

PRONETWORK NEWS

Risk Management Tools for the Design Professional

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Jonathan C. Shoemaker is the Managing Member of Lee/Shoemaker law firm with offices in Washington, D.C. and Charlottesville, VA. Jonathan believes that the best solution to most problems is often the simplest: What does the contract say?

He begins every new engagement seeking to understand how the parties on a construction project elected to allocate risk and responsibility before the project, and then works with his client to develop a plan for bringing the issue to resolution as expeditiously as possible consistent with the client's goals.

Jonathan has tried cases before judges, juries, and arbitrators, and relishes the opportunity to advocate for his clients in court and in arbitration.

He frequently speaks on risk management issues, best practices for design professionals, different project delivery methods, and legal updates both at in-house seminars for his clients and at programs put on by design professional organizations and insurance carriers.



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Asking the Right Questions: What to Ask Your Broker When Buying or Renewing a Professional Liability Policy

By Jonathan C. Shoemaker and Taylor T. Dolan, Lee/Shoemaker PLLC

Whether you are renewing the policy you have had for years, considering a change in carriers, or buying a policy for the first time, diving into the professional liability insurance market can be daunting. There are many factors that should be considered when purchasing insurance: coverage limits, premiums, exclusions, deductibles, claims team and experience, and the ability to choose defense counsel in the event of a claim. Finding a knowledgeable broker is the first step. Does your broker understand your business and your policy needs, and do they have a strong working relationship with the community and carriers they serve? Once you've found a broker you trust, knowing what questions to ask them before settling on a policy and carrier is key.

Understanding the Policy

The prudent design professional should understand the policy being purchased. Most design professionals begin their inquiry into the policy by looking at the financial terms. What are the limits of coverage? How much is the per claim deductible? What is the annual policy premium? How does the policy compare to the insurance requirements in my current contracts and/or the marketplace for my services? Crunching the numbers to understand the financial pros and cons of different policies can help you choose the policy that best balances cost and coverage. But the numbers should only be a starting point.

In addition to understanding the financial elements of the policies, it is important to understand the scope of coverage, as policies vary slightly from insurer to insurer. What is included and expressly excluded from coverage under the policies you are considering? Does your firm need cyber liability coverage (probably yes!), and is there any coverage for this included under the professional liability policy you are considering? Can you bundle your policies (i.e., professional liability, general commercial liability, umbrella/excess policy, workers' compensation, etc.) to save money and minimize potential coverage gaps?

For design firms considering a change in carriers or coverage, it is critical to consider the retroactive coverage date and 'prior acts' coverage. Professional liability policies are "claims made" policies, meaning the policy must be in place when a claim is made (not at the time the act, error or omission occurred).

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Some carriers offer policies on a “Retro Date Inception” or “RDI” basis. Be careful! This means that you have no coverage for any services that you provided before the effective date of the policy. Be sure your new policy provides an appropriate retroactive date, and covers prior acts, before you make the change.

The prudent design professional should also ask their broker questions about the carrier(s) under consideration. Every insurance carrier will try to sell you on why they are different from their competitors, but your broker should be able to give you a reality check.

How are Claims Handled?

In the event a claim arises, the prudent design professional looks to their carrier to effectively and efficiently guide you through the claims process. An effective and organized approach to claims handling can limit potential exposure and allow your firm to focus on its projects and client needs. Understanding the reporting process and what happens next should be a key factor when purchasing insurance:

- Who will be your assigned claims representative(s) at the carrier in the event of a claim?
- What is your broker’s experience with the claims team?
- How does the claims team and/or claims handling philosophy vary between the potential carriers? In other words, does the carrier take an aggressive and involved approach in defending claims or is settlement at an early stage the goal?
- How is a decision made regarding the appointment of legal counsel?

The prudent design professional should make sure they understand how claims are handled to understand the value of the policy being purchased.

Conclusion

Before you buy a professional liability insurance policy, it is critical to understand the policy being purchased, to get to know the carrier you are entrusting to insure your firm, and to become familiar with the claims handling process. This will empower you to make an educated decision when purchasing or renewing insurance coverage and preemptively reduce the headaches and lost productivity often caused by claims.

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.

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