

How to Handle a Pre-Claim Incident

Article courtesy of Professional Liability Agents Network

When is a professional liability claim not a claim? When it's a pre-claim incident. It's when you catch wind that something may be wrong with the project, yet your client or another project team member has not confronted you with a formal complaint and demand.

So why make a big deal about a pre-claim incident? Why stir up a hornet's nest when chances are the issue will likely just blow away? If the incident later develops into a claim, you can address it then, right? Who wants to make a mountain out of a molehill?

It's common knowledge that the sooner you address a problem or potential problem, the quicker you'll be able to find a solution and minimize damages. That logic applies tenfold to a construction project. If there's a potential problem with the integrity of a building's foundation, for example, it certainly is a lot smarter and cheaper to fix the foundation before proceeding with construction of the building that sits upon it. This reasoning alone makes it clear why pre-claim incidents should be addressed quickly, not swept under the rug until combustible.

There's another reason why it makes a whole lot of sense to address pre-claim incidents promptly: the nature of professional liability insurance (PLI). PLI is a type of insurance known as "claims made and reported," with emphasis on the word reported. This means that in order for your insurance coverage to come into effect, a claim must be made against you and you must report it to your insurance company during the current policy period. Even if the alleged error or omission that led to the claim occurred years previously, coverage only kicks in when the claim is made and then reported to your current insurer.

Smart PLI companies take this concept a step further. The carrier will kick in its insurance coverage as soon as an



insured reports a pre-claim incident that it believes may result in a claim. If the insurance company agrees that this incident may lead to a claim it will provide loss prevention assistance, likely on its own dime. It will open a loss prevention file and provide pre-claims services, likely spending its own money, not your deductible, to resolve and/or monitor the incident before it turns into a claim. Further, these forward-thinking insurers make it a policy not to increase an insured's premium or deductible simply because it reported a pre-claim incident.

If we've successfully convinced you that tracking and reporting pre-claim incidents is a good loss prevention practice, then you'll want to institute company policies that will assist all of your employees -- not just management and the risk management staff -- in handling these potential project upsets. Here are some of the basics.

Identify Red Flags

The red flags that indicate there may be a pre-claim incident brewing just below the surface take a wide range of shapes and sizes. Here are a few clues of impending trouble that you should have your staff looking out for:

- You discover your client has a history of litigation with its designers and contractors.
- A client who has been a good communicator suddenly stops returning your calls or answering your instant messages and emails.
- A client who has always paid your monthly invoices on time becomes 30, 60, then 90 days past due with its payment.
- An in-process project is unexpectedly put on hold with no clear explanation as to why.
- A client hires an outside design professional or construction manager to oversee your work.
- A client representative has a heated exchange with the contractor regarding project specifications, and then badmouths the contractor to you.
- You hear secondhand that your client recently badmouthed you to another design firm.
- You discover that project costs are running significantly over budget.
- You learn that your client was recently sued by another design firm for nonpayment of fees.
- Your client informs you that you will not need to attend this month's project meeting with the contractor.
- Your client or its contractor issues an inordinate number of requests for information (RFIs).
- You complete the project, but the ending balance due to you becomes past due.

Provide your own red-flag list to your employees, and then as a group, have them contribute to the list as it applies to their job duties. What red flags should they be looking out for?

Implement Formal Incident Reporting Procedures

Explain to employees that you want them to speak up at the first sign of trouble and report a red flag to the appropriate member of management, typically their immediate supervisor. Explain that you are not out to kill the messenger and, instead, appreciate the forewarning of a potential claim.



Discourage employees from trying to resolve a pre-claim incident by themselves. If they have received a complaint from a client representative, contractor, subcontractor or another party to the project, they shouldn't try to defend your company's actions or shift blame elsewhere. Nor should they admit responsibility for an error or omission in services, or offer to make payments or provide additional services to correct alleged mistakes. Instead, they should record the complaint, verify their understanding of the issue and commit to get back with a response once the

situation had been investigated. Stress to employees that they should remain calm and not overreact.

If company employees discover a pre-claim incident on their own, they should report it to their supervisor prior to discussing it with the client or another party to the project. That is, of course, unless the incident poses a clear and present danger to the health, welfare or safety of those on the jobsite. Then, appropriate warnings should be issued immediately to those in danger.

Once an incident has been reported to management your company should begin collecting all relevant documents and other information. Do not destroy any project records. Someone (likely the project lead or a risk manager) should be appointed manager of the incident file.

When sufficient information has been gathered, all employees should be informed of the incident. They should be instructed not to discuss the matter with anyone outside the firm and be alert to possible further developments regarding the incident. Meanwhile, the manager of the incident file should reassure the claimant that the incident is being taken seriously and investigated, and a response will be forthcoming once the initial investigation is complete.

When sufficient information has been gathered, your professional liability insurance agent should be notified. Generally, you shouldn't wait more than 24 hours from the time you became aware of the incident. Same day notification is even better.

Share all of the relevant information that has been gathered with your agent and ask for advice on how to proceed. Specifically, ask whether the incident should be reported to any of your insurance carriers. If your PLI carrier has a loss prevention assistance program that provides pre-claim services, chances are your agent will recommend that the incident be reported immediately. If your insurer has a higher threshold for claim reporting, you may be advised to hold off until there is further evidence that a claim may be forthcoming. Have your agent assist in determining whether your commercial general liability and excess insurers need to be notified as well. And you always have the right to report an incident to your PLI carrier, even if your agent advises you to wait.

Risk Management Seminar Series



Sexual Harassment Prevention Training

Wednesday, Sept. 5, 2018

7:30am Registration

8:00am - 10:00am Program

Safety Management Systems 101

(This is an all-day seminar)

Wednesday, Oct. 3, 2018

7:30am Registration

7:30am - 4:30pm Program

Human Resources Legal Update

Wednesday, Nov. 7, 2018

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 Sara Taylor staylor@cavnac.com or call 619-234-6848.

When An Incident is Reported

Once an incident is reported to your PLI carrier, the insurer will likely appoint a claims manager to handle your case. The claims manager will meet with you directly or remotely to discuss the incident, review your client contract and other relevant project documentation, pinpoint the underlying issues that could lead to a claim, and provide advice on how to proceed.

Based on the specifics of the situation, the claims manager may advise you to take no action at that time, other than to keep open communications with your client and report any further signs of project upsets. In other instances, the manager may assign legal counsel or subject matter experts to assist with the investigation. Each situation is different and the appropriate response can run the gamut from doing nothing, to soothing ruffled feathers, to aggressively building a strong defense team and legal case.

Where appropriate, your claims manager may wish to contact the potential claimant directly to gather further information or begin to seek resolution to the 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 (or other potential claimant), with the claims manager providing you background advice. Other times it will be more effective to begin direct dialog between your claims manager or legal counsel and your potential claimant's representatives. Either way your claims manager should keep you abreast of all developments.

Do your best not to upset the potential claimant, and follow the instructions of your claims manager regarding ongoing communications pertaining to the incident and your continued work on the project. In most cases, these incidents can be handled and resolved without formal litigation and your business relationship can be retained through project completion and beyond.

Heading Claims Off at the Pass

The best claim is an avoided claim. Take loss prevention and risk management seriously by following these basic risk management steps:

- Select your clients and projects carefully.



- Use protective language in your contract calling for limitation of liability and mediation as your dispute resolution method of choice.
- Provide loss prevention education for your whole staff.
- Promote open communication with your client throughout the life of the project.
- With the assistance of an insurance agent who specializes in your profession, procure adequate professional liability insurance from a carrier with expertise in the architect and engineer arena.

Beyond these basics, take steps to identify and address signs of possible project upsets before they turn into claims. To recap:

- Develop with your staff a list of red flags that could indicate possible project troubles bubbling beneath the surface.
- Encourage employees to report incidents to management at the first sign of trouble.
- Educate employees on what to say, and not to say, when dealing with a client or other potential claimant.
- Gather the basic facts and alert your PLI agent of the incident in a timely manner.
- Take advantage of your carrier's pre-claim incident, loss prevention assistance program.
- Heed the advice of your claims manager regarding your ongoing relations with the potential claimant. ■

Health and wellness tips for your work and life—
presented by Cavnac & Associates



Foodborne Illness is on the Rise: Protect Yourself

It's scary, but it's the truth. You've likely seen the news reports this year, announcing recall after recall of produce, eggs and other foods. According to the Centers for Disease Control and Prevention (CDC), the overall number of diagnosed cases of listeria and salmonella, among others, increased 96 percent in 2017 alone.

Foodborne illness is no joke—1 in 6 Americans get sick and 3,000 die every year from one of 31 known pathogens. Globally, this number increases drastically.

To avoid contracting a foodborne illness, be sure to prepare your food safely and monitor the CDC's outbreak [webpage](#). If an outbreak is reported or a recall is issued, don't risk it! Follow the CDC's advice so you don't get sick.

HBP Guidelines Have Changed: Do You Know Your Risk?

The American Heart Association and the American College of Cardiology redefined what is considered high blood pressure (HBP) in November 2017, based on new evidence supporting a lower threshold. Stage 1 high blood pressure, also known as hypertension 1, is consistently measured at 130 over 80 or greater. The previous threshold was 140 over 90.

HBP is a serious condition that, if left untreated, can lead to coronary heart disease, heart failure, stroke, kidney failure and other health problems.

The New Guidelines & You

Under these new guidelines, nearly 46 percent of American adults are considered to have high blood pressure. Over one-third of Americans would be recommended for high blood pressure medication.

Your Next Steps

HBP is referred to as the "silent killer" because those who have it don't typically experience symptoms. The best way to find out if you have HBP is to get your blood pressure checked every two years and speak with your doctor.

In some cases, HBP can be prevented by living a healthy lifestyle that includes exercising regularly, eating a healthy diet low in salt, fat and alcohol, avoiding smoking and managing stress.

For more information, speak with your doctor.

Beets, Beans and Greens

- ¼ cup lemon juice
- 1 garlic clove (finely chopped)
- 2 tsp. mustard
- 2 tsp. vegetable oil
- 2 cups beets (cooked, sliced)
- 1 head of lettuce (washed, torn into pieces)
- 2 cups beans (cooked, rinsed)
- Salt and pepper (to taste)

PREPARATIONS

1. Combine lemon juice, garlic, mustard, oil, salt and pepper in a large bowl to make a dressing.
2. Place sliced beets in a separate bowl. Toss 1 Tbsp. of dressing with beets to coat.
3. Toss the lettuce pieces and beans with the remaining dressing in the large bowl.
4. Plate dressed salad and beans. Add dressed beets on top.

Makes: 6 servings

Nutritional Information (per serving)

Total Calories	150
Total Fat	5 g
Protein	6 g
Carbohydrates	22 g
Dietary Fiber	7 g
Saturated Fat	1 g
Sodium	176 mg
Total Sugars	5 g

Source: USDA

Fruits and Veggies: How Much is Enough?

If you're like the majority of Americans, you're most likely not eating enough fruits and vegetables. Fruits & Veggies – More Matters, a national health observance that occurs every September, wants to change that.

Fruits and vegetables contain essential vitamins, minerals, fiber and other naturally occurring substances that may help prevent chronic diseases.

How Much is Enough?

According to [MyPlate](#), the U.S. Department of Agriculture's symbol for healthy eating, the recommended adult daily serving for fruits and vegetables are:

- Fruits
 - Women: 2 cups (ages 19-30), 1 ½ cups (ages 31+)
 - Men: 2 cups (ages 19+)
- Vegetables
 - Women: 2 ½ cups (ages 19-50), 2 cups (ages 51+)
 - Men: 3 cups (ages 19-50), 2 ½ cups (ages 51+)





Cavignac & Community



Cavignac & Associates is proud to support local and non-profit civic organizations, including Serving Seniors.



Emilio's Story

When Emilio was diagnosed with Acute Lymphoblastic Leukemia (ALL), his parents Richard and Diane felt their world turned upside down cycling through emotions including fear, promise, desperation, and hope. Despite a relapse, intensive chemotherapy, marrow registry search, and a transplant, the Nares family say they felt lucky. They had family, friends, even strangers reaching out to help them. However, while living at the hospital, it became clear not everyone has the same kind of support.

After Emilio passed away just before his sixth birthday, he passed the torch on to his parents.

Richard and Diane honored his memory by creating the Emilio Nares Foundation (ENF) to help low-income underserved families meet basic needs, especially transportation. Emilio's spirit can be felt in the hundreds of young patients ENF helps annually — laughter in the van, a comforting hand during hard times at the hospital, and the smiling eyes of our families. He looks after us all.

