

Q&A

MORE QUESTIONS FROM THE FIELD

September 8, 2022

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Agenda

- Review and discussion of common questions and issues raised by actual clients.
- Names have been omitted to protect the innocent.

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Emerging Risks

- Changes in Standard of Care
- New theories
 - “negligent coordination” “negligent specification” “negligent breach of contract”
- More reliance on contractual obligations
- Higher insurance limits requirements
- Uncertainty in marketplace creates angst with carriers
 - Increase to your premiums, deductibles, additional exclusions
- Need to be mindful of sound business practices

Confidentiality Provisions

- A requirement in more and more client generated contracts
- Need to have cyber/privacy liability coverage
- Cyber attacks are increasing
- You must be permitted to retain copies of all project documents, including 'confidential information'
- Should have some exceptions/restrictions . . . see next 2 slides

CONFIDENTIAL

Sample Confidentiality Amendment

This paragraph shall not apply in the event of a dispute between the A/E and the Owner or between the A/E and a third party. This paragraph shall not restrict the A/E from giving notices or engaging in discussions with its legal counsel or as may be required by its insurance carriers, by law or by contract or complying with an order to provide information or data when such an order is issued by a court, arbitration board, administrative agency or other legitimate authority, or if disclosure is necessary for the A/E to defend itself from any legal action, claim, dispute, demand, and causes of action.

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Additional Exceptions

The disclosure of confidential and proprietary information is permitted:

- If such information has become known to the public generally through no fault of any of the parties
- If the information is regularly given to third parties without restriction on use or disclosure
- If the information was provided to any of the parties prior to this agreement
- If the other party must disclose in any dispute resolution
- If the A/E must disclose the information in rendering its services; or
- If the Architect must comply with its applicable professional codes of ethics or standards and conduct, or the disclosure is otherwise required by law or a court of competent jurisdiction.

Cyber Coverage vs Network Security Liability

Network Security is an add on coverage in most PL policies. It is to cover 3rd party damages arising from the from your negligence in managing security of a network that is owned, controlled, leased or operated by your firm. The trigger for this coverage is a commonly referred to as a network security compromise. Two things must occur 1. A network breach or 2. A third party who is authorized is unable to gain access to the network.

Cyber Coverage is a stand alone policy that covers both 1st party and 3rd party losses. Losses can include response costs for a data breach that causes access to personally identifiable information. It covers first party costs for ransomware/cyber extortion.



Can I Get Higher Limits?

- Increase practice policy
- SJX/SCX
- Project Professional Liability
- Owners Protective Professional Indemnity



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Merger/Acquisition Activity

Acquisition Activity requires acquiring firm to determine how they want to treat liabilities of the firm they are purchasing

- How to handle work in progress?
- How to handle acquired firms past liabilities?
(when extended reporting period expires)
- Would having a lower deductible and/or access to lower limits make you more comfortable with uncertainty?

Various ways to handle acquisition activity depending on your main goal.



When to Call Legal Counsel and/or Oswald

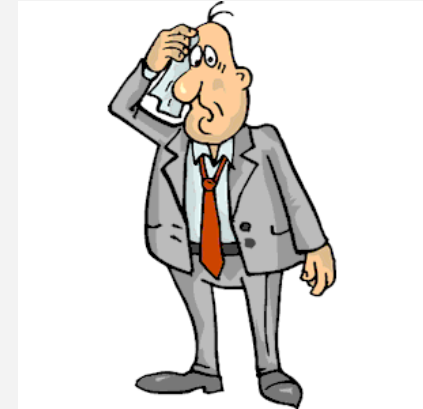
- When choosing legal counsel, design/construction experience is a must
- Legal for legal review and negotiation; Oswald for insurability review
- Good to have on retainer, especially if firm can't afford staff lawyer
 - If not on retainer, have 'on-call' relationship
- Potential claim matters/loss prevention
- When considering filing a lien



What is Impact of claim on my renewal

Factors:

- Frequency
- Severity
- Loss ratio



LPs have no impact

Ohio Statute of Repose vs Limitations

Statute of Repose – Bar to claims made more than 10 years after date of substantial completion. Applies to both contract and tort claims but... statute of repose for written contract claims is 6 years/4 years for oral contracts. As to negligence claims there is 2-year extension for defects discovered less than 2 years before 10-year statute of repose.

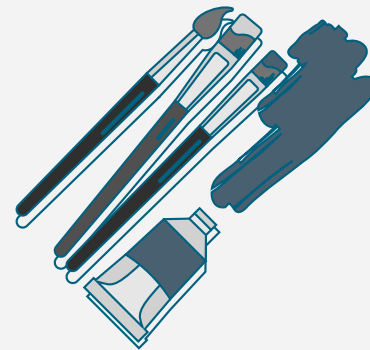
Statute of Limitations – Claims of negligence against A/E's must be filed within 2 years from the date of when cause of action was or should have been discovered.



Art Installations

How do we cover art installations?

- Artists do not usually carry professional liability insurance and are typically retained by the owner.
- Your design may incorporate the art installation or be involved in the installation.
- Depending on if it is owner recommended or part of your design.



Contract Review

- What issues are deal breakers?
- Request to review already signed contract
- We can't change anything but please review anyway
- Can you negotiate this since you understand issue better?
- We never received signed agreement; do we still have a contract?
- Please remember our comments are for your eyes only unless you ask us otherwise.

Thank you for your time

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