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PROFESSIONAL LIABILITY

Design professionals owe a contractual duty to their clients as well as general duty to practice in a reasonable manner to the public. If a design professional breaches a duty and that breach causes harm that could have been anticipated, the design professional can be held liable. Therefore, the sources of design professionals' professional liability lie in two areas of law, *liability in contract* and *liability in tort*.

Strictly speaking, under *liability in contract*, the design professional is answerable for either the breach of a term in the contract or for the failure to perform the services described in the contract with due care and diligence. (CNA policies do not cover all breaches of contract, since they may not be professional liability claims arising from issues like error, omission or negligence in the performance of professional services.)

Liability in tort is a physical or economic wrong done to someone that can lead to claims against the party responsible. If acts of negligence or omission by design professionals harm people, whether or not the design professional has a contractual relationship with those persons, the design professional can have *liability in tort* to those persons.

How professional liability insurance can protect you

Because design professionals are personally liable for the consequences of their actions or failures to act, any design professional in active practice should be protected by professional liability insurance. This coverage not only protects your firm, but also your personal assets. It also provides a means of maintaining a good reputation by defending allegations that might be frivolous, malicious or false.

When professional liability insurance cannot protect you

Liability insurance is not armor plating. It can help you manage the exposures you face in practice and the claims your actions may generate, but it cannot prevent them. Professional liability insurance cannot protect design professionals in the following situations:

- ✓ When they assume liabilities that are specifically excluded
- ✓ When they do or fail to do something that invalidates their insurance
- ✓ When the damages exceed the limit of liability purchased by the design professional

There are certain risks that most, if not all professional liability insurance, will not cover. For example, many of the business risks design professionals may be asked to assume in design-build projects are specifically excluded. Express warranties not tied to the obligation to practice in a non-negligent manner will not be within the scope of coverage. Direct fines and penalties caused by action or inaction are not contemplated by the policy. The exclusions in a professional liability policy are clearly identified in the policy.

After a claim is made, the insured may take some action that can lead to a loss of insurance coverage. That could include a delay in reporting the claim, which means the insurer loses valuable time needed to prepare an effective defense, or the insurer becomes prejudiced because of the delay.

When purchasing a policy, a design professional selects a deductible obligation, a limit of coverage for each claim and a total for all claims within a policy year. If the total defense and any indemnification costs exceed the selected limit, the risk of the excess falls solely on the design professional.