

# Risk Management Basics

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## SUMMARY

This Best Practice, adapted from a series of Best Practice articles that appeared in *AIArchitect*, describes seven steps for creating a quick-response risk management plan.

## THE BASIS OF LIABILITY CLAIMS

You don't have to practice architecture long before you encounter challenges to your work. These may come in the form of a simple disagreement over your opinions or the performance of your services, or they may come as a direct demand for compensation for alleged damages caused by your actions. Nevertheless, you will find that you are judged not only by what you do but when, how fast, and why you do it. And the services you provide will be scrutinized by other professionals who almost certainly will disagree with your actions.

To understand this challenging process and defend yourself through it better, it is helpful to understand what a claim is: the vehicle for launching an effort to recover alleged damages. Our professional liability insurance (PLI) policy protects us from claims against our services. These policies typically have deductibles that you must pay up front to activate coverage; they contain policy limits, which are the monetary amounts that the policy provides; and they have rules for preserving the coverage, to which you must conform to keep your coverage intact.

## WHAT IS A LIABILITY CLAIM?

PLI policies are known as *claims-made* policies. That is, policy coverage is triggered when you give notice that a claim has been made against you, and you are protected by the policy that is in effect at the time of the claim. This differs from your automobile insurance policy, which is triggered by the date the injury to a person or property occurs. Injuries done through professional services can be caused by an act or a failure to act. These can be caused by a design that may prove to be defective over an extended period of time. Insurers use the claims-made process because of the potential difficulties in

determining the date of origin of the action that precipitated the injury.

Because the claim triggers the policy coverage, it is important to define a claim to the extent that it can be sufficiently recognized. Accordingly, in most circumstances, an event must include three necessary elements for it to be considered a claim:

- **Identifiable injury to a person or property.** If injury cannot be proven, legally there is no cause for claim.
- **An allegation of wrongdoing.** It must be alleged that you caused the damages by your actions.
- **A demand for money or services** (sometimes referred to as "damages") as compensation for the alleged injury.

Under the terms and conditions of the typical insurance policy, however, insurance companies are generally content to acknowledge a claim against you if only the first two elements exist.

It is important that you respond quickly and appropriately when a claim is made. Your insurance company may require you to report claims on "first knowledge," and you have certain advantages when a claim is first made that may not sustain over time. Therefore, it is advisable to develop a quick-response plan that you can initiate immediately when a claim is made.

## SEVEN STEPS TO A QUICK-RESPONSE PLAN

1. *Report the claim to your insurer in accordance with the notice requirements of your PLI policy.* Policies have specific claims-reporting procedures, and you should become aware of your policy requirements and notify your insurer accordingly. Although insurance companies may accept a verbal notice of claim, it is advisable to document your notice in writing to avoid any misunderstanding later.

2. *Contact your preferred legal counsel and ask him or her to represent your firm in the claim.* If you do not know a lawyer who specializes in architect and engineer errors-and-omissions (E&O) defense, your insurance company will provide you with a “panel” attorney. This is a lawyer whom your insurance company has preselected based on qualifications. If you wish to use counsel that your insurance company has not preapproved, you must get your insurer’s prior consent. Lawyers with experience in architect E&O defense are relatively rare, so it is important to secure your representation early before someone beats you to the punch.

3. *Visit the project site, if appropriate. Gather necessary information and document relevant conditions.* Conditions that give rise to claims often mysteriously disappear or are corrected within a short time following an incident. It is wise to take photographs, make notes, and gather documents relating to the claim or circumstance while they are available. If necessary, have a third-party expert inspect the conditions and, in some cases, file a report. At a minimum, your own photographs can be beneficial. Wherever possible, coordinate these efforts with your legal counsel or insurer.

4. *Hire an expert.* For a claimant to prove that you have breached your professional duty, that party must generally hire an expert witness who has appropriate credentials. Likewise, for you to defend against the expert’s testimony, you will need a similar expert. In some cases, it may be appropriate for you or a member of your firm to serve as an expert in defense of the claim. If you do not know an architect who is qualified to be your expert, your legal counsel or your insurer can help you find one.

5. *Assemble your project team and plan how you will manage the claim within your office.* Designate who will serve as the primary contact within your office. If this person did not work on the project, he or she will need the assistance of project team members for knowledge of facts and to review and manage documents. People who worked on the project and have since left your firm must be contacted to obtain their knowledge of facts. You should maintain a good relationship with them even if you have to pay for their time spent giving testimony or providing information.

Someone in your office must be in charge of the claims management activities, including

- Assembling in-house documents
- Reviewing in-house documents

- Reviewing documents in other offices (owner, contractor, subcontractors, subconsultants)
- Developing a written chronology of events that led up to the claim
- Communicating with the insurance claims supervisor, legal counsel, and experts
- Attending depositions
- Giving depositions
- Making your documents available for review by others
- Being the “corporate representative” for your firm in legal proceedings

6. *Contact subconsultants and advise them of the claim.* Your consultants will be required to defend claims made against their portion of the work, and it is important that they follow a response plan as well. You should be certain their insurance carrier is involved early to ensure that they are managing their portion of the claim effectively.

7. *Assemble your documents, develop the chronology, and organize your defense effort.* One of the greatest expenses in claims management is personnel time. A large, complicated claim can absorb many labor hours that otherwise would be billable, and usually these expenses cannot be counted against your deductible. The more efficient your claims management is, the less it will cost you in time.

A little information and preparation will go a long way toward helping you to defend claims, and it is wise to become thoroughly familiar with the claims process.

### **About the Contributors**

Jim Atkins is a principal with HKS Architects. He is a contributing editor for *AIArchitect*, he serves on the AIA Risk Management Committee, and he is Chair of the *Architect’s Handbook of Professional Practice*, 14<sup>th</sup> edition Revision Task Group. Grant Simpson manages project delivery for RTKL Associates in Dallas and is the 2006 chair of the AIA Practice Management Advisory Group.

## RESOURCES

### More Best Practices

The following AIA Best Practices provide additional information related to this topic:

09.01.07 Emerging Risks in Practice

09.01.05 Controlling Exposure to Risk

09.03.03 Mediation for Conflict Resolution

### For More Information on This Topic

See “Managing Disputes,” by Frank Musica, Esq., Assoc. AIA, in *The Architect’s Handbook of Professional Practice*, 13th edition, Chapter 12, page 345. See also “Managing Risk in Fast-Track Projects,” by Grant A. Simpson, FAIA, and James B. Atkins, FAIA, in *The Architect’s Handbook of Professional Practice Update 2006*.



See also the 14th edition of the *Handbook*, which can be ordered from the AIA Bookstore by calling 800-242-3837 (option 4) or by email at [bookstore@aia.org](mailto:bookstore@aia.org).



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### Key Terms

- Practice
- Legal management
- Firm liability