

Are You Sure You Don't Have a Professional Exposure?



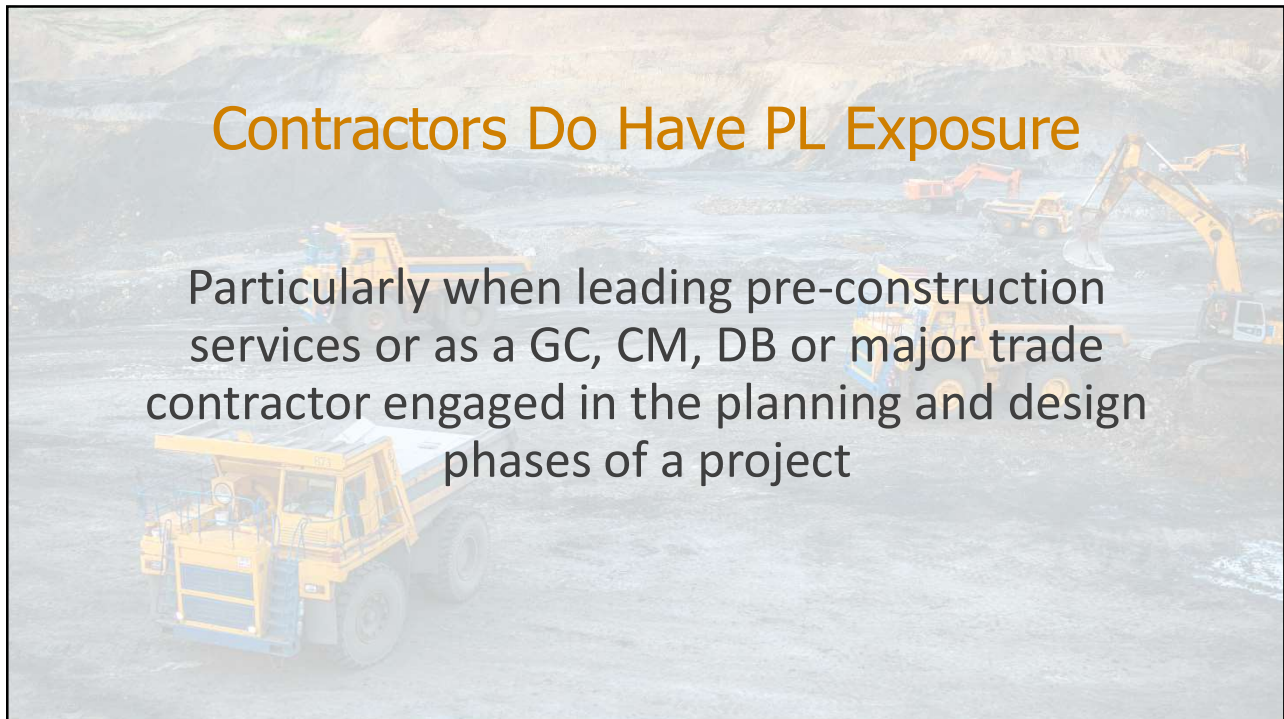
Are You Sure You Don't Have a Professional Exposure?



Presented May 4, 2023



Risk Management is important for
building and infrastructure
construction



Contractors Do Have PL Exposure

Particularly when leading pre-construction
services or as a GC, CM, DB or major trade
contractor engaged in the planning and design
phases of a project

Pre-Construction Services That Can Be "Professional" in Nature

- Review, refinement and understanding of Project Requirements, with Owner and design team
- Review of and coordination with the design team on design progress submittals
- Advice to the owner and design team in a "Design Assist" role
- Construction logistics, phasing, sequencing, and other project management activities



Pre-Construction Services That Can Be "Professional" in Nature

- Budgeting and cost estimating
- Advice on material and system selection and availability
- Value engineering and substitutions
- Input to and use of Building Information Modeling (BIM)



Professional Responsibilities in the Construction Phase

Delegated design of final engineering

Substitutions of materials and systems that may occur due to product availability and value engineering

Change order review, processing

Budget and schedule control including sequencing of trade contractors and related logistics and coordination issues

Use/misuse of BIM or other 3D technology for construction



Presented by



Berkley
Construction Professional
a Berkley Company

Peter Brooks
Senior Vice President

- 20+ years of professional liability underwriting experience in the Construction and Design industry
- Worked with a leading carrier, creating a successful ground-up construction professional/pollution market
- Provided key underwriting support for a worldwide insurance company
- Founding member of BCP in 2015.



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Chris McQueen, CPCU, ARM, CIC
Senior Vice President

- Chris is a founding member of Berkley Construction Professional and manages the Southeast underwriting team
- 25+ years of experience in the insurance industry with the last 20 years specializing in the Construction and Design Professional liability industry
- Active in the Chartered Property Casualty Underwriter Society (CPCU) and was recently awarded the Outstanding Course Leader distinction as an Institute Instructor



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Andrew D. Mendelson, FAIA
EVP, Chief Risk Management Officer

- Licensed Architect, firm principal
- 36+ yrs experience, large firm A/E
- PM, Market Leader, Contracts, CFO, Director of Practice Management
- AIA Documents Committee 2003-2017
- LFRT Legal Subcommittee 2000-2010
- ACEC Risk Management Committee 2014+
- Risk+Project+Practice Management = Firm Success

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Berkley Construction Professional

At Berkley Construction Professional, we transform uncertainty into opportunity so our clients can confidently build a better tomorrow. Our experienced underwriters deliver innovative, creative professional and pollution liability solutions for contractors and project owners. We respond quickly with customized coverages that fulfill the needs of our brokers and their clients. We offer practical risk management guidance and high-quality, results-oriented claims handling provided by our dedicated in-house claims professionals. Our mission is to relentlessly protect our clients' work, reputation and dreams.



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Workshop Outline

How to Determine Your Professional Exposure

How Insurance Responds

Services that Can Trigger Professional Exposure

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Workshop Outline

How to Determine Your Professional Exposure

How Insurance Responds

Services that Can Trigger Professional Exposure



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You might not have professional exposure **if**:

- You only signed a contract with the Owner as General Contractor **AND**
- The Owner hired the design team separately **AND**
- You built the job with no changes to the plans **AND**
- The project was delivered on time and on budget

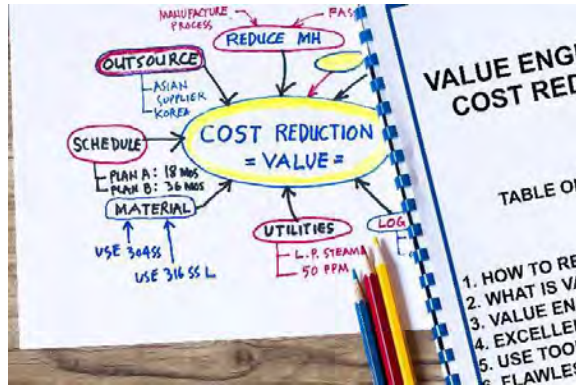


That's a lot of "ifs"...



But has an owner ever asked you to do any of the following?

- Value engineering or cost reduction
- Assist with any kind of BIM or 3D modeling software
- Design assist, design delegation
- Submittals, shop drawings
- Constructability reviews
- Scheduling, sequencing or coordination of trade subcontractors



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How about these?

- LEED Certification, other sustainable goal, "Green" design/construction
- Choosing and/or hiring trade and/or specialty sub trades and the associated vicarious liability of such trades
- Project management, program management, owner's rep services



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You probably have professional exposure if:

- You have performed any of these services at the request of the owner (whether or not it was in your contract)
- The job was subsequently delayed or over budget

Performance of such functions may likely determine that you have delivered professional services.

Then the owner could have grounds to sue you for a breach of those professional duties—and you may not even have known you had a professional exposure!

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An unendorsed GL form excludes coverage for professional services

- **CG 2234:** Construction Management E&O Exclusion – excludes BI/PD for all professional services on any project where the contractor is a CM
- **CG 2243:** Engineers, Architects or Surveyors Professional Liability – excludes BI/PD resultant from professional services rendered by any A&E that is employed by or performing work on contractor's behalf



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An unendorsed GL form excludes coverage for professional services

(continued)

- **CG 2279:** Contractors Professional Liability – excludes BI/PD for professional services only as they relate to providing A&E services to others or from A&Es you hire in connection with construction work that you perform. *(Limited CM cover, but no Design/Build cover for contractor or subs)*
- **CG 2280:** Limited Exclusion, Contractors Professional Liability – excludes BI/PD for A&E professional services provided to others in your capacity as an A&E. The exclusion doesn't apply in connection with construction work performed by or on behalf of contractor. *(Design/Build extension)*

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Contractors Professional Liability Exposure

So, the contractor's professional liability exposure is adequately addressed with CG 2279 or 2280, right?

Not quite...

CGL policies and endorsements only address BI/PD

But what about economic loss?

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Professional Liability Claims Generally Arise out of Economic Loss

- Professional services provided pre-construction
- Cost overruns as a result of scheduling/delays
- Owner's consequential damages
 - Loss of Use, Revenue
 - Loss of Financing
 - Loss of Reputation

In addition, GL policies typically exclude pollution and mold losses



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Proceed with care if you provide these services:

- Material, systems selection
- Constructability/logistics
- Use/manipulation of building information modeling (BIM)
- Responsibility (and vicarious liability) for subcontractors/trade consultants with design responsibility/delegated design liability
- Shop drawings
- Start-up and commissioning
- Quality control/code compliance

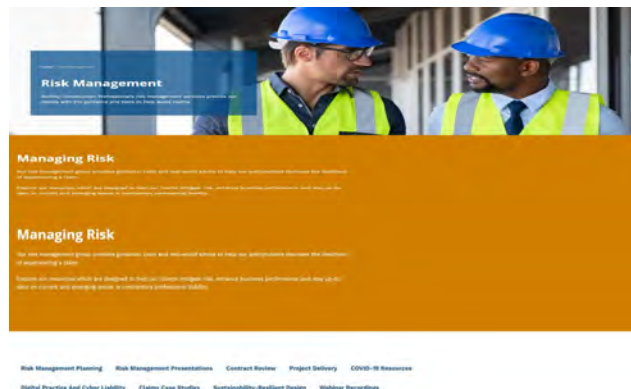


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Summary

- BCP is solely dedicated to serving the professional and pollution liability insurance needs of the construction industry
- BCP is at the forefront of educating and identifying potential professional liability hazards of the construction industry and providing innovative solutions to the industry



So if you're not SURE, why not give us a call?

Available Risk Management Resources on BerkleyCP.com

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Questions?

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