

EC RISK REVIEW

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Reporting Claims and Locking In Your PL Coverage

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.

It's a fact. The chances of you facing a professional liability (PL) claim increases during difficult economic times. Your client can easily get into a financial bind when a project turns south and begin to cut corners on quality. Then, when things go wrong, the client may look to your insurance limits as a resource for cutting its losses, regardless of whether you are a cause of the troubles.

Likewise, you may be forced to lay off staff during an economic downturn and find yourself stretching your employees too thin, resulting in increased errors and omissions. If you've reduced your insurance coverage or, worse yet, allowed your coverage to lapse, you could soon be facing a financial quagmire that threatens your professional future.

It is critical that you and your staff understand this increased risk during hard times and learn how to lock in your insurance protection in the event of a claim. Keeping your PL policy up to date and in force and 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 coverage.

Understanding Professional Liability Insurance

Professional liability (also known as "errors and omissions") insurance works differently than most types of insurance with which you are familiar. Rather than being an occurrence policy that comes into effect when damages occur, professional liability is a "claims-made-and-reported" policy that comes into effect only when a claim is made and reported to the insurer -- regardless of when the alleged error or omission occurred.

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 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 worked on a wastewater plant in 2004 when you were insured by ABC insurance. In 2006 you switched from ABC to XYZ insurance and have maintained continuous coverage with them ever since. If you now receive and report a claim regarding your 2004 environmental services, you are covered by the current policy in effect with XYZ insurance.

Why is this an important distinction? Suppose you let your PL insurance lapse in 2006 because you felt you couldn't afford it. When you sought a new policy in 2008, that carrier may not provide "tail" coverage and you could be uninsured for all of your projects prior to the inception date of your new policy. 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, however, 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 in a tough economy is don't let your PL insurance coverage lapse. Even if your active projects have shrunk to zero you still need continuous professional liability coverage to ensure that your previous projects are covered.

Report All Incidents Promptly

As an insurance agency that specializes in professional liability services for environmental and design firms, we hear stories like these all the time from our insureds:

- "All of a sudden my client stopped returning my phone calls and then cancelled our monthly meeting. I sensed he might be upset with me but I had no idea why. I just figured he was in a bad mood."
- "Typically, their accountant paid our bills like clockwork. But all of a sudden our invoices were becoming 30, 60, 90 days past due. "
- "We got a call to put our consulting work on hold until further notice. I figured they were in a cash crunch but now it's been three months."
- "I was surprised to find that the client hired another environmental professional to help him manage our project. They're now asking for copies of everything and the client has requested changes to our plans."
- "The guy threatened to file a claim but I knew it was bogus. That was the contractor's error, not ours."
- "I had no idea that this little issue would evolve into a claim."

Regardless of how inconsequential a project upset may seem at the time, 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 a potential claim to the insurance company. "When in doubt, do it" is a wise rule of thumb.

Why report an incident? Because it generally locks in your PL insurance coverage. If a potential claim is reported to the carrier during the policy year, chances are great that you have coverage under a claims-made-and-reported policy. If the incident never materializes into a formal demand for damages, no harm, no foul. If a claim later arises out of the incident, this year or in the future, you have formally reported it during the policy year and coverage should be there.

Some environmental consultants fear that reporting an incident will automatically put them in line for a PL premium rate increase the following year. That is not the case. Most insurance firms will not consider an incident report as a claim until a demand for money is made. Smart insurance carriers understand that it is in their best interest to encourage early reporting. Forewarned is forearmed. The carriers' claims department -- and where 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 costs of providing consulting and legal services are not applied against your policy limits or deductibles unless a claim develops.

A Prudent Course of Action

All environmental firms would be wise to put a claims-reporting procedure in place and communicate it to all company employees. This is not just an insurance issue to be handled by your accounting, legal or risk management staff. It is a client-relation issue that relates to all employees, from receptionist to top executive, who come in contact with your customers.

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 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 environmental team of an error or omission. How your staff responds to that complaint is critical. Instruct employees to listen closely and empathetically to the client and fully document the complaint. However, 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.

The complaint should be fully documented and reported to appropriate members of management. Management should initiate an investigation of the matter, meeting with appropriate 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 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 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. Sometimes it may be best to keep correspondence between you and 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.