

CLIENT ALERT - DESIGN PROFESSIONAL'S LIABILITY POLICY

Design professionals, including architects and engineers, typically have a “claims made” liability insurance policy. This type of policy provides coverage for an owner’s claim of professional negligence under the policy in effect at the time the demand for payment of property damages is made against the insured, rather than under the policy in effect when the professional services were rendered. As long as the insured architect or engineer timely reports the owner’s claim to its current professional liability insurer, coverage exists for the professional negligence-caused damages.¹ This is a different type of policy from a contractor’s “occurrence” policy which provides coverage for property damages under the policy in place at the time of the “occurrence” (not under the policy when the claim is made) which is when the contractor’s defective work actually causes the property damage.

Recently, some design professionals, in order to lower their premiums, have purchased professional liability insurance which is extremely limited and is not a standard “claims made” policy. The professional liability insurance policy may be labeled as a “claims made and reported” policy, but the policy conditions in the fine print greatly narrow the coverage by requiring the claim for damages to be made by the owner against the design professional during the period when the professional services are still being provided. This limiting condition means it is not a real “claims made” policy because the coverage will apply only during the time the design professional is still providing services.

If the architect or engineer consistently uses the same insurer with the same actual “claims made” coverage from year to year over the life of the project, and also purchases “tail” insurance at the end of the project to cover at least the warranty period and the period of the statute of limitations, then this insurance coverage concern may not apply. However, if no tail policy is purchased at the end of the project to address subsequently made claims, it is likely there will be no coverage if the policy contains this limiting condition.

It is critical to review the architect and engineer’s professional liability policies before executing a professional services contract in order to carefully determine both the coverage and limiting terms and conditions. The policy may be labeled as a typical “claims made and reported” policy, but in effect does not operate as such. In that case, the owner only has access to professional liability coverage for property damage while the professional is still performing services, but not after the services are completed. It is commonplace for a design or engineering defect involved with the owner’s property damage claim to be “discovered” well after the project is completed and some years have elapsed, leaving the owner of the completed project without the means to recover damages.

This update is for general information purposes only and does not contain legal opinions applicable to any specific situation. It should not be used as a substitute for obtaining personal legal advice.

¹ Under a “claims made” policy, the claim must be reported to the professional liability insurer in the same policy period as the claim for property damages is made, or coverage will be denied.