

# Trends in Contractor's Liability Coverage

by David M. Slaughoupp

**W**ith an anticipated increase in construction activity stemming from the Trump administration's proposed \$1 trillion infrastructure spending plan and the continued focus on jobsite safety from agencies and law enforcement, contractor's professional liability (CPrL) policies are receiving greater attention. These policies cover damages arising out of acts, errors and omissions from professional services performed by or on behalf of a construction firm, including a general contractor, design-builder, construction manager (at-risk or agency) or specialty subcontractor.

In addition to third-party liability, some CPrL programs now even offer first-party coverage, such as "protective" coverage or rectification coverage for mitigation of damages. Protective coverage indemnifies the named insured for costs incurred—in excess of the design professional's professional liability insurance—as a result of negligent acts, errors and omissions committed by design professionals under contract with the named insured.

The contractor's professional liability market has grown to a capacity of \$300 million in the United States and continues to expand as an increasing number of carriers are offering CPrL terms. Contractual obligations remain the major driver for purchasing both practice and project programs. For the larger firms, however, asset protection is an even bigger



factor. The number of entities requiring project CPrL or project-dedicated limits from the construction professional continues to rise. Although owners believed \$1 million was adequate a few years ago, they are now requiring \$2 million, \$5 million or more. For larger projects (more than \$500 million in construction value), \$25 million seems to be standard.

The frequency of contractor's professional liability claims also continues to climb, with some major carriers reporting an increase of as much as 20% year-over-year. This should not be a surprise since the number of CPrL buyers has also

risen, regularly producing new claims due to the much broader coverage form now available.

One concern among carriers is the severity of the claims. It is not uncommon to see an eight-figure demand on CPrL claims. Other challenges often relate to insureds that at times will attempt to "fix" the act, error or omission and then report the issue to the carrier, potentially nullifying coverage altogether.

Misconceptions also exist regarding the results of reporting claims. Many companies fail to alert their providers about problems out of fear that the

claim will increase their premiums. While this may be a natural concern, it is often not true.

As for pricing, contractor's professional liability can be costly. On the bright side, however, there are an increasing number of carrier alternatives. Five or six carriers are offering project coverage (with the ability to include protective and rectification/mitigation coverage) on a primary basis for large (\$500 million or higher) projects, and others are providing project terms for smaller projects (usually under \$100 million).

On larger projects, coverage considerations have also been made with certain project delivery methods like integrated project delivery and public-private partnerships. This is especially true when design professionals become part of the primary named insured, and/or when design professionals are partnered in joint ventures to pursue work.

Other trends include the expansion of project policy terms and extended reporting periods. A year ago, the maximum duration of a program was 10 years (policy term plus the extended reporting period), but many carriers are now offering 10-year reporting periods in addition to the policy. Another innovation involves combining contractor's professional liability with contractor's pollution liability in middle (\$50 million to

\$250 million) and small (\$50 million and below) markets, where there is a need to leverage premiums. Additional expansion continues in the areas of:

- **First-party coverages:** Rectification and mitigation of damages coverage is fairly prevalent, even with new carriers entering the marketplace. Eleven providers now offer this coverage. In addition, excess carriers are willing to expand the first-party coverage if higher capacity is needed. Expect policy offerings to increase in 2017, but carriers will need to build "bench" strength in their claims departments while instilling a more proactive mindset among their adjusters.
- **Defense in addition to the limit of liability:** Additional or supplemental limits for defense expenses are becoming typical. Usually capped at either a certain dollar amount or a percentage of the purchased limit, such limits are then used to preserve the base limit for indemnity payments rather than defense costs that reduce the overall limit of liability. More carriers will offer this supplemental limit in 2017.
- **Definition of professional services:** Defining professional

services is a keystone in professional liability insurance because not all of a firm's services are insured, only those that are expressly itemized. Therefore, these definitions must be accurate and as close to all-encompassing as possible. Of course, each carrier is different in the way it approaches this definition. Some will use a broad definition that is more traditional to architect/engineer professional liability. Some require a customized list of services, while others apply such depth that it engulfs an entire policy page. Either way, the definition needs to reflect the services that expose the firm to professional liability.

Lastly, existing carriers will continue to promote "new and improved" contractor's professional liability forms in 2017, with many looking to revise or update policy terms. This will also include continual coverage expansion and soft rates as long as the business itself experiences no large revenue swings or changes in services or claims, which should benefit buyers in 2017. ■

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