



Pick One: Professional Liability, General Liability, Both, Neither

RLI[®]
DIFFERENT WORKS

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DIFFERENT WORKS

Course Description

Many clients and contractors confuse a design professional's obligations for professional liability and general liability.

But the distinctions are important because:



the
exposures

the
insurance
coverages

the
premiums

the
deductible
obligations

are actually all different.

Learning Objectives

Participants in this course will:

Understand how a design professional's general liability obligations contrast with professional liability obligations.

Address common contractual issues and possible solutions to address them.

Consider insurance coverage differences between the two.

Review familiar claim scenarios in which the distinctions become important.

Section 1—The Risks

Part of Defining the Risk is Defining How Your Firm is Facing It

THE RISE OF COPPER THEFT & ITS THREAT TO U.S. CRITICAL INFRASTRUCTURE

“ Copper thieves are threatening U.S. critical infrastructure...and present a risk to both public safety and national security. ”

– Federal Bureau of Investigation

Since August 2009, metal thefts have steadily increased across the nation, driven by rising prices for base metals... especially copper.

Whether the theft is an expensive personal irritant, like finding your catalytic converter has been stolen, or one that threatens public safety, as when the theft of copper wiring blacked out runway approach lights at the Modesto, CA, regional airport—metal thefts are increasing in frequency and severity.

Rank by Claims / 100,000 Residents	State	2010-2012 Claims	2012 Population	2010-2012 Claims / 100,000 Residents
1	Rhode Island	309	1,050,292	29.4
2	Ohio	3,228	11,544,225	28.0
3	Delaware	231	917,092	25.2
4	Kentucky	929	4,380,415	21.2
5	Arkansas	605	2,949,131	20.5
6	Georgia	1,953	9,919,945	19.7
7	Maine	250	1,329,192	18.8
8	Missouri	1,097	6,021,988	18.2
9	Connecticut	639	3,590,347	17.8
10	North Carolina	1,682	9,752,073	17.2

Risks—General Liability

Common GL Risks for Design Professionals:

- Bodily injury and property damage NOT arising out of professional services
- Tenant legal liability
- Employee benefits liability

Other Risks—Possible Insurance Coverage Enhancements:

- Hired and non-owned auto liability coverage
- Hired auto physical damage coverage
- Watercraft liability



Risks—Professional Liability

Negligent Design

You Didn't Give Me What I Wanted or Expected

Negligent Preparation of Plans and Specifications

The Contractor Suffered Delays and Extras Due to Inadequate Design

Negligent Observation of Construction

You Didn't Protect Me from the Contractor's Faulty Workmanship

Contracts—Insurance Requirements

Contractual Insurance and Indemnification Requirements May Be:

- Outdated,
- Unattainable,
- Expensive to Meet, or
- Unreasonable

but failing to meet them may have significant consequences for you...



Contracts—Insurance Requirements

Cancellation/Non-renewal/Reduced limits

BOTH: RLI's obligations to notify of cancellation, nonrenewal, or reductions in limits by endorsement are to the first named insured, not its clients, in accordance with the policy terms and conditions.

Contracts—Insurance Requirements

Commitment to Carrying Insurance:

PL: Sometimes professional liability coverage is required to be maintained for _____ years following final completion of the project. Compliance with this requirement is subject to availability of the coverage at commercially affordable rates.

Contracts—Insurance Requirements

Insurance Required of Consultants

BOTH: The Prime Consultant can't "ensure" that consultants maintain insurance, but can require them to do so and request confirmation of that coverage via certificates of insurance.

**Professional Liability Policy
Architects & Engineers
Declarations**

RLI®
RLI Insurance Company
9025 North Lindbergh Drive
Peoria, Illinois 61615
Phone: (309) 692-1000

xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx
xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

NOTICE: THIS IS A "CLAIMS MADE AND REPORTED" POLICY. THIS POLICY REQUIRES THAT A CLAIM BE MADE AGAINST THE INSURED DURING THE POLICY PERIOD AND REPORTED TO THE INSURER, IN WRITING, DURING THE POLICY PERIOD OR AUTOMATIC EXTENDED REPORTING PERIOD.

THIS POLICY CONTAINS PROVISIONS WHICH LIMIT THE AMOUNT OF CLAIM EXPENSES THE INSURER IS RESPONSIBLE TO PAY IN CONNECTION WITH CLAIMS. CLAIM EXPENSES SHALL BE SUBJECT TO ANY DEDUCTIBLE AMOUNT. THE PAYMENT OF CLAIM EXPENSES WILL REDUCE THE LIMITS OF LIABILITY STATED IN ITEM 3. OF THE DECLARATIONS. PLEASE READ YOUR POLICY CAREFULLY.

Policy No. xxxxxxxxxxxx

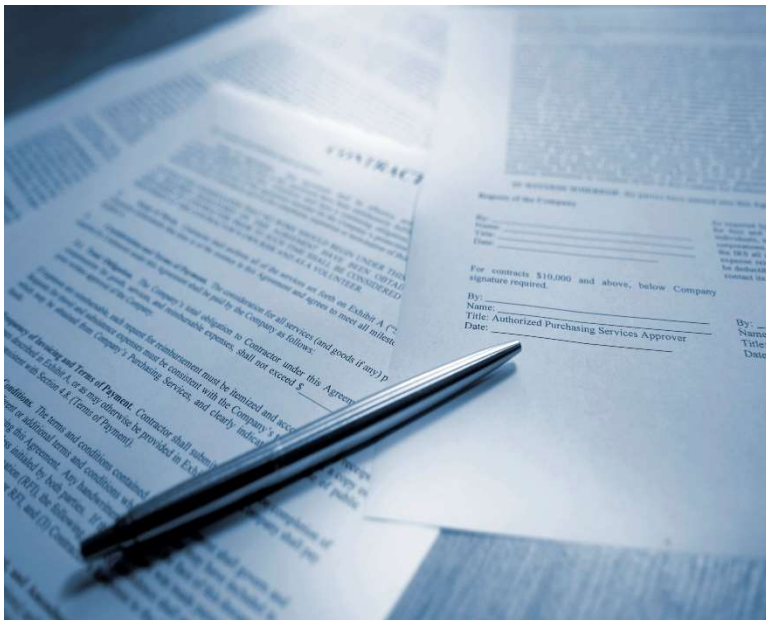
Contracts—Insurance Requirements

Contractual Liability

BOTH: RLI liability policies automatically include limited amounts of contractual liability coverage. If a request for contractual liability coverage is consistent with the coverage already provided by each policy, a special endorsement is unnecessary. But policies cannot be modified to cover additional liability assumed under contract.

Contracts—Insurance Requirements

Primary and Non-contributory Coverage



- GL: General liability insurance applies on a primary and non-contributory basis. Professional liability does not apply on a primary and non-contributory basis.

Contracts—Insurance Requirements

Waiver of Subrogation

BOTH: Waiver of subrogation is granted in favor of the insured's client, but not in favor of other parties.

Contracts—“Split” Indemnity

- 9.1 INDEMNIFICATION
- *9.1.1 General Indemnity.* Engineer agrees to indemnify and hold harmless the Owner, Owner’s Representative, Construction Manager, and each of their respective directors, officers, and employees (collectively, "Indemnitee(s)") from losses **to the extent caused by** any act or omission constituting ordinary and **not professional negligence**, provided, however, that nothing contained herein shall be construed as obligating the Engineer to indemnify and hold harmless any Indemnitee to the extent not required under the provisions of Paragraph 9.1.3, below.
- *9.1.2 Indemnity for Professional Negligence.* **As it relates to professional services by Engineer and its subconsultants**, Engineer agrees to indemnify and hold harmless the Indemnitees, and each of them, against Losses **but only to the extent caused by** any act or omission constituting professional negligence on the part of the Engineer or its Subconsultants, or their respective employees, agents, representatives or independent contractors.
- *9.1.3 Limitations on Indemnity Obligation.* Engineer shall not be required to indemnify or hold harmless an Indemnitee for a Loss due to that Indemnitee’s own negligence; provided, however, that such negligence has been determined by agreement of the Engineer and Indemnitee or has been adjudged by the findings of a court of competent jurisdiction.

Section 3—The Insurance

How does your insurance program all fit together?



General Liability Insurance

Professional Services Exclusion

“Professional services” means any service requiring specialized skill or training including but not limited to the following:

- a. Preparing, approving, or failing to prepare or approve** any map, shop drawing, opinion, report, survey, field order, change order, design, drawing, specification, recommendation, permit application, payment request, manual or instruction;
- b. Supervision, inspection, quality control, architectural, engineering or surveying activity or service**, job site safety, warning or failure to warn, construction contracting, construction administration, construction management, computer consulting or design, software development or programming service, or selection of a contractor, subcontractor or subconsultant;
- c. Monitoring, testing, or sampling service necessary** to perform any of the services included in a. or b. above....

Professional Liability Insurance

Products Exclusion

This Policy does not apply to any Claim(s):

...based upon or arising out of the **sale or distribution of any product developed by the Insured or by others under license or trade name from the Insured** for multiple sale or mass distribution, including, but not limited to, computer programs and software. This Exclusion does not apply to software designed or modified for an individual client of the Insured in connection with the Insured's rendering of Professional Services for that individual client.

Other Differences Between GL and PL Insurance

Trigger

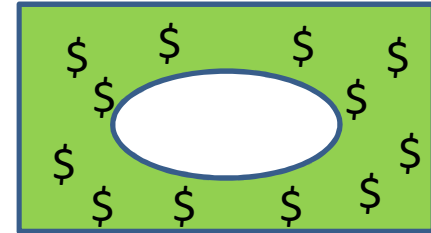
GL coverage is triggered by bodily injury or property damage.

PL coverage is triggered by bodily injury, property damage, or economic damages

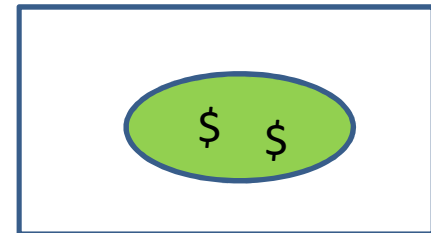
Other Differences Between GL and PL Insurance

Defense Costs

- **GL** limits are not eroded by defense costs. Defense costs are outside the limits of liability.



- **PL** limits are eroded by defense costs. The same limit covers both defense and indemnity payments.



Other Differences Between GL and PL Insurance

Basis of Coverage

- **GL** is typically written on an “occurrence basis.”
- **PL** is written on a “claims made basis.”



Other Differences Between GL and PL Insurance

Additional Insureds

ACORD		CERTIFICATE OF INSURANCE		ISSUE DATE
				05/18/2001
PRODUCER		This certificate is issued as a matter of information only and confers no rights upon the Certificate Holder. This Certificate does not amend, extend or alter the coverage afforded by the policies below.		
		COMPANIES AFFORDING COVERAGE		
		Company A		
INSURED		Company		
		<div style="border: 1px solid black; padding: 5px; display: inline-block;"> Commercial General Liability with a limit of not less than \$1,000,000 per occurrence. </div>		
This is to certify that the policies any requirement, term or condition the policies described herein is subject to all the terms, conditions and exclusions of each policy.		Notwithstanding as afforded by		
CO	TYPE OF INSURANCE	POLICY NUMBER	EFFECTIVE DATE	LIMIT
A	GENERAL LIABILITY			
	<input checked="" type="checkbox"/> Commercial General Liability			EACH OCCURRENCE \$ 1,000,000
	<input type="checkbox"/> Claims Made <input checked="" type="checkbox"/> Occurrence			FIRE DAMAGE
	<input type="checkbox"/> General and Contracted Protection			RECOUP EXPENSE
	<input type="checkbox"/> General Aggregate Limit applies per			REAL AND ADVERTISING INJURY \$ 1,000,000
	<input type="checkbox"/> Policy <input type="checkbox"/> Present Circumstances			GENERAL AGGREGATE \$ 1,000,000
				PRODUCTS AND COMP. OPER. AGG. \$ 1,000,000
A	AUTOMOBILE LIABILITY			
	<input checked="" type="checkbox"/> Any Automobile			COMBINED SINGLE LIMIT \$ 1,000,000
	<input type="checkbox"/> All Owned Automobiles			BODILY INJURY (Per person)
	<input type="checkbox"/> Non-owned Automobiles			BODILY INJURY (Per accident)
	<input type="checkbox"/> Mixed Automobiles			PROPERTY DAMAGE (Per accident)
	<input type="checkbox"/> Non-owned Automobiles			COMPREHENSIVE COLLISION
A	WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY			
				WC Statutory Limit (a) Other
				EL EACH OCCURRENCE \$ 100,000
				EL DISEASE (Each employee) \$ 100,000
				EL DISEASE (Policy Limit) \$ 100,000
				EACH OCCURRENCE
				AGGREGATE
Maricopa County Community College District, its agents, officers, officials, employees, and volunteers are hereby named as additional insureds as their interest may appear.				
CERTIFICATE HOLDER		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUER WILL endeavor to MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT A FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE ISSUER, COMPANY, ITS AGENTS OR REPRESENTATIVES.		
Maricopa County Community College District 2011 West 5th Street Tempe, AZ 85281-6942		Authorized Representative		

GL allows **Additional Insureds**.

PL does not allow **Additional Insureds**.

Other Differences Between GL and PL Insurance

Excess Coverage/Higher Limits

- **GL** may be scheduled under an **Excess** or **Umbrella Liability Policy**.
- **PL** cannot be scheduled under an **Excess** or **Umbrella Liability Policy**.



Section 4—The Claims

How Does This Play Out in Real Life Claims?



Claim Scenario #1



Pick One:

A civil engineer at a construction site gets frustrated with the mud surrounding their trailer. He trudges around the site, finds a hose, goes back to the trailer, and begins hosing it down. He leaves this task before completing it to take a phone call.

A bicycle messenger making a delivery to the site travels over the hose at an accelerated speed, is thrown from the bike, and suffers numerous broken bones and other serious injuries.

Under which policy is this claim covered?

- Professional Liability?**
- General Liability?**
- Both?**
- Neither?**

Claim Scenario #2

An interior designer finds a unique decorative lighting fixture and specifies it for 450 guest rooms. Due to the size of the contract, the designer agrees to procure the fixtures and have them stored until they can be installed. While in storage, the warehouse floods, and many of the fixtures are damaged. Fortunately, this happens before construction is complete, but 300 fixtures must be replaced. The warehouse is claiming no responsibility.

Under which policy is this claim covered?



Pick One:

- Professional Liability?
- General Liability?
- Both?
- Neither?

Claim Scenario #3

Same hotel project, but let's say that the interior designer designs the lighting fixtures himself for the 450 guest rooms. When they are completed, he discovers that due to a communication error, the fixtures, which were produced overseas, do not meet UL standards. All 450 fixtures must be replaced. The foreign manufacturer claims that the designer did not communicate this requirement, so they're not responsible.



Under which policy is this claim covered?

Pick One:

- Professional Liability?
- General Liability?
- Both?
- Neither?

Claim Scenario #4

A structural engineer is called on an emergency basis to determine the structural integrity of a building that has been damaged. Unknown to the engineer, there has been damage to an underground gas line, which is leaking gas into the building. The engineer does not warn the building occupants or the people in adjacent buildings because he is unaware of the harm.

After the engineer leaves, a fire breaks out. A number of people are seriously injured. Several parties make a claim against the engineer for failure to warn of the unsafe condition that caused the fire.

Under which policy is this claim covered?



Pick One:

- Professional Liability?
- General Liability?
- Both?
- Neither?

Check with your broker...

Especially if you:

- Receive a contract with provisions that seem onerous
- Design anything that might be considered a product
- Maintain custody of any construction materials or property of others
- Provide extensive construction phase services
- Consider a new service not previously undertaken by you
- Are unsure of how your insurance protects you

Thank you for your time!

QUESTIONS?

This concludes The American Institute of Architects
Continuing Education Systems Program



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