



Worldwide's Web

September 2008

Contractor's Professional Liability

Design/Build Exposures

We all know that contractors need General Liability coverage. But what about Professional Liability coverage? Your contractor may have an exposure to these types of claims if one or more of the following conditions exist:

- ⇒ Contractor performs design services in house.
- ⇒ Contractor assumes responsibility for design services but subcontracts the work to a design firm.
- ⇒ Contractor provides any engineering or revisions to design materials without approval or re-stamping.
- ⇒ The contractor's responsibility goes beyond construction to design delegation, project design or construction management.

A design-build contractor is the single point of responsibility for coordinating all design aspects, the construction execution, as well as ensuring that the design and changes during construction are within the authority of licensing laws and consistent with industry standards. Since there is no contractual relationship between the project owner and the design sub-consultant the project owner may make a claim against the general contractor instead.

Claim Examples:

- ⇒ **A Lapse in Judgment and Insurance** - A contractor subcontracted the design of a ventilation system to a mechanical engineer. The engineer miscalculated the cooling needs of the building and specified an inadequate ventilation system. Because of the system's poor performance, the building owner demanded \$180,000 to replace it. At the time of the claim, the mechanical engineer had let his E&O policy lapse. Therefore, the contractor was held liable for replacing the system.
- ⇒ **GC/CM Held Responsible for Site Safety** - A worker was seriously injured during construction by a collapsing wall. In his lawsuit, he alleged that the general contractor/construction manager was negligent for failing to provide for safety precautions. The case settled for over \$250,000.
- ⇒ **Design Error Produces Cost Overrun** - A contractor made a cost estimate of \$2 million for a warehouse project. After it was built, the loading platform was found to be inadequate to meet the stated needs of the warehouse, the project cost rose to \$2.5 million. The contractor was held liable for the \$500,000 difference for negligent design of the loading platform.

Construction Managers—Agency vs. At Risk

Agency Construction Managers (or "not at-risk") perform professional or advisory services regarding project design and construction services as representative and Agent of the client. They do not hold any trade contracts and are not responsible for the successful completion of the project. This also includes owner's representatives and owner's advisors.

At-risk Construction Managers have direct responsibility for means, method, techniques and sequences of the project and directly hire contractors or sub-contractors. They may also provide "front end" services such as constructability review of design documents, value analysis, cost estimation and scheduling.

Coverage Enhancements & Submission Requirements:

- ⇒ Contingent BI/PD, pollution, delay of project arising out of wrongful act, mediation deductible credit and site safety liability.
- ⇒ Contractors Professional application, sample client contract, project list and resumes.
- ⇒ Minimum Premiums of \$3,500—\$15,000 for limits of \$1,000,000 with a \$5,000 deductible.



Our Brokers:

⊙ Ruth Boozer x104	r_boozer@wwfisea.com
⊙ Stan Heydrick x108	s_heydrick@wwfisea.com
⊙ Erik Lindquist x105	e_lindquist@wwfisea.com
⊙ Bob Stout x115	b_stout@wwfisea.com
⊙ Mike Stutsman x103	m_stutsman@wwfisea.com

601 Union Street, Suite 1630, Seattle, WA 98101

Phone: (206) 749-9151 Fax: (206) 749-9152

CA Office License No. 0414108 • WA Office License No. 116180