



**A/E risk review**

## Prevention: the best medicine

Early reporting of a potential claim situation can go a long way toward resolving the dispute quickly and effectively. Of course, taking proactive measures to avoid claim situations in the first place is the preferred course of action. Our tried-and-true loss prevention advice includes:

- Maintain adequate and continuous professional liability insurance coverage
- Educate your entire staff on loss prevention
- Choose clients and projects carefully
- Include limitation of liability and mediation provisions in client agreements
- Communicate well with your client throughout the length of the project

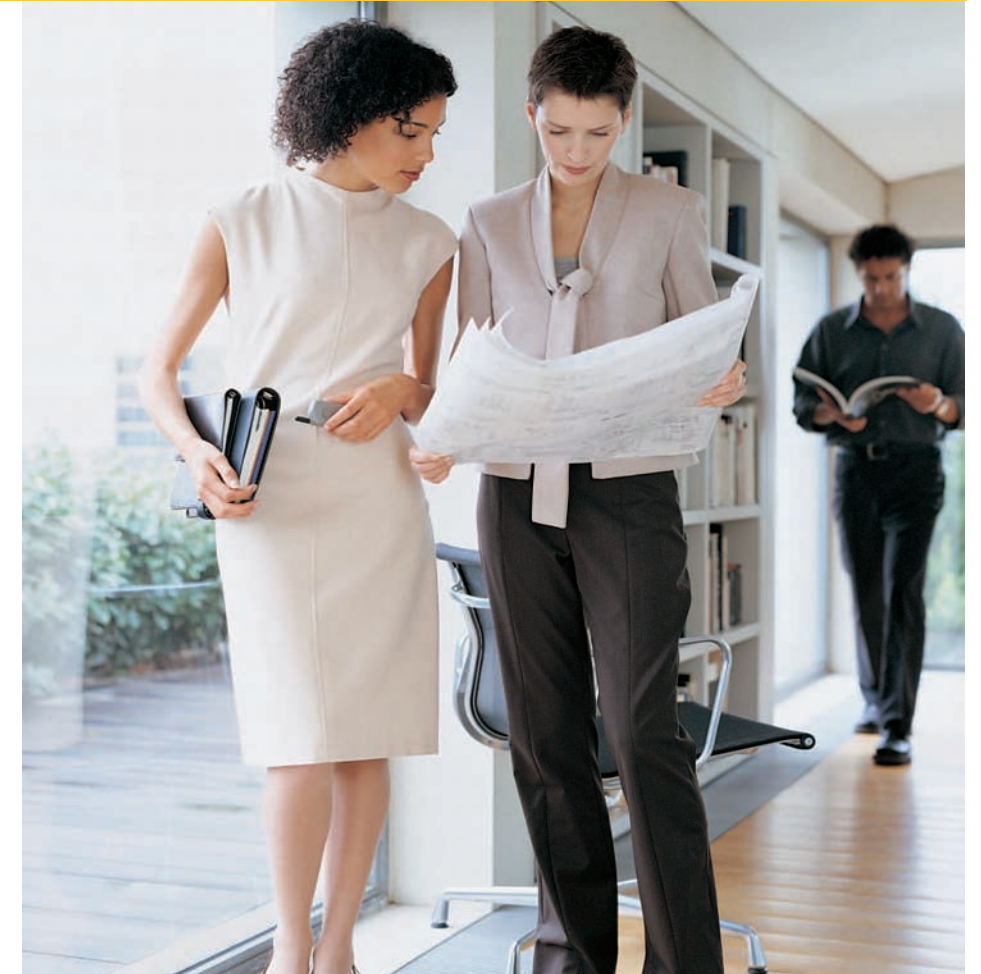
And should a project upset occur, call upon your professional liability agent and insurance carrier for support and advice at the first sign of trouble. It is critical to report a potential claim situation in a timely manner so that your coverage is locked in should the situation turn into a formal demand.



## Reporting claims and locking in your professional liability coverage

It's a fact. The chances of you facing a professional liability (PL) claim increases during difficult economic times. Your client can easily get into a financial bind when a project turns south and begin to cut corners on quality construction. Then, when things go wrong, the client may look to your insurance limits as a resource for cutting losses, regardless of the cause.

Likewise, you may be forced to lay off staff during an economic downturn and find yourself stretching your employees too thin, resulting in increased errors and omissions. If you've reduced your insurance coverage or worse yet, allowed your coverage to lapse, you could soon be facing a financial quagmire that threatens your professional future.



It is critical that you and your staff understand this increased risk and learn how to lock in your insurance protection in the event of a claim. Keeping your PL policy up to date and in force and taking

swift, appropriate action at the first sign of a project upset is critical to minimizing damage and utilizing the full extent of your coverage.

## Understanding professional liability insurance

Professional liability (also known as "errors and omissions") insurance works differently than most types of insurance. Rather than an occurrence policy that comes into effect when damages occur, professional liability is a "claims-made-and-reported" policy that comes into effect only when a claim is made and reported to the insurer – regardless of when the alleged error or omission occurred.

For example, your auto insurance is an occurrence policy. The policy you have in place at the time of an automobile accident is the one to pay for damages resulting from your actions. Your general liability policy is likely the same.

If someone slips and falls in your office tomorrow, the coverage you have in effect that day applies.

With professional liability insurance, the coverage that takes effect is the policy you have at the time the claim is made and reported which may not be the same policy you had in place when the error or omission occurred. For example, you designed an office building in 2004 when you were insured by ABC insurance. In 2006, you switched from ABC to XYZ insurance and have maintained continuous coverage ever since. The following year, you receive a claim regarding your 2004 design services. This claim is now covered by your policy with XYZ insurance (not ABC insurance).



Why is this important? Suppose you let your PL insurance lapse in 2006 because you felt you couldn't afford it. When you sought a new policy in 2008, that carrier may not provide "tail" coverage and you could be uninsured for all of your projects prior to the inception date of your new policy. As long as you maintain continuous professional liability insurance coverage – even if you change carriers – you are typically granted tail coverage all

the way back to the earliest date of your continuous coverage. If you let that coverage lapse, you might not be able to find a carrier offering affordable tail coverage for your previous projects.

Even at times when your active projects have shrunk to zero you still need continuous professional liability coverage to ensure that your previous projects are covered.

### Old National Insurance can help

Old National can help you by providing referrals to consultants, guidance relative to insurance issues, and certain preventives – from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN) and we're here to help.

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## Report all incidents promptly

As an insurance agency that specializes in professional liability services for architects and engineers, we have heard stories like these:

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*All of a sudden my client stopped returning my phone calls and then cancelled our monthly meeting. I sensed he might be upset with me but I had no idea why. I just figured he was in a bad mood.*

*Typically, their accountant paid our bills like clockwork. But all of a sudden our invoices were becoming 30, 60, 90 days past due.*

*We got a call to put our design work on hold until further notice. I figured they were in a cash crunch but now it's been three months.*

*I was surprised to find that the client hired another design professional to help him manage our project. They're now asking for copies of everything and the client has requested changes to our design.*

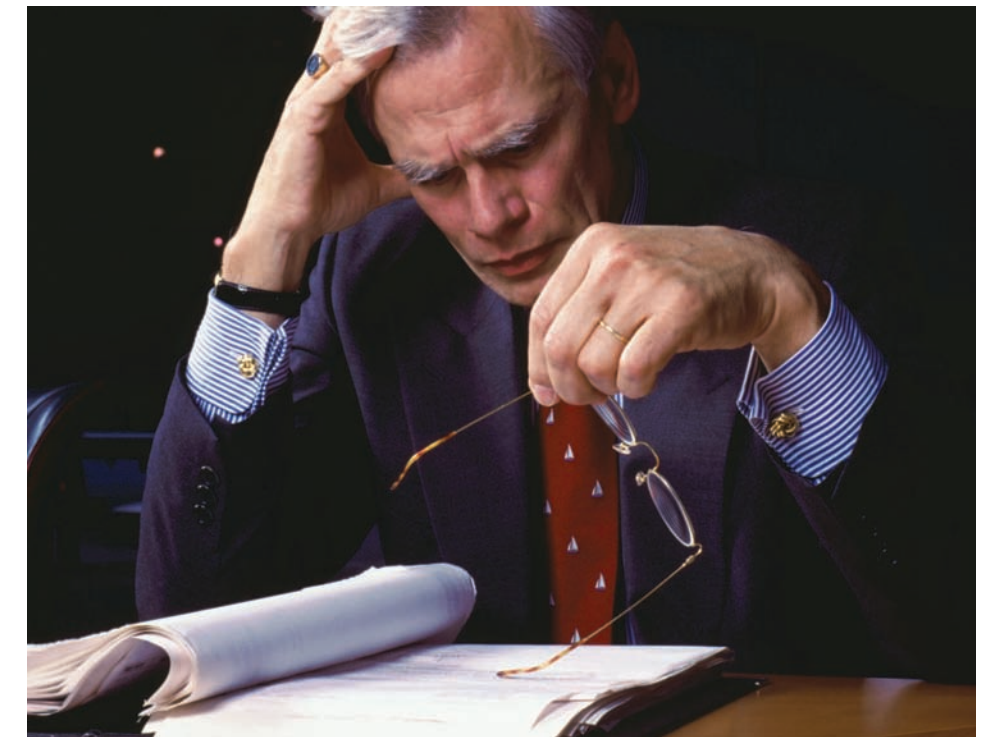
*The guy threatened to file a claim but I knew it was bogus. That was the contractor's error, not ours.*

*I had no idea that this little issue would evolve into a claim.*

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Regardless of how inconsequential a project upset may seem at the time, consider it a red flag worth bringing to our attention. It is always wise to act on the side of caution when deciding whether to report a potential claim to the insurance company.

following year. That is not the case. Most insurance firms will not consider an incident reporting as a claim until a demand for money is made. Smart insurance carriers understand that it is in their best interest to encourage early reporting.



Why report an incident? Because it generally locks in your PL insurance coverage. Then, if a potential claim is reported to the carrier during the policy year, you most likely will have coverage under a claims-made-and-reported policy. If a claim arises out of the incident, this year or in the future, you have formally reported it during the policy year and coverage should be available. Some people fear that reporting an incident will automatically put them in line for a premium rate increase the

The claims department – and when necessary, legal counsel – can begin providing advice to help you avoid having the incident escalate into a claim. For most carriers, the cost of providing consulting and legal services is not applied against your policy limits or deductibles unless a claim develops.