

Defining Diligence & Scope of Work

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UNDERSTANDING THE PROFESSIONAL LIABILITY EXPOSURES THAT PLAGUE PROJECTS

The wrongful performance of professional services can not only result in hefty financial losses, but also structural damages that can cause many problems, from delays to collapses and loss of life. The errors and/or omissions related to engineering and architectural designs, land surveys, construction management, and technical consulting are just a few of the areas where problems can lead to significant professional liability issues. Although no one knows the specific causes as of this date, one recent example could be the 2021 Surfside condo collapse in Miami/Dade County in Florida. Professional wrongful acts were also identified as a cause of the 2018 Florida International University pedestrian bridge collapse at University Park in Miami, Florida.

Offered to both design professionals and contractors, today's professional liability coverage forms are designed to manage the risks of specific projects, as well as protect the assets of businesses and owners when things go wrong. For instance, contractors professional liability (CPL) policies are typically written to cover the damages arising from the professional service acts, errors and omissions performed by or on behalf of any construction firm, while architects and engineers professional liability (A&E PL) are specifically employed to protect design professionals from the challenges resulting from their design work.



Contractor Exposure

However, the exposures suffered by contractors, architects, and engineers can be fundamentally different, given their different roles on any given project.

At the most basic level, contractors build from the plans they're given, while engineers and architects are most often tasked with turning the visions of owners into realities, albeit ones that initially only exist as drawings, designs, specifications, and blueprints.

A&E Exposure

Let's consider the steps involved in the design of a commercial office building as an example of the architectural artistry and basic engineering needed to create a project's preliminary plans and specifications. Based on years of training, education, and experience, both architects and engineers commonly

apply the laws of physics and engineering science to designs outlining the physical construction of architectural systems and structures. In most cases, these professional services and the role of each individual party are meticulously set forth in mutually agreed upon contracts written according to the guidelines of the American Institute of Architects (AIA).

Once the initial plans are complete, the architect and engineer's design skills are then merged with the locale's codes and national design standards to develop detailed planning documents that can be placed in service by qualified construction professionals. This can include everything from compliance and material recommendations to the best practices for building specific structures or fulfilling architectural design criteria. Examples could even cite the guidelines provided by the American Institute of Steel Construction (AISC) for the design of structural steel or the American Concrete Institute (ACI) when it comes to the use of reinforced concrete.

And then there's the professional liability factor, which is relatively straightforward for most architects and engineers. Claims, and even possibly litigation, can result from the failure to comply with accepted design codes or standards, errors or omissions made during the project's design and the application of general engineering and science principles and math or computational mistakes that can lead to even relatively minor structural deficiencies.


Contractors Close the Deal

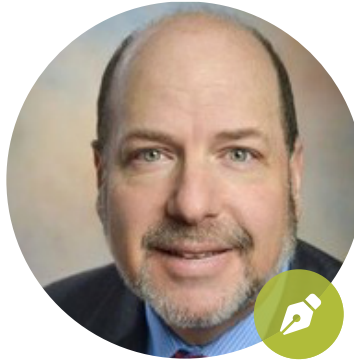
Unlike architects and engineers, contractors have a much more nebulous exposure to professional liability. This is because contractors, unless they're working within a design/build delivery model, have nearly all the responsibility for the structure's construction and little oversight of the project's actual design. Quite simply, they're most often tasked with following the plans they're given. At a minimum, this could include the geotechnical contractor, who builds the foundation; structural contractor, who erects steel components and framing; concrete contractor, who forms and pours reinforced concrete; electrical contractor, who constructs the electrical

systems; and mechanical contractor, who installs the ductwork heating and cooling systems.

But situations can still occur even when contractors diligently follow the standard of care during every building phase as well as all the accepted construction practices specific to their trade and geographic location. For instance, these contractor's professional liability exposures can be related, but not limited to:

- » Budgets that exceed contractual expectations
- » Scheduling delays and foul-ups that result in the owner's economic loss
- » The failure to properly oversee the work of subcontractors
- » Poor field decisions that result in delays, errors, or omissions
- » The hire of incompetent, unskilled, or inexperienced personnel and subcontractors
- » Construction management issues and problems
- » Value engineering decisions that vary from plans and specs and fail to save time and money

Therefore, it is inherently important for every architect, engineer, and contractor to not only thoroughly understand the scope of the work and their responsibilities before the work begins, but also the potential professional liability exposures that can plague a project from beginning to end. The possibility of financial loss and catastrophic failure are always there for the unprepared. That's why it's always best to manage even the slightest risks with diligence, foresight, and care before they ever occur. 



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