

## How to Report a Claim

*Article courtesy of  
Professional Liability Agents Network (PLAN)*

**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.

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.

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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 don't 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.”

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# Risk Management Seminar Series



## Sexual Harassment Prevention Training - Second Quarter

Friday, March 7, 2014

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

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Friday, March 14, 2014

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

## OSHA Construction 10-Hour Training

Thursday, April 10, 2014 and Friday, April 11, 2014

7:00AM Program\*

*Note: This training will be held from 7:00am to 1:00pm on both Thursday and Friday. Program will begin promptly at 7:00am. You must pre-register for this training.*

## Reserve Early, Seating is Limited!

To register, contact Bethany Mongold at [mongold@cavignac.com](mailto: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.*

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- “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 is 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 who come in contact with your customers, from receptionist to top executive.

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.

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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.*



Presented by Cavnac & Associates

## Stay Safe During Spring Weather Hazards

From hail and mudslides to thunderstorms and tornadoes, severe weather takes many different forms in the spring months. By knowing the extent of hazardous weather, you will be able to prepare yourself and protect your family and property.

Having a storm readiness plan in place saves valuable time if severe weather strikes. Advance planning may even limit the damage caused by harsh weather. Take the opportunity now to choose the best shelter in your home, and make sure your family knows where it is. Choose a meeting place to gather after the storm to ensure that everyone is safe and accounted for.

While severe weather can strike at any time, the following types of weather hazards become more prevalent during spring:

1. **Floods.** Floods are among the most frequent

and costly natural disasters in terms of human hardship and economic loss. Most flooding occurs when the volume of water in a river or stream exceeds the capacity of the channel. In the spring, heavy rains and melting snow can greatly increase the risk of flooding. To assess your susceptibility to flooding, consult flood hazard maps for your community. If you live in a high-risk area, consider elevating your furnace, water heater and electric panel. Install "check valves" to prevent floodwater from backing up into the drains of your home and seal walls in your basement with waterproofing compounds.

2. **Mudslides.** Mudslides develop when water rapidly accumulates in the ground and results in a surge of water-saturated rock, earth and debris. As with floods, the most important precaution you can take is to determine your susceptibility to mudslides. Consult a geotechnical expert (a registered professional

engineer with soils engineering expertise) for advice on reducing landslide problems and risks. Local authorities should be able to help you contact a geotechnical expert.

3. **Tornados and High Winds.** A tornado is a violently rotating column of air extending from the base of a thunderstorm down to the ground. While tornados have been reported in every state, in areas where tornados are frequent it's important to know the difference between a tornado watch and a tornado warning. A tornado watch is issued when weather conditions favor the formation of tornadoes—for example, during a severe thunderstorm. A tornado warning is issued when a tornado funnel is sighted or indicated by weather radar, and you should take shelter immediately.

For all weather hazards, maintain an emergency pack with a battery-powered flashlight, a radio, tools for emergency repair, food supplies, a first-aid kit, blankets and extra clothing. Store important identification and insurance documents in a fire- and water-proof safe. Be sure to fill your car's gas tank when severe weather is incoming. Planning ahead will help you be ready when severe weather hits.

**The most common spring allergy is pollen—tiny grains released into the air by trees, grasses and weeds.**

## Combating Allergy Season

While most people can't wait to welcome the end of winter, for millions of others spring's warmth and rebirth brings debilitating allergies. The most common spring allergy is pollen—tiny grains released into the air by trees, grasses and weeds for the purpose of fertilizing other plants. In allergy sufferers, the immune system mistakes pollen for harmful foreign germs, and triggers hypersensitive reactions that may include red eyes, runny nose, itchiness, eczema, hives or an asthma attack.

Fortunately, when potential hazards are recognized, allergies and asthma can often be prevented or their effects minimized. To reduce your exposure to pollen and other allergy triggers, check local weather reports to find out current pollen forecasts. If pollen counts are high, take allergy medication preemptively instead of waiting for symptoms to start. Stay indoors on dry, windy days. The best time to be outside is after a rainstorm, when the air is mostly pollen-free.

Refrain from gardening or doing yard work. Change your clothes after being outside for a long period of time. Consider taking a shower or rinsing your hair if your allergies are starting to act up. Be sure to use an air filter in your home as well. Don't let the onset of spring cause you to suffer.

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# Reboot Your Workout

It's very common to fall out of a fitness routine, especially at this time of year. Everyone has their excuses: holiday schedule changes, bad winter weather, injury or illness, failed New Year's resolution, etc.

Regardless of the reason, you need to get back in the habit. Now is a perfect time to recommit to achieving and maintaining a prime fitness level. But before you start to pick up where you left off, be mindful of the following things:

1. **Start slow.** Do not try to make up for lost time. Depending on the length of time since your last workout and the reason for stopping, you might not want to resume working out at the same level you were at when you stopped. Rather, decrease your exertion by 20 to 30 percent and gradually build your way back up.
2. **Choose an activity you like.** Enjoying your workouts is a must. If you find cardio preferable to weight lifting, focus on that. The goal during the first month is to get moving, whichever way you choose.
3. **Recruit a buddy.** Grab a friend to join you. Adding a partner to your workouts can boost your commitment and give you someone to discuss fitness with, and the two of you can keep each other motivated.
4. **Track every workout.** Charting your workouts is a great way to watch yourself steadily improve and to stay motivated. Small fitness milestones give you a series of short-term goals to reach as you work towards your overall goals.



# Slow Cooker Beef Stew

Whether you're celebrating St. Patrick's Day or just trying to stay warm during an extra-chilly winter, this savory, healthy stew will stick to your ribs without emptying your wallet. Preparing it in a slow cooker will allow you to enjoy your day without having to worry about dinner. Bon appétit!

- 2 pounds beef stew meat, cut into 1-inch cubes
- ¼ cup all-purpose flour
- 2 cups beef broth
- 1 garlic clove, minced
- 3 carrots, chopped
- 3 potatoes, chopped
- 3 tbsp. vegetable oil
- 1 celery stalk, chopped
- Herbs (bay leaf, basil, oregano) to taste
- Salt and pepper to taste

Brown meat in a skillet over medium-high heat for about 1 minute per side. Place meat in slow cooker. Mix flour, salt and pepper in a medium bowl and pour over meat. Stir until meat is coated with flour mixture. Add remaining ingredients and stir to mix. Cover and cook on low for 8 to 10 hours or on high for 4 to 6 hours. Stir stew thoroughly and discard bay leaf before serving.

Yield: 6 servings. Each serving provides 240 calories, 6g of fat, 2.5g saturated fat, 70mg of cholesterol, 290mg of sodium, 3g of sugar and 2g of fiber.

Source: USDA

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# Spring Clean Your Finances



If you haven't already, spring is a great time to get a handle on your debt, especially if you have holiday bills due. Revisit your accounts to find out exactly how much you owe and what the interest rate is per account. It may be possible to refinance or consolidate debt at a lower interest rate than what you're currently paying. Once you've done that, set up a new monthly budget for the year, taking into account debt and insurance payments, savings deposits, and living and entertainment expenses.

Other steps you can take to reorganize your finances include throwing away non-essential account statements from the last year, gathering your tax information, checking your credit report, updating dependent and beneficiary information and getting new quotes for insurance policies if you think it's possible to obtain the same quality of coverage for less.

# SPOTLIGHT ON



Cavnac & Associates is proud to support local and non-profit civic organizations, including JDRF (formerly known as the Juvenile Diabetes Research Foundation).



JDRF is the leading global organization funding type 1 diabetes (T1D) research. JDRF's goal is to progressively remove the impact of T1D from people's lives until we achieve a world without T1D. JDRF collaborates with a wide spectrum of partners and is the only organization with the scientific resources, regulatory influence, and a working plan to better treat, prevent, and eventually cure T1D.

As the largest charitable supporter of T1D research, JDRF is currently sponsoring \$530 million in scientific research in 17 countries. In 2012 alone, JDRF provided more than \$110 million to T1D research. More than 80 percent of JDRF's expenditures directly support research and research-related education. In 2012 Forbes magazine named JDRF one of its five All-Star charities, citing the organization's efficiency and effectiveness.

*For more information about JDRF, visit: [www.jdrf.org](http://www.jdrf.org)*