



History Lesson

A Timeline of Support

Schinnerer Develops the First A/E Insurance Program in the U.S.

In 2007, Schinnerer celebrated its 50th anniversary as the largest, only continuously operating, and most responsive professional liability program of coverage for architects and engineers. The celebration recognized 50 years of working with CNA and the program's continuing Commended Program relationship with [The American Institute of Architects \(AIA\)](#) and the [National Society of Professional Engineers \(NSPE\)](#).

Although the Commended Program officially became available to the design and construction professions in 1957, the genesis of Schinnerer's involvement extends back to 1955. Both the AIA and NSPE had studied the issue of professional liability coverage for their members for years, but the modern concept of coverage and risk management for design firms did not come about until their common relationship with Victor O. Schinnerer, both the man and his company, began.

Professional liability insurance for architects and engineers was not unique in 1957. In the decade before the Commended Program was established, various insurers provided coverage under a generic negligence policy, not recognizing the difference between design firms and other professionals. No carrier provided risk management advice for design professionals. In 1947, the AIA set up a program with an insurer, but dissolved it within two years because the program provided inconsistent coverage and was not specific to architects.

Until 1955, both the AIA and NSPE studied numerous proposals. Separately, both organizations began to develop the concept of set criteria for establishing whether a program should be given official status and marketed to members. Neither association found an insurance company that met their separate criteria for organizational support until 1955, when a local Washington, DC insurance broker, Victor O. Schinnerer, responded to their needs.

NSPE and AIA Commend the Schinnerer and CNA Program

Vic Schinnerer worked with the AIA and NSPE to identify a financially stable carrier for a new, specialized insurance program. In 1956, Continental Casualty Company, which later became one of the [CNA Insurance Companies](#), agreed to underwrite the policy with Victor O. Schinnerer & Company, Inc., serving as the program administrator and underwriting manager. Schinnerer was also given the responsibility of developing educational and management assistance programs to help reduce the exposure of professionals.

The associations, Schinnerer, and CNA agreed to market the program through independent brokers. This reliance on an independent broker system rather than agents to sell the coverage was in response to a desire by NSPE and AIA that professionals be able to select their own representatives.

The Commended Program and Schinnerer's role as the agent-of-record for it was officially formalized. In November of 1956, the AIA Board of Directors voted to "commend to the favorable consideration of the membership" the policy. It also authorized a committee to "review the procedures of the handling of this insurance on behalf of The Institute," thus establishing an ongoing review of the Commended Program's compliance with the objective criteria. In January 1957, after learning that all legal requirements had been met, the AIA Executive Committee approved making the policy "available to members of the Institute."

In February, the NSPE Board of Directors officially recognized Schinnerer as the agent-of-record, with the relationship "remaining in effect at the will of the Board and the agent" and directed that the policy "be favorably called to the attention of those interested members who are consulting engineers in private practice." With this action, the program commendation was established by both associations.



Innovation Meets Reality in the 1960s

Following its initial commendation, Schinnerer and CNA's program moved forward quickly to insure design firms. But an incredible growth in construction brought with it a wave of construction disputes. With changes in the laws applying to professionals, claims mounted.

During the first years of the program, the initial premium rates were guesses; there was little, if any, actuarial information on which to rely. While the premiums remained relatively stable, claims data began to be collected and analyzed so that the actual cost of the program could be calculated and appropriate premiums charged. In 1961, the data revealed that claims were being closed for amounts much greater than reserves, the time between reporting and resolving a claim was much longer than anticipated, and defense costs were significant. The program was in jeopardy. With Schinnerer's assistance, the AIA and NSPE exercised their right to audit the program. The actuarial review confirmed that a significant rate increase was needed.

By 1964, however, claims were again outpacing premiums, necessitating another increase. Then, just when the program seemed to have gained an understanding of the factors leading to claims, the market turmoil of 1968 hit. With high inflation and increased litigation, claims costs soared, and the frequency of claims began to rise dramatically. Rates were raised to keep coverage in place. And CNA, despite significant losses, agreed to stay with the program.

The AIA and NSPE worked with Schinnerer to develop additional strategies to maintain the program. Significant loss prevention measures were taken to mitigate the upward trend. An annual training program for defense counsel (Schinnerer's [Annual Meeting of Invited Attorneys](#)), first given in 1962, was increased in scope; additional publications were created to educate policyholders; and defense counsel and Schinnerer underwriters began to travel throughout the country to advise firms on managing their exposures.

The Development of the Office for Professional Liability Research

Although Schinnerer increased the number and quality of publications and seminars available to policyholders during the 1960s, it was the creation of Schinnerer's Office for Professional Liability Research (OPLR) in 1971 that established the high standards of [turning claims information into risk management guidance](#). This new operation brought together Schinnerer and CNA staff and outside experts to analyze claims, examine regulatory and legal developments, and monitor [changes in practice management](#). OPLR created [Guidelines for Improving Practice](#) in 1971.

Under the guidance of consulting attorney Jerry Farquhar, who provided his independent expertise to Schinnerer until 2007, a series of regularly scheduled [professional liability seminars](#), co-sponsored by NSPE and AIA, were developed by OPLR and committees from the commending societies. In February of 1972, the first seminar in Atlanta drew 80 architects and engineers. It was the model for the series that, through 2008, has attracted over 40,000 design professionals. In addition, efforts were made to widely disseminate risk management advice: professional liability risk management audiotapes were created from the seminar to provide loss prevention advice to design professionals unable to attend.

The Office for Professional Liability Research also increased Schinnerer's effort to create a pool of attorneys expert in defending design professionals. In 1972 OPLR first published *A/E Legal Newsletter* in which consulting counsel reviewed case law developments of importance to construction-related professional service firms. It was the industry's first lawyer-briefing periodical addressing the liability exposure of design professionals.

This emphasis on risk management tools helped to mitigate the growing exposure of design firms to economic loss claims as the economy began to experience inflation and stagnation. However, the 1980s would present difficult challenges for the Schinnerer and CNA program.



Responding to the Financial Chaos of the 1980s

During the 1980s, professional liability claims soared in both number and cost. The U.S. economy endured escalating energy costs, inflationary pressures on financing and materials, infrastructure degradation, and concern over asbestos and pollution. Design firms often were the targets of litigation.

The Schinnerer and CNA program responded in highly creative ways. These included a voluntary limitation on underwriting profits, support for legislative initiatives for tax-free self-insurance funds, and international lobbying efforts to prevent concerns over claims involving pollution and asbestos from constraining the services provided by policyholders.

In 1980, Schinnerer approached the AIA and NSPE with a novel plan. To provide for stability over time, CNA would agree to limit its underwriting profit and return, with interest, premiums that were not needed to fund defense and indemnity costs and that exceeded the cap. While other insurers rushed into and out of the marketplace to take advantage of soaring rates and high investment returns, CNA committed to stay in the market long-term.

Schinnerer was also a strong supporter of federal legislation to allow firms to deposit into a tax-free reserve for professional liability claims. This law would have allowed smaller firms to effectively self-insure and larger firms to increase their deductibles to reduce insurance costs.

A panic over rising claims based on environmental impairment, pollution, and asbestos forced much of the industry toward absolute exclusions for such claims. Schinnerer, however, headed off such restrictions in the CNA program by taking committees from the AIA and NSPE to meet with major European reinsurance companies to educate them on the nature of professional services so that exceptions to exclusions would be possible. This effort forced others in the market to preserve coverage as well.

Responding to Asbestos Pollution and Mold

Many factors affect the rates charged by professional liability insurers. One primary influence is the scope of coverage; exclusions often reduce cost but eviscerate the overall value of a policy. For decades the Schinnerer and CNA program has fought to keep coverage as broad as possible so that policyholders will have confidence that their insurance will protect them in the present and future.

In the mid-1980s, the insurance industry, led by property and casualty insurers and the reinsurers that backed up their coverage, saw soaring claims alleging damage from asbestos and pollution. In an effort to remedy bodily injury and property damage, courts reinterpreted insurance policies to provide coverage even though no premium was collected to prepare for such claims. Losses to insurers and their reinsurers mounted. The insurance solution: absolute exclusions of asbestos and pollution claims.

Most professional liability insurers acquiesced in this attempt to set a bright-line limit of coverage that both policyholders and courts could understand. Since doing so severely restricted the available services of prudent engineering and architecture firms, Schinnerer conducted marathon negotiation sessions with reinsurers and CNA. Schinnerer provided guidance on the nature of claims against design firms and succeeded in creating “exemptions” to the industry-wide exclusions.

When calls for massive coverage exclusions reemerged with growing concern for mold, Schinnerer again worked with CNA to fight through the “mold is gold” refrain of plaintiff attorneys and avoided the mold exclusions that many professional liability carriers permitted. Sound underwriting rather than reactive restrictions still characterize the Schinnerer and CNA program, and will continue to do so in the future as professional practice evolves.

Facilitating the Evolution of Practice

Five decades of insuring construction-related design firms and close work with their professional societies and trade associations have prepared the Schinnerer and CNA program for the continuing evolution of professional



practice. Schinnerer is committed to leading the way in working to identify the changes in the contractual and legal environment and tailoring insurance coverage that minimizes the gaps and overlaps that could affect the financial viability of firms.

Sustainability Brings New Design and Coverage Challenges: Incorporating elements of [green design](#) has been an aspect of sound design practice for decades. But new consumer demand for conservation and energy efficiency has increased the need for clear communication and documentation of design trade-offs, expectations, and results. Increasing regulation of design and construction, evolving supplies of materials and systems offered by manufacturers of green products, and the enthusiasm of the political system to respond to complex design problems with simple solutions all place new pressures on design firms.

Integrated Project Delivery Transforms the Profession: With the blurring of the “bright line” established by practice and the law between design responsibilities and construction work, it is vital that professional liability insurance navigates the transformation and prepares for the increasing [integration in project delivery systems](#). Changes in the traditional design and construction process resulting in design-build and relationship, or three-party, contracting challenge the legal system to reevaluate sources of duty and liability. While contractual arrangements and entity formation methods can minimize exposures and allocate risks, some exposures are extremely long-term and fall on one group—those who are licensed design professionals.

As professional practice changes and presents new challenges, Schinnerer will be there to assist in the evolution.

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