



ProNet Practice Notes

Contractor's Insurance and Bonds: Essential Tools for Successful Projects

by Dennis J. Linder*

TABLE OF CONTENTS

- WHY WORRY?
- THE CONTRACTOR'S INSURANCE
 1. [Commercial General Liability](#)
 2. [Workers' Compensation and Employer's Liability](#)
 3. [Commercial Automobile Liability](#)
 4. [Umbrella Liability Coverage](#)
 5. [Owner's Liability Insurance](#)
 6. [Property Insurance \(Builder's Risk\)](#)
 7. [Boiler and Machinery Coverage](#)
 8. [Loss of Use Insurance](#)
- THIS IS SIMPLE, SO WHAT'S THE PROBLEM?
- DESIGN PROFESSIONALS NEED PROTECTION, TOO
 1. [Indemnification and Contractual Liability](#)
 2. [Additional Insured](#)
 3. [Waiver of Subrogation](#)

YOU ARE ASKING ME TO DO WHAT? NO WAY!

- CONTRACTOR BONDS
 1. [What Happens When the Contractor Bails Out?](#)
 2. [Enter the Bond](#)
 3. [The Bond in the Box](#)
- GUIDES FOR DESIGN PROFESSIONALS

INTRODUCTION

Must architects and engineers be all things to all people to remain competitive? There is a competitive advantage if one can answer yes, but there is enormous personal and professional risk in the attempt to deliver on so broad a promise.

Professional services are sought by the client in the first place to reduce stress and uncertainty. Services conscientiously provided are aimed to satisfy the client's needs, including the tangible need for security and certainty. Clients are satisfied by architectural and engineering services, finally, because architects and engineers have the expertise and experience to perform those services well.

Clients, of course, have other needs that are bound up in the construction process. It might appear tidy if you would do it all, but you lack the expertise and experience to meet every need. The construction



ProNet Practice Notes

contractor's insurance is among the client problems needing a solution that must be unbound from your services.

Nearly everyone has experienced the temptation to replace a client's doubt with insurance advice. A place to specify the contractor's insurance limits is conveniently provided in AIA Document A201 and EJCDC Document 1910 (both are General Conditions for the construction contract); however, the specification of insurance coverages and limits, the "fill in the blanks" part of the exercise, is neither architecture, nor engineering. It is insurance.

Most architects and engineers have some knowledge about "typical" insurance and could likely "fill in the blanks" with better answers than many clients. Time may be short, the bid package must go out, but you should not begin practicing insurance under pressures of time or nature's response to a vacuum. Without doubt, there is an insurance professional somewhere who has the skill (and probably the obligation) to advise the owner. Insurance specialists get chosen to advise because their answers are more likely than yours to satisfy the client's needs. Everyone knows this, and your clients will understand it when you explain it.

WHY WORRY?

Simply stated, your specialty is not insurance. You chose to take your training and build your experience elsewhere. The markets providing your professional liability insurance, while respecting your other skills, recognize your limitations. They all contain a coverage exclusion which in substance provides: We will not defend or pay any claims arising out of the advising, requiring, or obtaining or failure to advise, require, or obtain any form of insurance, suretyship, or bond.

The exclusion is clear. If you specify insurance and claims are inadequately covered (or, worse, there is no coverage), you could be drawn into a long, complex, and expensive ordeal without the benefit of insurance of your own for the alleged errors in your "insurance" advice.

Credibility is a precious quality in any professional relationship. You go to great lengths to earn and maintain your reputation for exacting, complete, and appropriate architectural and engineering advice. Insurance advice that proves inexact, incomplete, and inappropriate can only diminish your credibility. If you do not get the insurance right, then, perhaps other services are suspect. If money is lost, security and certainty weaken. The time you will spend correcting insurance advice will be unrecoverable; your client relationship might be devalued to mere salvage.

Services outside your expertise do not add value. One is not made competitive by an attempt to satisfy all client needs in so complex an enterprise as construction.

You may be clear on the fact that insurance is not your forte. But bliss is not necessarily the reward of ignorance. In fact, self-assurance comes only from knowledge, and your greater knowledge about insurance in the construction industry will add to your confidence. Architects and engineers are construction team members, and they are more effective when the contributions of all team members are understood. You need to know that sound insurance advice contributes to a project's success. You need insurance knowledge to interact and cooperate with other experts. With this knowledge, you can protect yourself and your client where insurance (and on particularly bleak days, only insurance) can help.

Adding to your knowledge is the reason to continue with this *Practice Note*.

THE CONTRACTOR'S INSURANCE

This is the show and tell of contractor insurance coverages. Reading the next few pages will not amaze you, but sticking to it will give you an overview of the basic insurance coverages incorporated into AIA Document A201 and EJDC Document 1910. They are the following:

- Commercial General Liability
- Workers' Compensation and Employer's Liability
- Commercial Automobile Liability
- Umbrella Liability Coverage
- Owner's Liability Insurance
- Property Insurance (Builder's Risk)
- Boiler and Machinery Coverage
- Loss of Use Insurance

A. Commercial General Liability

Contractors get themselves sued by third parties for negligence on the job. They need insurance for protection. Owner's and design professionals need the protection, as well, because they are frequently sued for conduct and damages for which the contractor is legally responsible. Contractors solve their problem by buying a Commercial General Liability Policy. Owners and design professionals can deal with the risk by requiring that the contractor name them as "additional insureds" on that policy. By the way, "third parties" is a very large category that includes nearly everyone, but it specifically exempts employees of the contractor. Hold that thought for the discussion of the next policy, Workers' Compensation and Employer's Liability Insurance.

The Commercial General Liability Policy generally consists of seven coverage areas:

1. Operations of the Contractor

This is direct liability coverage for the contractor arising out of his activities at a permanent location or any job site. It covers the concrete masonry units implanted for dramatic decoration in the hoods of cars and the custom L.A. paint jobs no one expects or fully appreciates.

2. Operations of Subcontractors (Contingent Liability)

Subcontractors may anger third parties (see blocks and paints), and when they do, the contractor may be sued for his duty to supervise and stand legally responsible, vicariously, for the conduct of his subcontractors. This is the coverage for that liability.

3. Completed Operations

Even when the contractor departs the project safely, liability lives on in the places he has been. Completed Operations coverage is protection for property damage and bodily injury that occurs after the project is completed and turned over to the owner. Any faulty workmanship or material

can be the cause of damage, injury, and a lawsuit to recover for them. A faulty weld that leads to a collapse is one example. Water infiltration through a poorly constructed roof or window is more common.

4. Personal Injury

Injury to the "person" falls into two broad categories: Bodily and personal. Injury to one's physical body is the jurisdiction of bodily injury insurance coverage. People injured in their bodies take it personally, but bodily injury is not the jurisdiction of personal insurance coverage. Insurance policies get away with calling personal injury something else entirely. It's "personal injury" if it arises out of libel, slander, defamation of character, wrongful eviction, right of private occupancy, or false arrest and detention. That's personal all right, but, except for talking insurance, the difference isn't of much use.

5. Employees as Additional Insureds

Nothing much going on here: This says that employees have the same insurance coverage the corporation, its directors, and officers have.

6. Explosion, Collapse, Underground

Contractors may damage the property of others by the use of explosives, by digging near buildings, or by the surprise discovery of long buried and sometimes forgotten utilities. Gas and electric companies never give rewards for discovery of the exact location of their property. They sue, and that is why this coverage is required.

7. Contractual Liability

You, contractors, and others are asked to sign indemnity agreements. Broadly, insurance people call these assumptions of the liability of others by contract. Typically, the contractor will indemnify the owner for the consequences of the contractor's operations, and you should get yourself included as a party indemnified whenever feasible. Look for more discussion later on in this Practice Note. Contractual liability coverage is insurance for those agreements.

B. Workers' Compensation and Employer's Liability

Workers' compensation insurance is better understood if you think of it as a limitation on the employee's recovery for work-related injuries. Before the workers' compensation laws were passed, workers could sue at common law for injuries sustained in the course of the job resulting from the employer's negligence. The problem with the common law remedy was two-fold: Lawsuits could be very expensive for employers, and workers had difficulty establishing negligence and meeting other employer defenses (contributory negligence, assumption of the risk, and the like). The solution in all fifty states was workers' compensation laws and insurance.

So long as a suitable workers' compensation program or policy is in effect, the law provides that injured workers may recover fixed insurance benefits but may not sue their employers at common law for job-

related injuries (employers like that). Recovery does not require proof of the employer's negligence, nor does it require proof of the employee's freedom from contributory negligence (employees like this part).

Owners are keenly interested in their contractors' Workers' Compensation Insurance, because workers generally cannot sue project owners for their injuries if recovery is available under the contractor's insurance. Owners like that very much. You will not think it great social policy when the injured worker is disappointed with his modest insurance recovery and looks for someone else to sue. In most states, that could be you.

Worker's Compensation Insurance is written in two parts: Part A is everything discussed above; Part B is called Employer's Liability, and it protects the employer from common law claims brought by employees for job-related injuries. The common law constructs new theories, and the old ones die hard; therefore, one still needs common insurance.

C. Commercial Automobile Liability

Three categories of automobiles are afforded coverage from third party lawsuits in the commercial automobile liability policy: Owned, non-owned, and hired. An owned automobile is one purchased or leased by the contractor. A hired automobile is one on short term commercial hire for use in the contractor's business, a special transport truck, for example. A non-owned automobile is not owned, leased, or hired by the contractor. It might be an automobile used by a contractor employee or agent in the course or the contractor's business.

The contractor needs this insurance for all the reasons any one of us needs it. The project owner wants the contractor covered for the layer of financial protection it provides before an injured person would think to look elsewhere for an additional defendant.

D. Umbrella Liability Coverage

After the owner and his or her insurance professional have mandated all the insurance policies in this section at limits of liability believed adequate, the nagging question of how much coverage is enough will remain. You won't want to answer that question, but the umbrella liability policy is intended to bring peace of mind to the people who must. It is a layer of higher limits of liability insurance above three policy limits required of the contractor:

- General Liability
- Employer's Liability
- Automobile Liability

E. Owner's Liability Insurance (Owner's Protective Liability)

Owners of construction projects have all the duties that go with real estate ownership. Construction activity carries additional duties, including a duty reasonably to supervise the construction activity itself. Because owners hire the contractor, vicarious liability for damages and injuries suffered in the course of construction will attach to them. This means owners have a liability to third parties that may be greater by

reason of the construction than they either anticipate or have insurance to cover. The Owner's Protective Liability Policy is insurance for these risks.

Some insurance advisors contend that the contractor should purchase this policy on behalf of the owner. This is a practical and a financial decision. Contractors can generally provide the policy at less cost. Owners infrequently engaged in construction may lack the expertise to select the coverage wisely. When you are asked, always refer your client to his or her own insurance professional. Otherwise, the owner's advisor, by default, will probably be the contractor's. Guided by sound insurance advice, the owner can review the adequacy and appropriateness of the coverage, regardless of its source.

F. Property Insurance (Builder's Risk)

The Builder's Risk Policy protects the project itself (the material and labor in it) from direct damage. In its simplest form, it protects from fire, lightning, windstorm, hail, vandalism, and malicious mischief. The so called "named perils " form is limited to damage caused by the perils listed in the policy. What you see is what you get there. A broader form is available, and it is called (predictably) an "all risk " form. But, also predictably, it doesn't protect from every risk: There is protection from all risks except those excluded in the policy. That said, there is room for even broader coverage, and among those coverages are surface water and damage resulting from faulty workmanship, faulty materials, and faulty design.

People differ on whether the contractor or the owner should obtain the Builder's Risk Policy. When there is damage, it's mostly the material and labor the owner paid for that is lost. Thus, the owner has a great interest in the policy and which insurance company issues it. When you are asked, you know all the reasons why the answer is, "Talk to your own insurance professional. "

G. Boiler and Machinery Coverage

This policy exists because it is the way the insurance industry chose at one time or another to carve up its coverages. Risks arising out of boilers and machinery get their own policy for reasons mostly lost in history and accounted for in ritual. The policy covers mechanical breakdown and failure of boilers, machinery, air conditioning equipment, and electrical apparatus in a building. The policy takes effect after the covered equipment is installed, tested, and put into service. For that reason, the owner generally will purchase the policy.

H. Loss of Use Insurance

When projects are delayed or fail to perform, either the facility cannot be put to use, or refuge must be taken in expensive alternative facilities. The owner may suffer monetary losses, and he can insure against some of the perils that cause that. Loss of use insurance is another financial safeguard the owner's insurance advisor may recommend.

THIS IS SIMPLE, SO WHAT'S THE PROBLEM?

Some readers may have concluded by now that this insurance business isn't so difficult once you catch on. Some might speculate that a boilerplate insurance specification is entirely feasible. In fact, some of you may have had one handy, checking it off against the list. Hold on! We have been talking insurance the



ProNet Practice Notes

same way specialized insurance brokers occasionally talk architecture or engineering. Talking isn't doing by a long shot, in either case.

Complexities will frustrate every boilerplate imaginable. If all variations were accounted for, the boilerplate would extend nearly forever. How are boilerplate specifications modified for projects in a flood plain? How do they handle construction manager arrangements? What about multiple prime contractors? The list of exceptions and unique exposures goes on and on. Boilerplate insurance specifications give a false sense of security. Key coverages are overlooked or limits understated. That, finally, is not a service at all.

All parties to the construction process benefit from the expertise brought to the project by a strong insurance professional working for the owner. Weak representation distributes calamity, if not equally, then, widely.

Everything that harms the owner harms the reputation of the contractor and the design professionals signed on to design and construct the project. When the builder's risk policy is canceled before the owner has placed the property coverage, everyone loses. The loss goes all around when critical material or equipment stored off-site is damaged without insurance protection. It happens, and when it does, everyone risks the loss of that most valuable asset—the good will and trust of the client.

An insurance professional familiar with construction insurance and construction contracts can advise the owner on available and appropriate coverage, evaluate the financial capabilities and claims services of carriers, schedule planned occupancies (even during construction), and seek endorsements tailored to the construction project everyone is so energetically ready to leap forward and bring into reality.

DESIGN PROFESSIONALS NEED PROTECTION, TOO

Owners are exposed to special risks from the contractor's operations, and there is no argument with the contractor providing insurance protection against them. Architects and engineers are exposed in identical ways, and there is no credible argument against their having protection, as well. There is no good argument against protection, but architects and engineers will forfeit it unless requests are made and the need for protection substantiated. There are protections you can reasonably request and arguments you can advance to secure them.

All can be secured in the General Conditions to the Construction Contract. They may be argued by the contractor later, but you will have no chance to make your case unless the requirements are written into the General Conditions.

A thoughtful owner will want you to have protection against the consequences of the contractor's negligence and a defense from the contractor's liability insurance carrier. The reasons the owner wants protection apply to your case for it. Unity of interests under one insurance policy contributes to a forceful defense for all. Conflict is endemic in construction, and part of the reason for that is the plethora of separate interests that clash in any adversity. When the damages or injury claimed arise out of the contractor's negligence, all save time, money, and aggravation by uniting the defense under one banner.

A. Indemnification and Contractual Liability

The AIA and EJDC General Conditions provide indemnification in favor of both the owner and the design professional for claims caused by the contractor's negligence. Standing alone, the clause is a promise by the contractor to indemnify you, but more help is available. When the contractor's liability policies include contractual liability coverage (easily and inexpensively purchased), you have the assurance that an insurance company's assets back the promise. The owner will want that, and you will want it too.

Be prepared, when you ask for indemnification, to answer a demand that you reciprocate by providing the contractor with an indemnification from the consequences of your negligence. Demands for indemnification have the taste of the sauce for the gander on them. You might decide both to give and receive the sauce, but you will need the advice of your own legal and insurance counsel. Architects and engineers are situated differently from contractors, and project risks vary. No single satisfactory answer can be given.

The benefits to you of an indemnification in your favor can be substantial. An apt lesson is presented by *Hillman v. Leland E. Burns, Inc.*, 257 *Cal.Rptr.* 535 (Cal.App. 1 Dist. 1989). There, the survivors of a contractor's employee sued the architect for wrongful death. The contractor refused the architect's tender of defense under the indemnity contained in the AIA short form construction agreement. That form provided indemnity against claims for damage or injury (including death) caused in whole or in part by the negligence of the contractor. Upon the failure of the tender of defense, the architect cross-claimed against the contractor.

At trial, the architect was exonerated of all negligence claims, and he persisted in his claim for reimbursement of defense costs (they were mid-five figures by that time). Despite the results at trial, the contractor's insurance carrier (through the contractor) persisted in the argument that it had no obligation to defend the architect against the claim, because the AIA contract excused the contractor from liability for the architect's professional services.

The appeals court distinguished between a claim against the architect that the contractor was obligated to defend and the liability (when and if established) of the architect, for which the contractor would not be responsible. The trial had established that the architect had no liability. Accordingly, the court decided the contractor was responsible under the indemnity for the architect's defense costs.

In short, plain words, the terms of the AIA form of indemnity in the Hillman case required that the contractor defend the architect against the claim even though the contractor would not be responsible for the damages if and when the architect was found culpable.

B. Additional

Contractual liability makes insurance company assets available for your protection through the contractor's duty to indemnify you. "Additional Insured" is a status that creates a duty of the insurance company directly to you. When you are named an additional insured, the carrier is obliged to defend and protect you against claims, demands, and lawsuits arising out of the contractor's negligence. You have status, and that gets you recognized in troubled times. Don't let the word "Insured" mislead you. "Additional Insured" status does not provide insurance to you for your own negligence. That is still the job of your own insurance. Pause for a moment to consider how the architect's position in Hillman could have been strengthened had he been an additional insured as well as an indemnitee. There is an important lesson here.

Your plan to become an additional insured begins with the preparation of your agreement, and it extends to the contract for construction. Your agreement can easily require that you be listed as an additional insured on the Owner's Protective Liability Insurance or the contractor's General Liability Policy. The same requirements should be included in the General Conditions of the construction contract.

Being named an additional insured helps to avoid enforcement problems with indemnity agreements. Courts tend to regard indemnity with suspicion, but they are more than delighted to enforce an insurance company's obligation to protect a party listed on its insurance policy.

C. Waiver of Subrogation

All insurance policies provide (as does the common law) that after an insurance company has paid a loss it becomes "subrogated to" (takes over) its insured's claims against all other people who may share responsibility. Insurance companies like that, and they have departments dedicated to making subrogation claims. Nearly everyone else does not like that. Subrogation keeps the litigation fires alive years after the first loss is paid. For example, a loss from a fire in the electrical system that spread to the roof is first paid by the Builder's Risk Policy. That is fair enough, you would think, but subrogation is a restless remedy. The builder's risk insurer may claim next against the manufacturer of the electrical panel or the electrical engineer who specified it. Perhaps the wiring was improperly installed, and the architect doing periodic observation should be brought into the case. What's the harm? Everyone is looking for justice and a little help.

There is better help at hand. Standard agreements for professional services usually provide (and you should see that yours do) that all parties waive their subrogation rights against one another for damages covered by property insurance. When you are named as an additional insured, an additional barrier to subrogation claims against you is erected. An insurer cannot subrogate against its own insured.

Consent of the insurance carrier should be required and monitored by the owner's insurance advisor. Most policies acknowledge the policyholder's right to waive rights of subrogation before a loss occurs. The entire field can be covered if each carrier's consent is secured before the project begins. Consent is generally routine, but it may not happen without persistent follow through. For all the obvious reasons, waiver of subrogation is a faint hope after a loss has occurred. That is why advance planning is essential.

YOU ARE ASKING ME TO DO WHAT? NO WAY!

Some contractors may call your request for one or more of the protections discussed above onerous or bizarre. At the very least, they represent additional contract terms that take time and effort. Objections to them are predictable.

- This will cost more.
- My insurance carrier will never go for it.
- We will not pick up your E&O responsibility.
- This serves no purpose.

Your first and best defense to these objections is a client who understands that it is fair for you to have protection (the same as the client) against the greatest risk of construction—the contractor's operations.



ProNet Practice Notes

The contractor has control over the construction site, directs all safety programs, and selects the construction means and methods. Responsibility shows the way to the risk, and, when an insurance company has underwritten that risk, there is no good reason the carrier should not offer complete protection—even to the owner and the design professional—against the risk covered by the policy. Should your client be unpersuaded, the force of your arguments will be deflated. You have the first opportunity, so discuss your objectives and discuss the probable objections with your client at the outset.

The protections discussed here, in fact, cost no more than a nominal amount, and insurance carriers regularly consent to and do provide them. The contractor's insurer has been paid a premium to cover the risks of contractor operations. It is exactly those risk against which you seek protection. The owner's insurance advisor should be able to verify that. Score another advantage for a well represented client. Nothing suggested here will require an insurance carrier to cover your responsibility for errors and omissions. Remember, you get protection only from the operations of the contractor—never your own. In fact, the contractor's carrier will include an endorsement that excludes the preparation of designs, specifications, drawings, surveys, and maps.

Do these protections not serve a useful purpose? Does it not serve a useful purpose to reduce the reasons and opportunities for complex and nearly endless litigation, some of it at the insistence of insurance companies? Should the owner and design professional not be defended by the same insurance company (with resulting cost efficiency) when the claim is for damages caused by the contractor? The contrary result, that everyone must fight plaintiff's claim separately (and one another) at duplicate expense, calls to mind mixed doubles tennis made chaos by each of the four players serving simultaneously.

CONTRACTOR BONDS

Bonds are basic to construction. Public entities generally require them as a matter of law. Knowledgeable owners in the private sector usually require them, as well. Three types of bonds are typically utilized in the construction industry: Bid Bonds, Performance Bonds, and Payment Bonds.

A Bid Bond affords the owner the assurance that the contractor has submitted its bid in good faith; that, if awarded, the contract will be executed at the bid price, and the required Performance and Payment Bonds will be furnished.

Once the construction contract is signed, the Performance and Payment Bonds are delivered to the owner. The Performance Bond protects against financial loss should the contractor fail to perform the work in accordance with the contract documents. The Payment Bond completes the protection by guaranteeing that the contractor will pay its employees, subcontractors, and material suppliers.

Here is another opportunity to extend your services. What do you recommend on bonding? "To have or not to have? " is the question asked. You know the construction industry, and you may even know the contractors. If they are pretty good, shouldn't the owner save some money on bonds and elect "not to have? "

How would you know? How would anyone know? The question properly stated is, "How much risk of financial loss is the owner comfortable taking? An owner might obtain that information from a bank, stock broker, insurance professional, spouse, clergy, or his or her own heart. But it isn't generally available from

one's architect or engineer. The premise on which this question is based is yet a second question: "Just what are the financial capabilities of the contractor?" Only a bonding company is in a position to guarantee a satisfactory answer.

A. What Happens When the Contractor Bails Out?

This isn't good news. Subcontractors won't work, because they haven't been paid; suppliers stop shipping; the general contractor won't budge; and everyone in sight has begun to file liens against the owner's property. The lien part is especially bad news. The owner could wind up paying twice for the same work and material and still have only a partially completed project.

It doesn't take much for this scenario to develop. The contractor has a bad job or two, an adverse judgment, labor problems, an untimely divorce. Who could have known? No one, and if you advised against a requirement for bonds, you might expect that your client will sue. One bit of additional bad news: Your professional liability insurance policy excludes coverage for your advice or encouragement to forego a requirement for bonds. But, let's assume a happier circumstance—the owner holds a bond.

B. Enter the Bond

When the bad news about the contractor arrives, the owner generally turns to the design professional with the obvious question: "How do we get the bonding company in to fix this?" You cannot complete this assignment. About the most you can do is report the facts that place the contractor in default. Contractor default is the trigger on the bonding company's obligation.

The owner's attorney is the most likely candidate to deal with the bonding company. Oh yes, one other problem: The owner's attorney may not be knowledgeable about construction or insurance. That will make your job harder, but it doesn't mean you ought to take over the job and the responsibility. Perhaps, your experience will have unearthed a few good construction lawyers you can recommend?

C. The Bond in the Box

Where are the bonds for all of your projects, and was anything done with them? Too frequently, the contractor will submit a bond (or what looks like a bond) to the design professional who dutifully sends it to the owner's representative or plugs it into the project file. If so, you are missing a chance to initiate a valuable service for your client.

Bonds need checking by the owner's insurance professional, and you may want to remind the owner of this. Bonds are contracts prepared by the very party obligated to pay on them (the bonding company). Wouldn't you expect the people depending on them would want to check them over? Some of the essentials needing verification are these:

- A proper description of the project
- Properly identified principal (contractor) and obligee (owner)
- Bond compliance with contract terms
- Correct bond amount
- Both performance and payment bond included

- Properly signed, corporate seals attached, notarized, and proper powers of attorney
- Surety licensed to do business in the state
- Surety listed on the Federal Treasury list

Improperly drawn bonds and even bonds fraudulently issued are not unknown. They do not belong in a box until they are verified. The financial strength and performance of bonding companies differ. Some are undesirable. Insurance professionals figure that out. You can initiate services in that direction, and you will strengthen client relations when you are the initiator. Forward the bonds with a strong recommendation to the owner that they be carefully reviewed by the owner's insurance advisor.

GUIDES FOR DESIGN PROFESSIONALS

Your starting point is knowledge and an appreciation of the hazards and opportunities hidden in construction insurance. You have some of that by now. The next step is the intelligent preparation of the construction contract insurance requirements generally embodied in AIA Document G-612 or EJCDC 1910-21.

In a more perfect world, your client will complete one of these forms with the help of insurance and legal counsel, and you will go about the business of preparing the construction documents for the bid package. The real world can be different. In that world, clients do not complete the form, they ask you to do it. Their advisors are not construction experts.

Some actions can make the world less imperfect. It is helpful to start on the insurance requirements early. They should not be the last patch sewn into the construction documents. Get the forms to your client early, and follow up on them. If your client's insurance advisor is in doubt, suggest a few people about town who specialize in construction insurance. Some even provide their services on a consulting basis. Your own insurance professional may be a source of useful information and guidance. A late start and poor follow through could make you the owner's insurance advisor by default.

In every event, AIA Document G-612 or EJCDC Document 1910-21 must be approved and signed off by the owner.

Your understanding of insurance policies, the industry, and your proper place in all of that will lead to more intelligent discussions with your clients and their advisors. This is all part of making you a more competent, more valuable consultant. Some of the points you will want to offer are these:

- Your client deserves and needs the same sort of complete, quality counseling on insurance and risk that you endeavor to provide for the architecture and engineering arts and sciences that are your specialty.
- Insurance and bond decisions rest with the owner. They cannot be made by you.
- Architects and engineers do not have the expertise, financial ability, or the insurance necessary to render services on questions of insurance and risk management.
- AIA Document G-612 and EJCDC Document 1910-21, when thoroughly reviewed with an insurance professional, can guide the owner to the insurance coverages and bonds prudent for the project.



ProNet Practice Notes

One cannot be indifferent or uninformed about construction insurance. The stakes for you and your client are too high.

*Dennis J. Linder is Vice President, Cobb-Strecker-Dunphy & Zimmermann, Inc., Minneapolis, Minnesota. Mr. Linder has more than 21 years' experience in commercial insurance, and he has specialized for the past 12 in the delivery of insurance and risk management services to the construction industry and the design community. Mr. Linder holds a degree in Economics and Psychology from the University of Wisconsin at River Falls.