ProNet Practice Notes

An Introduction to Typical Liability and Property Insurance Coverages for Design Professionals

Introduction

Design specialization has been established as an effective method for project development and delivery. It is well recognized by sophisticated project owners and developers as both cost effective and time sensitive. A knowledgeable owner would scarcely engage the services of a design firm specializing in fast food restaurants if the owner were planning the construction of a regional indoor shopping mall. A similar rationale applies to insuring design firms. A design professional is far better served by a specialist agent and broker whose main focus is insuring design professionals. Designing an effective insurance program is as uniquely individual as project designs are for individual owners.

The process to achieve an adequate insurance program is a function of utilizing proper risk management techniques and applying them to each individual design professional's situation. Simply stated, risk management is a four-step process. The first step is to conduct a survey of risk exposure. Only a trained insurance professional can adequately guide the design professional through a process of exposure analysis of their individual firm. Typically this involves a comprehensive review of professional service agreements, leases of real property, office personal property, and vehicles. A valuation study of business personal property, valuable papers exposures, loss of income potential and loss of accounts receivable is conducted to determine exposures to loss by physical damage such as fire, storm, water damage or theft.

Legal liability exposures may represent the greatest threat to the financial health of a design firm. In recent years, new forms of legal responsibility and exposure have been created by innovative plaintive attorneys seeking financial remedies for their clients that may have suffered an unanticipated financial loss. Governmental agencies have expanded rules and regulations with new responsibilities for owners and officers of design firms, creating new exposures to legal liability resulting in financial loss to an organization.

Following the identification of exposures to loss, step two is a process of eliminating as many exposures to loss as possible. This may be simply eliminating a business practice that creates an unreasonable exposure to loss, modification of the terms of professional service agreements, removing ominous and unfavorable indemnification clauses and ceasing other business practices that expose the firm to loss or damage.

Step three is assisting the design professional in determining their level of retention of loss. This typically involves a review of the design firm's ability and appetite for assuming risks either by complete assumption of a particular exposure or sharing the responsibility with an insurance company through deductibles or other contributory formulas.

Finally, the last step involves the transfer of risks the design firm has neither the financial ability to assume or the desire to self assume, by the arrangement and purchase of insurance.

Step four has as much in common with design professionals as a design firm has in designing a successful project for their clients. If we consider the various forms of insurances outlined in this white paper as the equivalent of a list of "building materials," it is the skill of the specialist insurance agent or broker in arranging the various components of an insurance program to provide a sound and reasonably cost effective insurance program that will protect the design firm from destructive financial loss, much in the same manner as a design firm produces a successful project for their client that meets the client's objective, adequately serves the purpose of the project, delivered in a timely fashion and results in a satisfied project owner. Creating a successful project is more than simply selecting building materials and assembling them, and so is creating a sound and effective financial "protective envelope" for a design firm to provide adequate protection, peace of mind and reasonable assurance against financial disaster from legal liability and exposures to loss by physical damage to property. Repeating our earlier comment, specialization of design firms is paramount in delivering a satisfactory project to the owner and specialization in insuring design professionals is equally important in properly insuring design firms.

This **Practice Notes** edition may be viewed as a "glossary" of insurance terminology and individual coverages. Use this as a resource document to identify the various forms of insurance coverages that are applicable to design firms. All of these coverages may not be appropriate for every design firm. The skill of the individual agent and broker is critical in the risk management process of identifying the exposures to loss for each individual firm and guiding the firm through the process of elimination of loss potential, modification of loss severity, deciding the level of loss retention and the final step of risk transfer.

We will introduce our "glossary" of insurance terminology and coverages by first introducing you to the meaning of the word **"insurance."**

Insurance *(noun)*[1]
Pronunciation: in-'shur-&n(t)s also 'in-"

1. **a:** the business of insuring persons or property **b:** coverage by contract whereby one party undertakes to indemnify or guarantee another against loss by a specified contingency or peril **c:** the sum for which something is insured
2. a means of guaranteeing protection or safety <the contract is your *insurance* against price changes>

Any one who has purchased a home or driven an automobile has had some exposure to insurance products and would have at least a basic under-standing of nature and functions of insurance coverages. Architects and engineers are faced with some very unique insurance requirements. Not only are design professionals required to purchase a variety of different types of polices they need to have a general understanding of the coverages that protect owners and contractors involved in construction projects. To complicate matters the insurance world has a jargon of its own and is not afraid to use it

In an effort to demystify some of the concepts and to provide a ready reference a/e ProNet gathered some of its finest insurance minds and put together this insurance manual. This is not intended to be an exhaustive source of information but rather a primer designed to answer basic questions and to put the reader on the right track if more information is needed. a/e ProNet strongly recommends that the reader seek advice from an agent or broker specialist who is best equipped to understand the exposures to loss of each individual design firm.

Liability Insurance Coverages:

PROFESSIONAL LIABILITY INSURANCE also known as *Errors & Omissions, (E&O)* or *Malpractice* insurance. This insurance provides coverage to defend and indemnify the design professional against claims alleging negligent acts, errors or omissions in the performance of professional services (wrongful acts). Wrongful Acts are not limited to defects in plans and specifications. Coverage usually extends broadly to encompass most of the professional services rendered by A/E firms. The policy will pay on behalf of the design professional those damages that the design professional is legally obligated to pay as a result of a wrongful act. The policy deductible usually applies to each claim and may or may not apply to the cost of defense. The policy limit of liability typically includes defense costs, meaning that the limit is eroded and can be exhausted by legal fees and other defense costs. Careful consideration should be made when deciding on an adequate limit of liability.

Policies typically exclude express warranties or guarantees; obligations under worker's compensation laws; claims by employees for employment practices and; the costs to repair/replace faulty workmanship on construction performed by the insured. As with all insurance policies, it is important to read the exclusions to see how they may impact your business.

Asbestos and Pollution liability has been broadly covered, however this coverage can vary greatly from company to company. Exclusions relating to mold exposures are beginning to appear on some new policies or added by endorsement on older policy forms. Coverage is written almost exclusively on a "Claims-Made" form which applies only to wrongful acts which happen, and for which claim is made, while the insurance is in force. Once the policy is canceled or not renewed, all coverage will cease. Few, if any, policies will provide retroactive coverage to the previously uninsured firm. It is therefore advisable to begin a professional liability insurance program as early as practical in one's practice. (See *CLAIMS-MADE vs. OCCURRENCE*)

COMMERCIAL PACKAGE AND BUSINESS OWNER PACKAGE POLICIES Insurance companies will combine frequently requested coverages under one economical package known as Commercial Package Policies or Business Owners Policies (BOP). One policy is designed to include among other coverages:

- General Liability
- Commercial Property
- Non-Owned/Hired Automobile
- Valuable Papers and Records
- Business Interruption/Business Income Equipment Breakdown
- Accounts Receivable

BOPs tend to be prepackaged policies available to smaller firms with little flexibility (other than limits) on available coverages. Commercial Package policies are offered to larger firms and provide a wide range of coverage options. Insurance companies that offer these policies to design professionals may require the insured to maintain professional liability insurance as a prerequisite to obtaining a package policy.

COMMERCIAL <u>GENERAL</u> LIABILITY INSURANCE General Liability insurance is designed to pay on behalf of the insured firm, all sums which the insured becomes legally obligated to pay as damages because of bodily injury or property damage caused by an "occurrence" - defined to be an accident including continuous or repeated exposure to substantially the same general harmful conditions.

The policy typically includes coverage for "personal injury" including libel and slander.

Landlords will require their tenants to provide General Liability insurance as a requirement in a lease. Since the A/E and its employees are regularly at job sites it is important to purchase a policy that will insure against claims arising from the firm's operations away from the office premises in addition to premises accident claims. Project owners often require A/E consultants to maintain General Liability including the owner as an "additional insured." General Liability will specifically exclude coverage for architects and engineers professional liability.

Design professionals usually obtain this coverage as part of a package policy as described above that may include coverage for business owned property, business interruption, hired and non-owned automobiles and other coverage extensions.

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY Although this policy does not insure the design professional directly, many governmental owners contractually require design firms to purchase this coverage. The policy protects the owner or contractor against third party claims arising from his hiring independent contractors (including design firms). The owner or the general contractor is designated as the insured covering bodily injury and property damage arising out of the operations of the design firm at the designated project. Policies are restricted to insure specific projects.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE Most states mandate that employers maintain Workers Compensation and Employers Liability insurance as soon as an employee is hired. State Worker Compensation Boards can levy serious fines against the firm that fails to provide this coverage for its employees. Part one of this policy (Workers Compensation) pays employee compensation for lost income and all medical expenses related to bodily injury by accident or disease attributed to job-related activities. These benefits will vary by state. Part Two (Employers Liability) will pay for damages (resulting directly from an employee's job-related bodily injury) for liability to a third party for damages claimed by the employee against the third party.

Premiums are based on payrolls of employees and their duties. When a policy is purchased, 1099 consultants of the insured must show evidence of their own Workers Compensation insurance or the cost of covering consultants may be borne by the insured.

UMBRELLA LIABILITY INSURANCE Umbrella policies are designed to provide excess limits of liability for General Liability, Automobile Liability and Employers Liability. In addition, coverage is provided for many exclusions and gaps in the primary Liability policies designated as the underlying insurance. The Umbrella policy will apply to a claim when the limits of the underlying insurance are exhausted. If the Umbrella policy applies to a claim that is excluded by the underlying insurance, the claim is subject to a self-insured retention (usually a minimum of $10,000) that the insured must pay before the Umbrella policy pays. Current Umbrella policies contain many exclusions that minimize the application of this coverage.

EMPLOYMENT PRACTICES LIABILITY INSURANCE The proliferation of claims by employees against their employers has created the need for insurance designed to cover claims of wrongful termination, discrimination (e.g., race, sex, age, disability, etc.), harassment, right to privacy, emotional distress and other employment practices. Although the state and federal laws can apply differently to different size firms, virtually any employer is susceptible to employment practices claims. Claims of discrimination or harassment can brought by prospective employees.

Underwriters of this insurance typically require the insured to establish employment practices in the form of an employee manual that include polices relating to harassment and discrimination and establishes company policies and procedures for handling employee complaints.

Coverage is usually written as a stand-alone, claims-made policy. However, some insurers offer the coverage, in a limited form, by endorsement to a professional liability insurance policy. This coverage can also be packaged with other coverages such as Directors and Officers and Fiduciary.

DIRECTORS AND OFFICERS LIABILITY INSURANCE With public awareness of the debacles at Enron and WorldCom more and more claims are levied against corporate officers and directors by shareholders, employees and creditors who are affected by their business decisions. D&O insurance, like professional liability insurance, is written on a claims-made policy form (See *CLAIMS-MADE vs. OCCURRENCE*). Policies contain two separate parts. Part one pays on behalf of any directors or officers for their liability arising out of wrongful acts. Part Two is Company Reimbursement or Company Indemnification coverage, which reimburses the insured company for payment made to its directors or officers for their expenses incurred due to claims made against them for wrongful acts when provided by the company's bylaws or required by law. Wrongful Acts are defined to include errors, omissions, misstatements, misleading statements, breach of fiduciary duty or other duty by an Insured Person while acting in his or her capacity as a director or officer. Wrongful acts also include Securities Activities and sometimes Employment Practices such as wrongful termination, failure to hire or promote harassment and discrimination.

STATUTORY DISABILITY BENEFITS INSURANCE In addition to Workers Compensation Insurance, many states also require that employees be covered by disability insurance that provides income for the time an employee is unable to work due to a non job-related injury or sickness. Benefits are very limited in terms of duration and amount and are generally not a good substitute for individual or group long-term disability insurance. Pregnancy leave may be considered a disability triggering coverage.

FIDUCIARY LIABILITY The Employee Retirement Income Security Act of 1974 (ERISA) created a burden on fiduciaries and trustees of employee benefit and retirement plans. More than ever, employees and beneficiaries of retirement plans hold fiduciaries responsible for the prudent administration of fiduciary funds. Fiduciary Liability insurance protects the plans and individuals acting as trustees or fiduciaries from lawsuits alleging errors or omissions in the handling of investment funds. The performance of individual investments is not covered by this insurance. This insurance should not be confused with ERISA Bonds.

AUTOMOBILE, HIRED AND NON-OWNED AUTOMOBILE INSURANCE Businesses that own automobiles need to purchase Commercial Automobile Insurance to protect the firm and driver from claims of bodily injury and property damage caused during the operation of business-owned vehicles. Even if the firm does not own any vehicles, Non-Owned and Hired Automobile insurance should be considered in order to cover accidents involving rented vehicles or employee vehicles used during the course of business operations. Note that physical damage to the employee's or hired auto is not automatically covered. Non-Owned and Hired Automobile insurance can be included on a Commercial Automobile insurance policy, a stand-alone policy or by endorsement to a commercial package insurance policy.

INTERNATIONAL LIABILITY POLICY Design firms that have projects outside the U.S., its territories and Canada may need an International Liability policy to insure the firm from suits brought against them in foreign countries. Typical General Liability policies insure the operations of the insured worldwide, but only for suits brought within the U.S. This territory provision may not satisfy the owner who wants protection in the location of the project.

Depending on the location of the insured's foreign projects, this coverage is usually provided on a package policy that can insure the design firm's property in a foreign office as well as workers compensation coverage and repatriation for employees working abroad. Many foreign countries require coverage to be written with insurers domiciled in their native country. The typical foreign liability policy may not satisfy this requirement.

Property Insurance Coverages:

BUSINESS PROPERTY INSURANCE Whether you lease or own your office; office equipment, furniture, fixtures, computer equipment, phone systems, fax and copy machinery, valuable papers and fine arts need to be insured for fire, theft and water damage. Insuring these valuables for "replacement cost" on an "all-risk form" provides the best protection that your business will be reimbursed properly for a covered loss. When leasing furniture and equipment, the lessor will require this coverage and be designated as a "loss payee."

Landlords of rented property usually require their tenants to maintain property coverage for the rented space to cover improvements and betterments provided to the leaseholder. Since most design firms are heavily dependent on computer systems, it is important to properly inventory equipment and software. The cost to reproduce plans and specifications kept on computer files is significant when considering the insured value of valuable papers and records. However, no limit of insurance is an adequate substitute for reliable backup protection and procedures.

VALUABLE PAPERS INSURANCE A/E firms have in their possession valuable papers and documents whose destruction would prove very costly. Maps, plans, specifications, books are some examples. All-risk protection is generally available excluding wear and tear, gradual deterioration and vermin. Certain valuable papers may be insured specifically, or "scheduled." More commonly a blanket limit is established to cover all valuable papers. Articles insured on a blanket basis are covered for their replacement cost. Scheduled items are covered on a valued basis even though it is not possible to replace them with like kind and quality.

BUSINESS INTERRUPTION AND BUSINESS EXPENSE INSURANCE While Business Property Insurance covers the cost of lost property, in many instances the loss caused by the interruption of business can exceed the amount of physical damage. Business Interruption generally consists of two parts: Business Income and Extra Expense.

Business Income will pay the insured for lost earnings during a total or partial suspension of business caused by direct physical damage to the insured's premises. The policy covers "actual loss sustained" by the insured because of the interruption of business during the period that it would take to rebuild or repair the damaged property. Extra Expense reimburses the insured for the extra costs that are necessary to continue business operations during the period of restoration.

Most small design firms can be insured inexpensively for their actual loss sustained up to 12 months with no limit on the amount of insurance. Larger firms may be subject to coinsurance clauses under which the insured agrees to carry a minimum amount of insurance unless an "Agreed Amount Endorsement" is added to the policy. Often misunderstood and neglected, this coverage should be carefully reviewed with your insurance advisor.

BUILDERS RISK INSURANCE This coverage protects against the loss of materials at a construction site. Materials can be defined as supplies and resources that will be part of the completed structure and include foundations and footings. The coverage typically begins once the Materials are delivered to the site and terminates when the builder's interest in the property ceases, ninety days after occupancy of a single family structure, if the property is permanently abandoned with no intention to complete it, when permanent property insurance is in force, or the property is accepted by the owner or buyer. Builders Risk insurance can be used to insure models homes and remodeling projects as well.

EQUIPMENT FLOATER Mostly purchased by contractors to cover their equipment, surveyors and engineering firms find this coverage worthwhile when expensive equipment is used regularly in the field. Each article listed on the policy is "scheduled" with a value. Coverage is typically on a Named Perils basis insuring for damage caused by fire, lightning, windstorm, hail and collision. Optional coverage for theft, riot and civil commotion is readily available.

BACKUP OF SEWERS AND DRAINS Under most property insurance policies, claims resulting from the back up of sewers and drains are not covered. Often times, the insurance company will offer this coverage back to the insured by endorsement for an additional premium. Some "Office Package Policies" include this coverage for a small additional cost along with other property enhancements. Each insurance company offers this coverage in various formats so it is important to research and know your options.

EARTHQUAKE COVERAGE Earthquake hazards in the United States are commonly associated with Western States and in particular California, however in past history, significant earthquakes have occurred on other states including South Carolina, Missouri, Ohio and Alaska. Because in the mid-states of the US a significant earthquake hasn't occurred for more than 100 years, people have become very complacent about a reoccurrence. Some experts say it's not a matter of "if" but "when." As a result of this casual attitude, a high percentage of real and personal property is not currently insured for this hazard. A further concern is that building structures in these mid-state areas are not constructed to resist earthquake damage such as most new construction in California and other western states are. Keep in mind that loss is not limited to the direct damage to property. Severe earthquake may interrupt public transportation, damage roads and bridges that prevent the movement of private vehicles. Many utilities including electricity, water, fuel gas, and sewage may be interrupted for long periods of time. Every firm would be well served to investigate Earthquake Coverage for their building and contents coverage, even though the risk of loss seems remote.

Most Earthquake coverage is written on a "Difference in Conditions" insurance form, attached to standard property policies. This form originally included a multitude of "All Risk" coverages offered with earthquake added as an insured peril. The evolution of this coverage form has changed the focus to coverage from "All Risks of Loss" to focus on earthquake, Sprinkler Leakage, and Flood and does not include landslide, subsidence or soil movement unless it is caused by Earthquake.

Policy deductibles vary by the property conditions such as age, location and the amount of premium the insured is willing to pay. There are typically three types of deductible options:

1. A percentage of the Total property values at risk. This is known as a "Per Occurrence" deductible.
2. A percentage of the values associated with one structure or a "Per Building or Location" deductible.
3. A percentage of only the unit of insurance that suffered loss, or a "Per Unit" deductible.

FLOOD Flood coverage is excluded under all basic property insurance policies but is available to all insured's if your community participates in the National Flood Insurance Program known as "NFIP." The NFIP was created in 1968 to provide flood insurance to individuals and businesses that are located in areas with the greatest risk of flooding, known as Special Flood Hazard Areas.

You can purchase flood insurance coverage at virtually any time, however there is a 30-day waiting period before coverage is effective, after you apply for insurance and paid the premium, with the following exceptions: 1) If the initial purchase of flood insurance is in connection with the making, increasing, extending or renewing of a loan there is no waiting period. 2) If the initial purchase of flood insurance is made during the 13 month period following the effective date of a revised flood map for a community, there is a one-day waiting period.

Homeowner's policies DO NOT cover flood damage, but through NFIP one may purchase a maximum of $250,000 of building coverage for a single-family residential building and a Personal Property limit of $100,000 for both homeowners and renters.

Commercial structures may be insured to a limit of $500,000 and $500,000 for business personal property.

NFIP defines covered flooding as a general and temporary condition during which the surface of normally dry land is partially or completely inundated. Two properties in the area or two or more acres must be affected. Flooding can be caused by:

- The overflow of inland or tidal waters or
- The unusual and rapid accumulation or runoff of such surface waters from any source, such as heavy rainfall or
- Mudslides, i.e. mudflows, caused by flooding, that could be described as a river of liquid and flowing mud and
- The collapse of destabilization of land along the shore of a lake or other body of water, resulting from erosion or the effect of waves, or water currents exceeding normal, cyclical levels.

Wind-driven rain IS NOT considered flooding. National Flood Insurance only covers damage caused by the general condition of flooding (as defined above), typically caused by storm surge, wave wash, tidal waves or the overflow of any body of water over normally dry land areas. Building that sustain this type of damage usually have a watermark defining how high the water rose before it subsided.

Crime Coverages:

COMMERCIAL CRIME COVERAGES Commercial Crime Coverages include several separate insuring agreements. Some or all of these individual coverages may be selected, depending on the individual needs of a design firm:

Employee Dishonesty: This coverage pays for loss sustained by the insured employer up to a specified amount, caused by a dishonest act of an employee or employees covered under the policy. This includes dishonest acts of the embezzlement of money or property, including inventory, owned by the insured.

Forgery or Alteration: This coverage pays for loss sustained by the insured employer for forgery or alteration of checks (including blank checks) issued by the insured. Coverage may be extended to include checks forged or altered by employees as well as others.

Premises Theft and Outside Robbery: This coverage applies to money and securities inside the premises or a banking premises or outside the premises in the care and custody of a messenger, for theft, disappearance or destruction.

Robbery and Safe Burglary: Coverage applies to loss caused by actual or attempted robbery inside the premises of property other than money and securities that is in the care and custody of a custodian. Coverage applies for the same property outside the premises in the care and custody of a messenger. Coverage applies to the actual or attempted burglary of a safe inside the premises of money, securities and property within the safe. Damage caused by the burglary or attempted burglary to the premises and safe is covered.

Premises Burglary: Covers property other than money and securities inside the premises for loss caused by actual or attempted robbery of a watch person or actual or attempted burglary.

Computer Fraud: Covers the loss of money, securities and other property when caused by a dishonest act of a non-employee via computer access.

ERISA Endorsements: ERISA Endorsements may be added to the Commercial Crime Policy to cover responsibilities under federal laws requiring coverage for eligible benefit plans. It should be noted that in the event a dishonest act includes both the insured's property and a employee benefit plan, policy proceeds are distributed first to the employee benefit plans.

ERISA BOND (PENSION BENEFITS BOND) Under the Employment Retirement Income Security Act of 1974 (ERISA) every administrator, officer and employee of any employee welfare benefit plan or employee pension plan who handles funds of the plan must be bonded. The amount of the bond must be at least 10% of the value of the plan. ERISA bonds provide coverage against loss by fraud or dishonesty. Coverage may be included as part of a Commercial Package Policy or as a stand-alone bond.

Miscellaneous Coverages:

KIDNAP & RANSOM INSURANCE Executives and their families are increasingly the targets of kidnapping, especially when traveling abroad. Kidnap and Ransom insurance was developed to reimburse the insured firm for the cost of ransom paid to kidnappers. The policy may also provide medical and life insurance benefits to the employee held for ransom. An important consideration when purchasing this coverage, is knowing the extent of assistance provided by the insurer when faced with a ransom demand. Coverage may not be available in all countries where employees travel.

MARITIME EMPLOYERS LIABILITY COVERAGES:

Jones Act Coverages: This is coverage for the Federal Benefit Law that applies to the Captain and Crew of vessels operating in navigable water-ways, or located in dry docks, territorial waters and any adjoining pier, wharf, terminal building way, marine railway or other adjoining areas customarily used in the loading, unloading, repair, dismantling or building a vessel. Coverage may be written by endorsement to a Workers' Compensation Policy or provided by a policy covering marine liability for the insured vessel. Care should be taken to determine if responsibility for benefits payable under this act apply and coverage arranged accordingly.

U.S. Longshoremens & Harbor workers Coverage: This is coverage for the Federal Benefit Law that applies to workers engaged in Longshoremens operations, including Harbor workers, ship repairmen, shipbuilders and ship breakers. Construction workers and employees performing work on docks, wharfs, piers, and areas contiguous to navigable waterways may be eligible for benefits under this act. Neither Jones act or USL&H Coverages are provided under the standard Workers' Compensation Policy. Again, care should be taken to determine if responsibility for benefits payable under this act apply and coverage arranged accordingly.

Defense Base Act Coverage: This coverage is an extension of the U.S. Longshoremans & Harborworkers Compensation Act to employees of American contractors and sub-contractors receiving contracts to perform public works projects outside the continental United States of America. The coverage applies to civilians working on military bases and overseas construction projects for the United States government or its allies including coverage for employees fulfilling service contracts tied to such overseas construction projects or to a national defense activity. The act has been amended to include employees providing welfare and morale services for the benefit of armed forces such as American Red Cross, the USO and Salvation Army. Excluded employees include those included in agriculture, domestic service and those employed in casual work, not the usual course of business of the employer. Also excluded are Masters or crew members of any vessel, employees entitled to Federal Employees Compensation Act benefits and Contractors or Sub Contractors engaged solely to furnish materials and supplies under a contract. Care should be taken to determine if responsibility for benefits payable under this act apply and coverage arranged accordingly.

OWNED & NON-OWNED AIRCRAFT INSURANCE: Owned and Non-Owned aircraft is similar in nature to auto insurance as there is public liability insurance to cover Bodily Injury and Property Damage as well as Physical Damage to the Aircraft itself. Unlike Auto insurance Passenger Seat Liability coverage is typically written with a limit per aircraft seat. This is also know as "Admitted Liability." Liability exposures for the use of rented aircraft or employees flying rented or personally owned aircraft on behalf of their employer for business purposes is covered by this form of insurance. Special care should be taken as respects the obligations for Physical Damage to a rented, leased or borrowed aircraft. The aircraft hull may be insured under the owned and non-owned policy by special endorsement or insured by the Lessor's policy. The terms of the rental or lease agreement should spell out the responsibility of the renter or Lessee as respects damage to the aircraft itself and coverage should be arranged accordingly.

OWNED & NON-OWNED WATERCRAFT INSURANCE This insurance is similar to Owned and Non-Owned Auto and Aircraft insurance, except that individual seat liability does not apply. In addition to liability exposures, physical damage to the Watercraft is a separate insuring agreement. Navigation limitations may apply to the range of Watercraft operations.

PERFORMANCE AND PAYMENT BONDS Design firms taking the lead in a design /build project may incur the obligation to provide performance and payment bonds, guaranteeing the payment of all material and labor bills and satisfactory completion of the project. Performance and payment bonds are typically required for publicly owned projects but also may be required by owners of large private projects. Qualifying for bonding is a fairly complex process and the applicant must demonstrate financial wherewithal, excellent credit and the capability of completing the construction as well as the design. Personal indemnification by the officers and owners of the design firm is typically required to induce a surety to bond a project. This places the personal assets of each indemnitor at risk.

RAILROAD PROTECTIVE LIABILITY Railroad Protective Liability Insurance is similar in nature to an Owners & Contractors Protective Liability Policy in that it is coverage purchased on behalf of a Railroad Company. General Liability Policies exclude coverage for occurrences on or within 50 feet of railroad right-of-way. Civil Design firms and Land Surveyors are most likely to incur this exposure with projects involving streets, roads, overpasses or underpasses on railroad property. Care should be taken to examine professional service agreements to determine if a railroad company requires this insurance. Typically companies performing services on railroad right-of-way are not permitted admittance on railroad property until satisfactory evidence of the insurance has been filed with the railroad company.

TRAVEL & ACCIDENT INSURANCE A relatively inexpensive policy providing death and dismemberment benefits to employees while traveling on business. Coverage can be provided on an individual or group basis. Benefit limits can be varied by classification of employee. Policies can be written on an annual or single-event basis.

TERRORISM RISK INSURANCE ACT OF 2002 On November 26, 2002, the President of the United States signed into law this Act which established a system of shared public and private compensation for insured losses resulting from certain acts of terrorism for insureds with commercial property and casualty coverage. If a policy had a terrorism exclusion prior to the Act, the exclusion was nullified by the Act. The Act stipulates that certified acts of terrorism are partially reimbursed by the United States government under a formula where the U.S. pays 90% of the covered loss exceeding the statutorily established deductible paid by the insurance company providing the coverage. The insurance company has the right to charge an additional premium for this coverage and must disclose the cost to the insured. The insured may elect to accept the coverage by paying the additional premium. The Act did not mandate what insurance companies can charge for terrorism coverage. Additional premiums can range from $0, in the case of some liability insurance policies, to many thousands of dollars for commercial property policies.

Terminology

CLAIMS-MADE vs. OCCURRENCE Most liability policies are written on an "occurrence" policy form. Occurrence policies need only to be in effect on the date that an accident causing damage occurs in order to trigger coverage. A claim asserted against the insured may be brought well after the accident. Coverage would revert back to the policy that was in effect at the time of the accident.

Claims of professional liability against design professionals often result many years after an alleged error is committed making it difficult for insurance companies to evaluate their true exposures and determine the premium necessary to cover the risk. Claims-Made policy forms were introduced whereby the trigger for coverage is the date the claim is made against the insured. Today, virtually all professional liability policies for design professionals are provided on Claims-Made forms. In order to establish coverage, three conditions must be met: 1) a policy must be in place at the time a claim is made and; 2) a "retroactive" or "prior acts" date on the policy must be dated at least as far back as the services, giving rise to the claim, were provided; and notice in the appropriate from must be provided to the insurer within the policy term or during a grace period that might be thirty or sixty days after coverage termination.

The advice of your insurance advisor is essential when reviewing Claims-Made policies with respect to mergers, acquisitions, splits and retirement.

DISCLAIMER This information is for illustrative purposes only and is intended to provide only a general overview of the insurance policies described. It is important to review actual policy terms, coverage conditions and exclusions with a qualified insurance professional. Not all policies shown are necessarily recommended for all A/E firms.

About the Authors

Meade Collinsworth, CPCU, ARM, AIM, AAI: Mr. Collinsworth is the President of Collinsworth, Alter, Dowling and French Group, Inc., the leading insurance agency in South East Florida servicing Design Professionals, Contractors and Environmental Consultants. Mr. Collinsworth has over 35 years experience as a specialist in complex commercial, management and professional liability risk management and insurance placement. He has authored numerous industry publications, is a frequent lecturer at insurance industry events, a member of numerous industry professional organizations, having served as President of Independent Insurance Agents of Dade County, the CPCU Society of South Florida and a/e ProNet. Mr. Collinsworth is a frequent contributor of Guest Essays appearing on the ***a/e ProNet*** web site.

Dan F. Middleton, CPCU, ARM: Mr. Middleton completed a 38-year career as Vice President, Construction, of the Ohio office of Willis-Corroon Corporation, one of the World's largest international insurance brokerages. He specialized in risk management and insurance for design firms and major construction companies. During his active insurance career, Mr. Middleton authored several published articles on insurance for design firms, was a frequent lecturer at the Ohio State University School of Architecture, served as a member of the advisory board of the Midwest Construction Institute, conducted numerous loss prevention seminars throughout the State of Ohio and participated as a guest speaker at numerous construction association affairs. He has served as the Executive Director of ***a/e ProNet*** since 1993.

Warren Redeker: Mr. Redeker has nearly 20 years experience in professional liability insurance for design professionals. He is Executive Vice President of Prosurance/Redeker Group, Ltd. In New York City and is the third generation president of The Redeker Brokerage, a pioneer in specialization in insurance for a/e firms. Mr. Redeker is the current President of ***a/e ProNet.***

Thomas J. Sharp: Mr. Sharp is the President of Thomas J. Sharp and Associates, Inc., the leading insurance agency in New Jersey, specializing in risk management and insurance placement for design professional, land surveying, landscape architects and environmental consulting firms. Mr. Sharp is a frequent lecturer on Professional Liability issues at the New Jersey Society of Professional Land Surveyors, New York State Association of Professional Land Surveyors, New Jersey Society of Professional Engineers, and New Jersey Society of Architects. He has received numerous awards and commendation in recognition of his contributions and dedication to the Surveying, Engineering and Architectural Professions.

F. David Shipley: Mr. Shipley is the founder and President of Shipley & Associates, Inc. Prior to the establishment of Shipley & Associates, he was associated with Willis Corroon Corporation, one of the World's largest international insurance brokerages, as an officer of the Oregon Corporation. Mr. Shipley has specialized in risk management and insurance placement for design professionals, land surveyors, landscape architects and environmental consultants for many years. He has been active in industry affairs and participated in numerous professional society activities. Mr. Shipley has authored and coauthored several **Practice Notes** white papers distributed nationally and currently posted on the ***a/e ProNet*** website. Mr. Shipley has served as Treasurer of ***a/e ProNet*** since its inception in 1987.

Earleen R. Thomas: Ms. Thomas has an extensive background in working with design professionals, finance and accounting firms as a specialist broker for insurance. She is active in industry associations in providing risk management, loss prevention and educational services to the industries she serves. From a background in accounting, business management, marketing/advertising sales and project management Ms Thomas provides a broad perspective on business and risk management issues. Ms Thomas is Vice President of Professional Practice Insurance Brokers, Inc. of Newport Beach, California, a wholly owned subsidiary of Hilb, Rogal and Hobbs, the 10th largest insurance brokerage in the world.

Michael Welbel: Mr. Welbel is the founder and President of M.G. Welbel and Associates, Inc. He has worked with design professionals since 1981. During that time he has been responsible for the management of one of the nation's largest national professional liability programs and prior to that focused his attention on the resolution of professional liability claims. He has acted as a party arbitrator involving construction and design claims. Mr. Welbel has presented to the American Institute of Architects, National Society of Professional Engineers, American Consulting Engineers Counsel, The American Bar Association, Chicago Bar Association, Professional Liability Underwriting Society and other Professional Societies. Mr. Welbel has authored numerous articles on issues of coverage in connection with professional liability insurance including a chapter in the Design Professionals Handbook of Business and Law. He is a member of the Illinois Bar and currently the editor for ***a/e ProNet.*** Mr. Welbel spends most of his practice helping design firms avoid claims and manage their risk and insurance needs.

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