

The Big Switch **Look before You Leap when Changing Insurance Companies**

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The insurance marketplace is changing every day. Unfortunately, the most current trends are less favorable for policyholders than they have been over the last decade. By now you have probably heard some frightening stories from colleagues who have had their architects' and engineers' professional liability policy premiums increase dramatically, have had important options like "first-dollar defense" or multiyear policy terms eliminated, or, worse, have found it difficult even to find an insurance company to offer them a policy. Some of these reports may be urban legend, but to some degree these issues are facing most architecture and engineering firms around the country. Because of this, you may be considering a switch to a new insurance company. If you are, there are important issues to consider.

Remember that your policy is written on a *claims-made* policy form. Unless you notified your insurance company of the potential claim before the policy ended, you have no protection for a claim made after the policy has been cancelled or has expired-*even if* the claim happened or the alleged design error occurred during the time you were insured. Insurance policies differ among insurance companies, as do state insurance requirements. But, in general, a professional liability claim needs to meet three criteria to be considered for coverage:

1. There must be an active policy
2. The policyholder must not have had knowledge of the claim before the policy started
3. The services that led to the claim must have been rendered after the retroactive date.

This unique *claims-made* feature puts an extra burden on you when you relocate your professional liability policy to a new insurance company. You need to evaluate your choices based on the retroactive date as well as the differences in the policies and/or brokers, the impact of reductions in coverage, the concern about claims that fall between two policies, and the disclosure of information to a new carrier.

Retroactive coverage

Check that the insurance company you are considering as a replacement is offering you the same or an earlier retroactive date. When you maintain your coverage, your retroactive date should stay the same. For instance, the policy you purchased with ABC Insurance Company on 12/10/1995 should still provide you with a retroactive date of at least 12/10/95 if you have continued the coverage, even if you are now with XYZ Insurance Company.

Increased risk changes

If you have to make some tough choices to control your renewal costs, such as lowering your limit of liability, eliminating attractive options like "first-dollar defense costs coverage," or increasing your deductible, remember the *claims-made* feature of the policy. Your firm will be subject to the financial risk of these changes today when the claim is made, even though the claim may stem from an alleged mistake you made when you had a policy that offered you financially friendlier terms. The choice you make now will impact risks from your past. For the same reason, be alert to limitations on your new policy that affect previous exposures. For example, even though you no longer work on





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project types that you consider to pose high risk for water infiltration claims, if you performed professional services on these projects in the past, you should be concerned with a policy that would exclude mold claims in the present.

Terms and conditions

What are you buying? What you pay out of your pocket can be more than a matter of your limit, deductible, and premium. Some policies pay you for your attendance at claim proceedings or cut your deductible in half if you participate in mediation or have fewer exclusions; these are savings too. Ask your broker to provide you with a comparison between the different policies. Or, if this means a switch to a new representative, create your own checklist from the features of the policies you are being sold. At a minimum your list should include:

- Retroactive date
- Deductible options and their cost
- Persons/entities covered
- Management and financial ratings of the company
- Definition of professional service
- Differences in exclusions
- Coverage territory
- Built-in features that reduce the deductible (What are the circumstances? By how much will the deductible be reduced?)
- Any payment to the policyholder for attendance at claim proceedings (How much? Under what circumstances?)
- Number of years the insurance company has offered policies to design firms
- Risk management support services, such as continuing education, contract review, and seminars
- What happens if the policyholder disagrees with the insurance company's desire to settle a claim (Must the policyholder give their written consent to settle the matter? If the policyholder does not agree with the settlement and refuses to consent, what liability do they incur?)

Awareness

New policies will *not* provide coverage for claims or potential claims that the policyholder is aware of on the day coverage begins with a new provider. A claim is a demand for money or services. A circumstance (also known as an incident or a potential claim) is an issue that a reasonable and prudent person could expect to result in a claim. *So double- and triple-check that you do not have claims or circumstances that have not been reported to your existing professional liability company.*

Disclosure of information

Your new insurance company is basing their offer of coverage on the information that you have supplied to them. It is a common practice to complete one application and ask several different insurance companies to provide quotations from it. If you select coverage through a different company, they may activate your coverage but you will eventually be asked to submit their own application before they will release the new policy to you. This can be a dangerous sequence of events. If the second application discloses information that the insurer was not aware of, it can raise your cost or jeopardize your coverage after you thought the deal was sealed.

For example, your new company may consider multifamily projects to be risky. If the first application you submitted did not ask you to disclose that a percentage of your services were performed for condominium jobs, but the second form did, the new company may come back with a higher premium or, worse, cancel



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your new policy. This problem can easily be avoided by asking your broker to supply you with all of the paperwork that will be required. You can submit the information to the company in advance of the effective date of your new policy and request verification that the initial quotations, terms, and conditions will remain unchanged.

Get informed

There are plenty of sources to help you gather and process information. Professional societies poll their members on insurance issues and some, including the AIA and the National Society of Professional Engineers, each year interview underwriters and other representatives from the professional liability insurance markets. Ask your colleagues. Check the Internet. And, most importantly, remember that a portion of your premium is paid to your insurance broker and you should expect service. Ask them to perform.

If you decide that a change to a new insurance company will meet your firm's needs better, it can be a smooth transition. You can compare the insurance companies and the policies' coverage and value-added features, confirm that there are no unreported claims or circumstances, and, if you are ready for the switch, supply your new insurance carrier with any required paperwork to verify their offer.

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