

CHOOSING A PROFESSIONAL LIABILITY PROGRAM

By Tom Owens

All right, so buying professional liability (PL) insurance isn't quite as exhilarating as shopping for that new sports utility vehicle. However, when it comes to protecting your practice from financial ruin, it's a far more crucial decision, and, unfortunately, just as complicated. As with buying a new car, there are many makes and models to choose from. Which insurer and type of policy you choose, and which broker you purchase it from, will have major repercussions when you come face-to-face with a professional liability claim.

THE INSURER

Today, it's a buyer's market in the professional liability field: what the insurance industry refers to as a "soft" market. And while that's bad for the insurance industry, it's good news for you when it comes to price and selection. There are more than a dozen carriers now providing PL coverage to architects, engineers and environmental consultants (A/E/E's), and the competition for your business can be fierce.

However, be aware that the insurance industry is a cyclical market. As many A/E/E firms discovered in the mid-1980s, a soft market can turn hard, with insurers bailing out as available capital dries up and claims mount. Ideally, you want a long-term relationship with your insurer. You don't want to be left in the lurch should your insurer suddenly decide that it no longer has an appetite for your risk.

Key, then, when select-

ACEC Liability Survey

Structural designers continue to lead the engineering pack in cost of liability insurance, according to the 17th Annual Professional Liability Survey conducted by the American Consulting Engineers Council. While geotechnical engineers paid 3.21% of their gross annual revenues for PL insurance and mechanical/electrical engineers paid 2.1%, structural engineers paid 4.3% last year. On the plus side, though, 4.3% represents a decline from 4.75% the previous year.

As could be expected, larger firms generally paid a lower percentage of their total revenues in premiums. Likewise, they tended to have larger limits of coverage and higher deductibles and also were more likely to have been sued in the past year.

According to the most important factor in purchasing insurance was the premium rate, followed by an insurers' stability. Other important factors were credits on premiums, level of deductible and efficiency of claims handling.

Complete copies of the 1995-96 ACEC Comprehensive Liability Report can be obtained for \$?? (\$20 for ACEC members) by calling ACEC at 202/347-7474 and asking for the publications department.

ing an insurer is its track record in the A/E/E industry.

- How long has it been in the PL business?
- How many A/E/E policies does it write?
- How large a portion of the insurer's total business is dedicated to its A/E/E program?
- What's the likelihood the insurer will stick it out through the next hard market?

Obviously, financial stability is another key. Check out the insurer's A.M. Best rating. An A (Excellent) or higher rating is the most secure. Also, determine whether the insurer is "admitted" in your state, which means that it must pass stiffer regulatory requirements regarding policy language and rates.

Most important, should an "admitted" carrier become insolvent, you are then protected by the state's guaranty fund.

Of course, it's also important to consider the specifics of the insurer's PL program.

- What types of loss prevention education and risk management services does it provide?
- Are there programs specifically geared to your type of firm, be it structural engineer or architect?
- How good are its claims handling services?
- How experienced are the attorneys that will be representing you?
- Does the insurer support mediation, partnering and other dispute avoidance and resolution tech-

niques?

- And finally, what is the company's reputation within your industry?

Before choosing an insurer, ask friends in the industry about their carriers. Read your professional association reports on PL carriers. The ACEC, AIA and others have surveys that determine with which insurers their members are most satisfied (see accompanying story on the ACEC survey).

THE POLICY

According to some, a policy is a policy is a policy. And to some extent, that's true. Most PL policies are pretty much the same. They're typically written on a "claims made and reported" basis (which means a claim must be made and reported during the policy year to be covered) and protect you from damages you are legally liable to pay due to your negligent acts, errors and omissions in the performance of your professional services. However, there are some basic variances in policies that can mean the difference between having your claim fully covered at the earliest possible moment, or having it denied outright.

One critical factor is the policy's definition of "claim". This determines when your policy kicks in and begins providing coverage. Some policies specify that coverage and defense services begin at the first reporting of an incident or potential dispute, before an actual "demand" or lawsuit is made. In fact, some firms reward policyholders for providing an "early warning" of a potential claim by not charging for services

against the policy or deductible until a formal demand is made. Other policies may not provide any services or coverage until a claim is actually filed. Look for the broadest coverage available.

Also look for policy exclusions:

- Is there pollution coverage and to what extent?
- Who can and cannot be listed as an "insured"?
- Is there foreign coverage for overseas projects?
- Are your "prior acts" covered, and how far back?

Limits and deductibles are available in all sizes, and how much insurance you need depends on your particular situation. But be aware that more and more project owners, both public and private, are demanding a minimum of \$1 million in limits.

When selecting limits, consider the amount of work you perform, the risk level of the services you and your subconsultants provide, the amount of assets that need protection and your appetite for retaining risk. Also, keep in mind the possibility of multiple claims in a single year. If one claim wipes out your coverage, a second claim could devastate your business. One option is purchasing "split limits" — a policy that has a per claim cap and a higher aggregate limit in the event of multiple claims in a single policy year.

THE BROKER

Perhaps the most often overlooked—but also one of the most important—elements of the professional liability insurance package is the insurance broker. Unless you have a claim or attend a loss prevention seminar held by the carrier, you may never meet a single employee of the insurance company. Your primary—and often sole—contact is your broker.

Professional Liability Insurers

ACSTAR Insurance Co.
233 Main St.
New Britain, CT 06050
860/224-2000

Admiral Insurance Co.
P.O. Box 5725
Cherry Hill, NJ 08034
609/429-9200

Architects & Engineers Insurance
4001 Kenett Pike, Suite 3108
Greenville, DE 19807
800/437-2342

AVRECO, Inc.
10 S. LaSalle St., 12th Floor
Chicago, IL 60603
312/346-6161

Benchmark Professional Insurance Services, Inc.
201 E. Ogden, Suite 212
Hinsdale, IL 60521
708/986-5151

Chicago Underwriting Group
211 W. Wacker Dr., Ste. 103
Solvang, CA 93463
805/688-7767

CNA/Schinnerer
2 Wisconsin Circle
Chevy Chase, MD 20815
301/961-9800

Dearborn Insurance Co.
c/o Oakley Underwriting Agency
10 N. Dearborn St.
Chicago, IL 60602-4202
312/357-3510

DPIC Companies, Inc.
2959 Monterey-Salinas Highway
Monterey, CA 93940
800/227-4284
<http://www.dpic.com>

ECS Underwriting Inc.
520 Eagleview Blvd.
Exton, PA 19341
610/458-0570

Engineers Liability Insurance Co.
P.O. Box HM1760
Hamilton, Bermuda HMHX
809/295-3688

Fidelity & Deposit Corp.
210 N. Charles St.
Baltimore, MD 21201
800/821-4635

General Accident Insurance
436 Walnut St.
Philadelphia, PA 19106
215/625-1000

HIC Services, Inc.
2221 N. LaSalle St., Suite 1026
Chicago, IL 60601-1304
312/346-5116

Illinois R.B. Jones, Inc.
250 S. Wacker Dr.
Chicago, IL 60606
312/993-0505

ITT Hartford
P.O. Box 2999
Hartford, CT 06104
860/547-5000

Lexington Insurance Co.
200 State St.
Boston, MA 02109
617/330-1100

Norman-Spencer, Inc.
377 East Butterfield Road,
Suite 260
Lombard, IL 60148
800/842-3653

Professional Coverage Managers
130 William St., 11th Floor
New York, NY 10038-3849
212/619-4900

Professional Indemnity Management Co. (PIMCO)
4225 Naperville Road, Ste. 265
Lisle, IL 60532
800/447-4626

Professional Managers Inc.
2 N. Riverside Plaza, Suite 1460
Chicago, IL 60606
312/559-0101

Professional Underwriters Agency
2907 Butterfield Road, Ste. 320
Oak Brook, IL 60521
708/575-8111

RA&MCO Insurance Services
1390 Willow Path Road
Suite 500
Concord, CA 94520
510/685-1600

Reliance National
77 Water St.
New York, NY 10005
212/858-6500

Ritter Insurance Agency,
P.O. Box 40563
Nashville, TN 37204-0563
800/229-5552

SAFECO
Safeco Plaza
Seattle, WA 98185
206/545-5765

Shand, Morahan & Co., Inc.
Shand Morahan Plaza
Evanston, IL 60201
847/866-0874

Structural Engineers Risk Management (SEIL)
11 Church St.
Hamilton, Bermuda HM11
809/295-3688

Structural Engineers Risk Management Council (SERMC)
c/o DPIC
2959 Monterey-Salinas Highway
Monterey, CA 93940
800/227-4284

TCO Insurance Services
3000 S. Wacker Dr., Suite 800
Chicago, IL 60606
312/922-8800

Trinity Managers International
111 Broadway, 7th Floor
New York, NY 10006
212/766-7000

United Coastal Insurance Co.
233 Main St.
New Britain, CT 06050
203/223-5000

Zurich American Group
1400 American Lane
Schaumburg, IL 60196
847/605-6962

Who's At Risk

According to an analysis of more than 8,600 closed claim files from 1989 to 1995 by DPIC Companies, structural engineers are more apt than other professionals to experience claims—and those claims tend to be expensive. While structural engineers generated only 6.9% of the fees of DPIC insureds, they generated 13.6% of claims and consume 20.3% of claims dollars paid by DPIC.

Higher risk projects include condominiums, airports, bridges/trestles, high-rise structures, correctional/security facilities and hotels.

Lower risk projects include colleges and universities, roads and highways, and commercial/industrial buildings.

Structural Engineering Liability Concerns

Structural engineers who work on condominium projects are among the most likely to face claims and lawsuits for design errors and omissions, according to DPIC figures. While DPIC-insured structural engineers have derived only 1% of their fees from condominium work, such projects have been the source of more than 12% of their closed claims. What's more, condo claims have consumed more than 19% of the total claims dollars expended by DPIC on structural engineers.

By comparison, commercial/industrial projects of nine stories or fewer appear far less risky. Structural engineers have derived more than a quarter of their fees from these type of projects, but only 15% of the closed claims and less than 17% of claims dollars.

The elements of work that have been the primary cause of claims against structural engineers are wall problems, accounting for 12% of closed claims, followed closely by roofs (11%), beams/joists (10%) and foundations/footings (9%).

Owners/clients filed 55% of the claims against structural engineers and consumed 60% of the claims dollars. Third parties filed 25% of claims (25% of claims dollars), while contractors/sub-contractors filed 16% of claims (14% of claims dollars).

Approximately 51% of closed claims against structural engineers were filed for property damage. That was followed by economic loss (34%), construction bodily injury (7%) and other bodily injury (5%).

"cost" goes far beyond just the premium dollars on the insureds initial quote.

Consider the full long-term cost of the PL program, including time and money that could be saved in a claim arises. That eventuality, after all, is why you're buying insurance.

Some insurers offer profit distributions if overall claims of insureds are less than expected. Others provide substantial premium credits directly to those firms that complete loss prevention courses or use recommended language in their professional services contracts. There are also risk purchasing groups set up by members of the A/E/E professions that develop loss prevention programs and then return profit distributions for improved claims experience.

In a nutshell, think of professional liability coverage as a complete program, rather than just a policy. When weighing your options, consider how one program might not only provide proper coverage, but actually improve your practice and reduce the chances of claims. Today, certificates of insurance can be bought pretty cheaply, but a sound professional liability program can save you much more in the long run.

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Selecting the right broker is paramount to receiving the best services for your premium dollar. First and foremost, choose a broker that understands your line of work. Your broker must serve as your advocate when dealing with insurers, and how well s/he understands your business will determine how well s/he can represent your interests. Look for a solid track record in dealing with others in your profession. Ask for and check references from the broker—and ask

your peers for broker recommendations.

Your broker should also be qualified to serve as your risk management consultant. Select a broker who can provide a wide range of services, including loss prevention education for your staff (which may also earn you continuing education credits required in your profession) and professional services contract language review and advice. Your broker also should be able to provide you with a choice of carriers and inform you

of the pros and cons of each.

OH YEAH: PRICE

In a perfect world, you could simply compare the coverages and services of the various carriers in the market and choose the best one for you. But in the real world, available dollars often limits the choices and price can become an important part of the equation.

Certainly, when faced with two equal PL programs, go for the lower cost. However, realize that