



Professional Liability Insurance Update

May 5, 2010

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State of the Insurance Market

44 Professional Liability Carriers

12 begun in the past 18 months

Soft Market?

Case Study

Combined Ratio (98%)

Losses 67% + Expenses 31%

Doesn't account for investment losses +8% (106%)

What does this say about new markets

Other Trends

Higher limits

Deductibles



Taking Over for Another Professional

Chapter Handout:

Replacing Another Consultant

Attorneys Fees Clauses: Good, Bad, Uninsurable

Uninsurable: Full defense obligation

“consultant shall indemnify, *defend*, and hold harmless”

Every PL Policy will contain some form of the following exclusion: Any Insured’s alleged liability under any contract, agreement or express warranty or guarantee, except where such liability would have existed in the absence of such contract or agreement.

Bad: Prevailing Party Clause (Insurability perspective):

“If a suit or action is filed between the parties to enforce the rights under this contract, reasonable attorney fees and expenses shall be allowed to the prevailing party.”

Attorneys Fees, cont.

Good: Silence on Any Defense Obligation

Or Reimbursement of legal expenses to the extent of proven negligence (still potentially uninsurable):

“The Professional’s duty to **reimburse** legal expenses, indemnify and hold the District harmless shall apply only to the extent that claims, demands, losses liability, reasonable attorneys’ fees, court costs, and all other claim related expenses are a result of the **proven negligence** of the professional.”

Where is the insurance industry on this?

“Notwithstanding the duty to indemnify and hold harmless, the consultant expressly agrees, after adjudication by a court of competent jurisdiction, to reimburse the Client pursuant to this provision for any costs and fees determined by the court to have been reasonably, necessarily, and actually incurred by the Client in the defense of those claims specifically founded upon the Consultant’s negligence.”

Attorneys Fees, Cont.

UDC-Universal Development, L.P. v CH2M Hill

- **Furthers a separation of Defense and Indemnity**
- **Requires no negligence standard upon which to trigger a defense obligation.**

“The parties expressly agree that this indemnity provision does not include, and in no event shall the Design Professional be required to assume, any obligation or duty to defend any claims, causes of action, demands, or lawsuits in connection with or arising out of this Project or the services rendered by the Design Professional.”

Best: Always delete any provision that requires you to indemnify the client.

Who is an insured?

Who is an Insured under your policy (Most Policies)

- Past and present employees, officers, directors, etc. (for work done at the firm)
- The estate, heirs, executors, administrators, assigns and legal reps
- Newly acquired entities you own over 50%

Who isn't an insured under your policy?

- Third Parties (Owners/Contractors)
- Subconsultants

Who is an insured, cont.

Who is sometimes, but not always, an insured?

- ▣ Retirees acting as consultants
- ▣ Predecessor firms
- ▣ Temporary Staff and Independent Contractors
- ▣ Joint Ventures (Legal liability, only)
- ▣ Related Entities

International Coverage

Right & Duty to Defend Policies

Four Clauses:

- (Domestic) The insurance afforded by this policy applies only to negligent acts, error, or omissions that took place and result in damages within the US, its territories or possessions, and Canada.
- (Limited Worldwide) This policy applies anywhere in the world provided the original suit for such damages is brought within the United States of America, its territories or possessions, and Canada.
- (Worldwide) This policy applies to Claims made for Wrongful Acts committed anywhere in the world.

International, cont.

- (Realistic Worldwide): If a **claim** is made against the **insured** within a jurisdiction that precludes the Company, by law or otherwise, from investigating any **claim(s)**, making any payments on the **insured's** behalf for **damages**, or from defending any suits brought against the **insured**, the Company shall have the right, but not the duty, to provide for the defense of such **claim**, including the retention of counsel. The **insured**, under the supervision of the Company, shall have the duty to make or cause to be made such investigation, adjustment, and defense as are necessary and, subject to prior authorization by the Company, effect settlement. In such eventuality, the Company shall indemnify the **insured** for **claim expenses** incurred and **damages** paid.

International, cont.

- ▣ **OFAC**

- ▣ **Decennial**

- ▣ **Known Civil Code Countries include:**

Angola	Morocco
Belgium	Paraguay
Bolivia	Peru
Brazil	Philippines
Chile	Qatar
Egypt	Romania
France	Spain
Indonesia	Syria
Italy	Sweden
Kuwait	Tunisia
United Arab Emirates	

Questions / Contact

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