



Ames & Gough

ACEC / MA Small Business Forum

February 7, 2012

Risk Issues faced by Design Professionals Firms

- Financial loss suffered by any of the project participants allegedly or actually caused by your acts, errors or omissions in the performance of your services
- Bodily injury suffered by anyone allegedly or actually due to design flaws
- Property damage allegedly or actually due to design flaws
- Injuries and illnesses at project sites, while on route to project sites or in the office
- Claims from employees for discrimination, harassment or other wrongful employer actions
- Damage to property owned by the firm, particularly equipment that may go to jobsites
- Automobile accidents
- Theft or other types of crime losses

Evaluating the Need for What Insurance to Purchase

- Workers Compensation is required of any business that has employees other than the owner. If you are hired as a sub-consultant, the prime may require that you be insured for workers compensation as otherwise their insurance coverage would have to respond to any injury you suffer on the job
- Professional Liability Insurance is essential for any designer. It is the only policy to respond to claims caused in the performance of your professional services
- Construction contracts usually require at a minimum that designers have commercial general liability insurance, professional liability insurance, workers compensation insurance, automobile liability insurance
- The combination of general liability, automobile liability and professional liability insurance is needed to insure against liability assumed from design professional contracts
- Buildings and personal property owned by the business should be insured against unexpected loss

Factors to Consider on How Much Limit to Purchase:

There really is no definitive answer regarding what liability insurance limits a firm should require its subs to carry. That's because it is impossible to predict with any kind of certainty the extent of bodily injury, property damage or other harm another might suffer as the result of any errors, mistakes or other actions that may cause a loss. As a general rule, consider:

- Not less than \$1,000,000 for professional liability and general liability
- What peers tend to carry (Often the rule firms use for professional liability is to purchase a limit equal to annual billings)
- What may be required in client contracts

Insurance Generally Needed by Designers:

- **Workers' Compensation and Employer's Liability** – Required of employers within every state, workers' compensation provides state-mandated benefits for workers who sustain job-related injuries or illnesses. The Employer's Liability section responds to any possible lawsuits against an employer by an injured worker or family members.
- **General Liability** – Provides coverage for bodily injury and property damage claims arising out of the business operations. Typically, completed operations coverage is also included. It is important to note that the general liability policy for most design firms contains a professional services exclusion, thereby, creating the need for professional liability insurance.
- **Automobile Liability** – Provides coverage for bodily injury and property damage claims arising out of the use of automobiles, including hired and non-owned autos.
- **Umbrella Liability** – Applies above the automobile, general liability and employer's liability coverage (under the workers' compensation policy), providing additional limits to pay for claims.
- **Professional Liability** – This insurance provides coverage to a consultant for liability arising out of professional services performed. Specifically, it protects against liability for bodily injury, property damage, and economic loss (including repairs, increased project costs, overruns and delays) caused by the consultant's negligence. Notably, it protects a prime for their "vicarious liability arising from a sub-consultant's negligence.
- **Property Insurance** – Coverage for any damage to property owned by the business. This should include all personal property such as laptop and desktop computers and other equipment essential to the business. Surveying equipment and other types of equipment that travels to project sites may need to be covered under what is called "inland marine" insurance. Additional property coverage that should be obtained includes **Valuable Papers and Records** which pays the cost to restore documents or drawings if damaged. **EDP Insurance** covers the restoration of electronic data that might get destroyed.
- **Contractors' Pollution Liability Insurance** – If performing any environmental services or if the project involves the risk of environmental contamination, this insurance is needed. It is often obtained as part of a professional liability insurance policy.

Ways to Control Insurance Costs:

- Professional Liability:
 - Track closely billings from studies, reports, landscape design, interior design as these are discounted 75% by insurers when calculating premium
 - Avail yourself of insurer loss prevention, pre-claim assistance and risk management services

- General Liability and Workers Compensation
 - There are payroll caps on individuals, partners and executives. Be sure to identify separately the payroll for these people.
 - Track the payroll of engineers or architects who do not REGULARLY travel to jobsites. They should be included in clerical payroll as their exposure to injury is far less

- Insurance Program in General:
 - Don't accept automatic renewals from insurers as these programs arbitrarily increase exposure information annually for inflation. Be sure to complete renewal applications at least six weeks prior to renewal and submit actual exposure information to the insurer
 - Market your insurance program once every three years
 - If you hire any sub-consultants, always obtain insurance certificates from them and be sure that they are insured for workers compensation
 - Seek assistance from your broker for workers compensation and general liability payroll audits. Always ask for a copy of the auditor's worksheet and check to see that you agree with how personnel are classified
 - Annual pre-renewal discussions on all coverage is essential – decide each year on a renewal strategy and be sure that your broker executes the strategy



General Types of Insurance Needed by Designers

Insurance Type and Generally Required Endorsements	Benefits to the Design Professional	Additional Cost for the Endorsement Yes or No
Workers' Compensation:	Required of employers in every state to provide state-mandated benefits for injured workers. Assuring benefit availability to injured workers of subs reduces likelihood of suit against A/E or CM firm.	
USL&H Coverage	Required ONLY IF workers are working on, near or over navigable water. Policy extends to cover benefits mandated by U.S. Maritime law.	Y
Waiver of Subrogation in favor of your clients	The endorsement means that the workers' compensation insurer will not seek recovery from your client alleging responsibility for a worker injury claim paid.	N
Commercial General Liability:	Provides coverage for bodily injury and property damage claims arising out of operations (and completed operations, if purchased).	
Additional Insured Endorsement for Clients (including completed operations)	Often your clients' contracts will require this. The endorsement provides defense and indemnity to your client for claims caused by your firm's activities.	N
General Aggregate Limits applying "per project"	The aggregate limits on the policy will apply separately to each project or job where the designer is working.	N
Waiver of Subrogation	The general liability insurer agrees not to seek recovery from your client for any claims it pays under the general liability insurance if required by contract.	N
Primary & Non Contributory Wording	This confirms that your insurer recognizes that its policy will pay the loss first and that any insurance carried by your client will not be expected to contribute as well to the loss.	N
Severability of Interests	This confirms that the insurer will treat the additional insured's interests separately from the named insured's with regard to defense and payment of any claims.	N
Coverage for XCU Hazard	Particularly if hiring drillers, excavators or blasters. Be sure that the general liability insurance will cover property damage arising from explosion, collapse or underground hazard (XCU).	N (Charge only applies to firms who are actually drillers, blasters & excavators)

Insurance Type and Generally Required Endorsements	Benefits to Design Professional	Additional Cost for Endorsement Yes or No
Automobile Liability Insurance (Any Auto Coverage)	Provides coverage for bodily injury and property damage claims arising out of the use of automobiles, including hired and non-owned autos.	
Additional Insured Status	Client becomes an additional insured for liability claims related to automobiles that are used in connection with the designer's services.	N
Waiver of Subrogation in favor of Client	The automobile insurer agrees not to seek recovery from the client for any claims it pays under the automobile liability insurance.	N
Transportation of Pollutants Coverage (MCS-90)	If you hire contractors hauling contaminants from site. This endorsement extends coverage to pay the costs to clean up pollutants as well as pay any bodily injury or property damage claims resulting from pollution due to an auto accident. The Design Professional should check that the transporter has this.	Y
Umbrella Liability Insurance	Coverage applies above the automobile, general liability and employer's liability coverage (under the workers' compensation policy) providing additional limits to pay for claims.	
Waiver of Subrogation	Same as above	N
Professional Liability Insurance:	Provides coverage to a design professional for liability arising out of professional services performed. Protection against liability for bodily injury, property damage and economic loss (e.g., project damage, increased project costs, overruns and delays) caused by the DP's negligence is covered. Protection against claims caused by sub-consultants as their insurance responds first.	
Contractors' Pollution Liability Coverage Endorsement	Most professional liability insurers include this as part of the policy for A/E/CMs or add by endorsement.	N
Additional Insured Status under Contractors Pollution Liability Coverage	Though professional liability insurers will not agree to add Clients as additional insured under professional liability, they WILL usually agree to provide additional insured status under the contractors' pollution liability coverage part.	N
Waiver of Subrogation in favor of the Client	The professional liability insurer agrees not to seek recovery from the Client for any claim it pays under the professional liability and contractors' pollution liability insurance policy. This is included in most insurers' forms without need of an endorsement.	N
Contractors' Pollution Liability Insurance (for subcontractors if you are hiring them for any specialized services)	Contractors cannot purchase pollution liability insurance as an endorsement to a general liability insurance policy. They must purchase a separate policy. This provides protection for liability arising from a release due to the contractor's operations. Require especially from remediation contractors, drillers or excavators.	
Additional Insured Status for Your Firm	Your firm can be an additional insured under the contractor's policy and is protected against pollution release claims.	N
Waiver of Subrogation in favor of Your Firm	The contractors' pollution liability insurer agrees not to seek recovery from the Your Firm for any claims it pays under the policy.	N