



What Architects and Engineers Should Know About Professional Liability Insurance

By Jonathan C. Shoemaker, Esq., Lee/Shoemaker PLLC

For many architecture and engineering firms, professional liability insurance is viewed as a necessary but opaque expense—something to renew annually, negotiate primarily on price, and hope is never needed. From a legal perspective, that mindset leaves firms exposed in ways they often do not discover until a dispute is already underway. There are several misconceptions about professional liability insurance which result in architects and engineers failing to receive the full value of the policies they purchase.

Misconception #1: Reporting Potential Problems Will Hurt You At Renewal

Many design professionals hesitate to report a claim—or even a potential claim—to their professional liability carrier, fearing that the act of reporting will result in increased premiums at renewal. From an underwriting standpoint, this fear is often misplaced. Professional liability insurance for design firms is underwritten based on firm size, project types, risk management profile, and their claims history/loss ratio. Reporting a potential issue that never matures into an actual claim does not, by itself, negatively change that calculus. Moreover, firms that notify their carriers of potential issues before they become claims are often seen as better proactive (rather than reactive) risk managers.

The real risk lies in failing to report claims or potential claims in a timely manner. Failure to provide timely notice can give rise to coverage defenses, allowing the carrier to deny coverage entirely if a small issue later turns into a significant claim. For most design professionals, this represents a far more acute exposure than any speculative concern about future premiums.

Just as important, design firms which delay reporting deprive themselves of one of the most valuable and underused features of professional liability insurance: pre-claim coverage. Many policies allow insureds to access carrier-funded legal assistance when circumstances arise that may give rise to a claim, but have not yet done so. Early engagement of counsel may help to prevent disputes from hardening into formal claims. When design firms wait to report matters until potential issues harden into formal claims, those legal costs trigger deductible obligations to be paid by the design professional (rather than by the insurer through pre-claim coverage offered under the professional liability insurance the design professional has already paid to receive).

Misconception #2: Professional Liability Policies Are All The Same

Another frequent mistake design professionals make is assuming that professional liability policies are interchangeable aside from price. From a lawyer's perspective, that assumption is risky. There are at least four distinguishing features among professional liability carriers, beyond straight cost, which may materially affect how a claim unfolds.



First, the deductible obligations under professional liability policies can vary. Some policies offer first-dollar defense, meaning defense costs are paid by the carrier from the outset, without eroding the deductible. This option is not universally available and may depend on the type of design professional, but can significantly reduce early out-of-pocket costs in the event of a claim for architects and engineers who may be able to obtain such an endorsement on their professional liability policy.

Second, the presence and structure of hammer clauses in professional liability insurance policies can vary. A hammer clause may allow the carrier to compel settlement over the design professional's objection, or limit the carrier's financial responsibility if the insured refuses a recommended resolution. Full hammer clauses are less common in professional liability policies, but even a limited hammer clause may not be desirable for a design professional recognizing that the reputational ramifications of settling a claim may be as important as the financial ramifications.

Third, choice of counsel provisions in professional liability insurance policies vary. Most professional liability carriers maintain panels of experienced attorneys who regularly represent design professionals. However, many policies allow insureds to designate preferred counsel when procuring the policy. When a carrier knows and trusts the proposed attorney, endorsements are available to assure the design professional that they will have the opportunity to work with their preferred counsel in the event of a claim.

Fourth, the claims handling philosophy of professional liability carriers can vary. Every carrier has a different claims team and approach to claims handling. These differences matter. Claims handling style can influence everything from extending pre-claim coverage to early resolution opportunities to how aggressively coverage positions are asserted by the carrier. In the event of a claim, the last thing any design professional wants is to be surprised by the way it is handled by their professional liability carrier.

Prudent design professionals recognize that not all professional liability insurance policies are created equal. As such, they engage with experienced insurance brokers who specialize in professional liability insurance to understand the differences between different carriers when deciding where to place their coverage.

Misconception #3: Changing Carriers Is Low-Risk

Professional liability insurance is claims-made coverage, which makes changing carriers fundamentally different—and more dangerous—than switching other types of insurance. Problems arise when firms underestimate what must be reported before a switch. Circumstances that have not yet become claims often still need to be disclosed under an expiring policy prior to a switch in carriers. Failure to do so can leave firms caught between carriers, with neither accepting responsibility when a claim later materializes.



Issues involving retroactive dates, prior acts coverage, notice of a claim (as defined in the policy), and continuity frequently surface only after litigation begins when it is too late to resolve those issues. Where a change in carriers results in a gap in coverage, design firms can find themselves facing uncovered defense costs and exposure because they misunderstood how a carrier change might affect coverage related to future claims. Before changing professional liability carriers, prudent design firms should confer with an experienced insurance broker who specializes in professional liability insurance to understand exactly what needs to be reported, what coverage is being preserved, and what risks are being transferred or left behind.

A Final Thought for Firm Principals

Professional liability insurance should not be treated as a passive asset. Used correctly, it is an active risk management tool that can help firms identify problems early, control disputes, and avoid litigation altogether. Used poorly—or misunderstood—it can create a false sense of security. Firms that understand how their policies are underwritten, how carriers differ, and how professional liability insurance policies work put themselves in a far stronger position—legally and financially—when challenges arise.

Jonathan C. Shoemaker is an attorney at Lee/Shoemaker PLLC, a law firm devoted to the representation of design professionals in DC, Maryland, and Virginia. The content of this article was prepared to educate related to potential risks but is not intended to be a substitute for professional legal advice.