray with you to repel mosquitoes, which can carry diseases.
- Beware of poisonous plants. Familiarize yourself with any dangerous plants that are common to the area. If you come into contact with a poisonous plant, immediately rinse the affected area with water and apply a soothing anti-itch lotion such as calamine.

Healthy aging involves being physically active, adapting to change and developing new skills and interests.

Healthy Aging Month

September has been designated as Healthy Aging Month—an annual observance designed to focus national attention on the positive aspects of growing older. Healthy aging involves developing new skills and interests, learning to adapt to change, staying physically active and being connected to your community and loved ones, instead of being consumed with anxiety about aging.

Exercise is a great way to stay healthy as you grow older. All older adults should avoid inactivity. Some physical activity is better than none, and those who participate in any amount of physical activity gain health benefits. Government health agencies recommend 150 minutes per week of moderate-intensity exercise for all adults. Additionally, eating a low-salt, low-fat diet with plenty of fruits, vegetables and fiber can reduce your age-related risks of heart disease, diabetes, stroke, osteoporosis and other chronic diseases. Whatever improvements you undertake, do so with determination and remain positive.

Provided by:
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Low-impact Exercise

While most people desire the health benefits of exercise, not all exercise can or should be performed by everyone. For many people, health conditions or long-term injuries prevent them from taking up some of the more demanding forms of exercise.

If you fall into one of those categories, low-impact exercise may be what you're looking for. Designed to limit stress on the body, low-impact exercise can still be intensive enough to provide cardiovascular and musculoskeletal benefits. You don't need to be a mountain climber or marathoner to obtain rewarding levels of personal fitness, but you do need regular exercise in order to maintain your health and well-being. Consider the following forms of exercise as a way to meet your fitness goals:

- **Walking.** The simplest form of exercise is still one of the best. This low-cost, low-stress workout will benefit your body and mind without taking a toll on your body. Just make sure your shoes are up to the distance and terrain challenges.
- **Swimming.** Swimming is one of the most grueling exercises out there. However, it can be done by almost anyone since its demands on the body's joints are practically non-existent.
- **Elliptical trainer.** This stationary exercise machine provides a full-body cardio workout while limiting impact on joints.
- **Cycling.** Whether stationary or in motion, pedaling a bike burns major calories without punishing your body.

Traditional vs. Roth Retirement Plans



When you set up a retirement account, one of the first decisions you face is whether to have a traditional plan or a Roth plan. The difference between traditional plans and Roth plans comes down to how your earnings are taxed.

With a traditional plan, money you deposit into your account can be deducted from your taxable income for the year. This can be a significant cost-saving measure if the amount you deduct places you in a lower tax bracket. When you withdraw money from your account, taxes will be assessed on it.

Contributions to Roth plans, on the other hand, are not deducted from your taxable income—they are made with money that has already been taxed. After you retire, withdrawals from Roth accounts will not be taxed.



Arroz con Pollo (Rice With Chicken)

This tasty entrée, a staple in many Latin American countries, makes good use of a whole chicken and can be easily recreated in kitchens all over the world.

- 2 tbsp. vegetable oil
- 1 whole chicken, separated, skin removed
- 1 green pepper, chopped
- 1 onion, chopped
- 1 tomato, chopped
- 2¼ cups low-sodium chicken broth
- 1 bay leaf
- 3 garlic cloves, minced
- 1 cup rice
- 1 cup peas (fresh, frozen or canned)
- Salt and pepper to taste

In a large skillet, heat oil and brown chicken on all sides. Add green pepper, onion and garlic. Cook for five minutes. Then add tomato, broth, bay leaf, salt and pepper. Cover and cook for 20 minutes. Add rice; stir well. Cover and simmer for 20 to 30 minutes, or until all liquid has been absorbed and chicken is tender. Then add peas and cook until hot.

Yield: 6 servings. Each serving provides 200 calories, 4g of fat, 1g of saturated fat, 15mg of cholesterol, 70mg of sodium, 3g of fiber, 4g of sugar and 11g of protein.

Source: USDA

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SPOTLIGHT ON



Cavnac & Associates is proud to support local and non-profit civic organizations, including the Warrior Foundation-Freedom Station.

WARRIOR FOUNDATION FREEDOM STATION

Serving Military Heroes in Transition

The Warrior Foundation-Freedom Station vows to be the leading force in assisting, honoring and supporting the military men and women who have so bravely served and sacrificed for our country. They are committed to supporting their warriors in a variety of ways, providing quality-of-life items and numerous support services designed to assist them and their families during recovery.

The Warrior Foundation-Freedom Station assists four main groups of warriors: the Seriously Injured (SI) just returning home from war; those suffering from post-traumatic stress disorder

(PTSD) or traumatic brain injury (TBI); those undergoing physical or occupational therapy, and warriors who have been medically retired and remain in our community.

To serve this last group in particular, Warrior Foundation-Freedom Station pioneered a new approach and opened Freedom Station - a unique recovery transition center and housing facility that provides injured warriors with the acclimation time, guidance and resources to successfully make the transition from military service to civilian life.

For more information about Warrior Foundation-Freedom Station, go to www.warriorfoundation.org.