

AIA CES INFORMATION

What's Covered, What's Not?:

Understanding The Value of Professional Liability Insurance

Credit: 1.0 Learning Unit (LU)

Provided By: Victor US

Provider Number: K048

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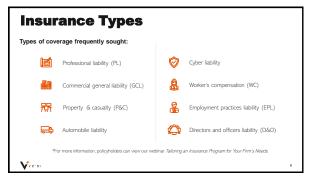


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Insurance Meriam-Webster Coverage by contract whereby one party undertakes to indemnify or guarantee another against loss by a specified contingency or peril. *Insurance is a risk transfer tool that allows and insured (policyholder) to transfer to an insurer (insurance carrier) certain types of risk inherent to the business, profession, or status of the insured.

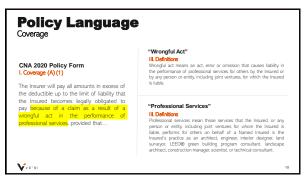
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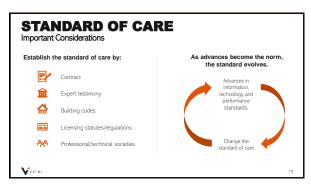


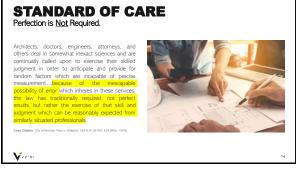
What's Covered, What's Not? Understanding the Value of Professional Liability Insurance











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Problematic Contract Language

Elevated Standard of Care



Sample Owner's Provision

Design Professional (DP) represents and warrants that its performance under this Agreement will at all times conform to the highest professional and ethical standards.

Design Professional (DP) warrants and represents that the Services and Work Product shall be free from Design Professional (UP) Warrants and represents that the Services and work Product shall be free from faults and defects of design, material and workmanship. This warranty shall extend to all necessary costs of repairs and replacements, as well as to all consequential damages resulting from such faults defects of design, material and/or workmanship. DP agrees it shall immediately take any and an measures required to saitsfy its warranty obligations to correct any faults and defects, without cost to Client. In the event DP fails to properly meet its warranty obligations stated herein, Client may perform all or part of same or obtain substitute services and charge DP for those costs.

If the standard of care is defined in your contracts, make sure the definition tracks with a standard of "reasonable skill and care. Avoid inadvertently elevating your standard of care."

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RED FLAG WORDS

Avoid elevating your standard of care.

- Highest
- Best
- First-Class
- Utmost
- Spedalist Fidudary

and similar terms (e.g. "highest standards in the profession" or "best professional standards") can increase the applicable standard of care and create

Don't make representations or warranties.

- Guarantee
- Represent
- Promise
- As/En/Insure
- Guard Protect

and similar term can impose a warranty or warranty-like obligation which increase the applicable standard of care and create coverage concerns.

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AIA Contract Language Standard of Care

AIA B101-2017 § 2.2

The Design Professional (DP) shall perform its services consistent with the professional skill and care ordinarily profesded by (DP) is practicing in the same or similar locality. under the same or similar locality. under the same or similar locality under the same or similar locality under the same or similar locality. Under the same or similar locality under the same or similar locality under the same or similar locality. skill and care and the orderly progress of the Project.



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AIA Contrac	t Language
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Right to Rely

AIA B101-2017 § 1.2

The [Client] and [DP] may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the [Client] and the [DP] shall appropriately adjust the [DP]'s services, schedule for the [DP]'s services and the [DP]'s compensation. The [Client] shall adjust the (Client]'s badget for the Cost of the Work and the [Client]'s anticipated design and construction mistestones, as necessary, to accommodate material changes in the Initial Information.

AIA B101-2017 § 3.1.2

.The [DP] shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and meliness of, services and information furnished by the [Client] and the [Client's] consultants...].

AIA E204-2017 § 2.5.2

[DP] shall be permitted to rely on the manufacturer's or supplier's representations and shall not be ponsible for any damages arising from failure of the material or equipment to perform in accordance with the manufacturer's or supplier's representations.

Note: Contract language should be drafted with the as

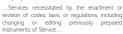
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AIA Contract Language

AIA B101-2017 § 4.2 & 4.2.1(3)

The [DP] may provide Additional Services after execution of this Agreement without invalidating the Agreement, Except for services required due to the fault of the [DP], any Additional Services provided in accordance with this Section 4.2 shall entitle the [DP] to compensation pursuant to Section 11.3 and an appropriate adjustment in west DDN's accordance.





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Policy Language Pollution Incident Liability

CNA 2020 Policy Form

I. Coverage (A) (2)
The Insurer will pay all amounts in excess of the deductible up to the limit of liability that the Insured becomes legally obligated to pay because of a claim as a result of a pollution incident arising out

- The Insured's activities or the activities of any person or entity for whom the Insured is liable;
 A covered location; or
 A non-owned disposal site,

"Pollution Incident"

- Pollution incident means the actual or alleged: discharge, dispersal, seepage, migration, release or escape of pollutants into or upon
- release or escape of pollutants into or upon land, the atmosphere, or any waterourse or body of water; or 2. inhalation, of, ingestion of, contact with, exposure to, existence of, growth or presence of fungi or microbes. Which results in bodily injury or property

damage

If the contract calls for pollution liability coverage requiring more robust coverage, a separate policy may be necessary.

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Policy Language Supplemental Insuring Agreement – Rectification Expense	
CNA 2020 Policy Form I. Coverage (B) (2)	
The Insure will reimburse the Named Insured for rectification expense in excess of the deductible and up to the applicable design defect circumstance limit of liability provided that (2) The Insured cemonstrates to the Insurer's satisfaction that there is a design defect which is reasonably likely to give rise to a claim covered under this Policy: (4) Prior to incurring any rectification expense, the Insurer consents in writing to such rectification expense Such rectification expense will be reimbursed within ninety (90) days of the Insurer d's submission of a proof of loss of such rectification expense which was consented to by the Insurer	
$\label{thm:proposed_prop_prop} $$ For more information, visit www.victorinsurance.com/us/solutions/design-construction/architects-enneers/resources/understanding-the-value-of-rectification-coverage.html$	
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	y Language tary Payments		
CNA 2020 Po II. Supplementa Except as note	ry Payments	ion are at the	Insurer's costs, are not subject to the
deductible, and	are in addition to the limits of liability	shown on the D	eclarations.
8	Pre-claims Assistance	A	Disciplinary Proceedings
益	Crisis Event Expenses	ė,	ADA, FHA, and OSHA
â	Defendant Reimbursement	6	Dodd-Frank Fees and Expenses
*For more informa	tion, policyholders can view our webinar <i>Insurar</i>	nce for Design Profe	essionals – Professional and Cyber Liability Coverages.
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Policy Language Risk Mitigation Incentives CNA 2020 Policy Form V. Limits of Labrilly (E) The Insured may be eligible for a Risk Mitigation Credit or an Early Resolution Credit for each claim. In no way shall this section be construed to afford more than one such Risk Mitigation Incentive per claim. (1) Risk Mitigation Credit. The insurer will reduce the Insured's deductible for a claim by 50%, up to \$25,000, if within sixty (EQ) days of the date of the Insurer sequent, the Insured may be insured scientify not to the Insured surface in the Insured scientifies to the Insured screen are secondary and the Insured scientifies to the Insured screen reasonable satisfaction, the insured screen contained in the Insured scientifies to the Insurer's reasonable satisfaction. He insuffers only these (3) of the following conditions... Its outlined in the policy]. (2) Early Resolution Credit. If negotiation or mediation of a claim results in a resolution of such claim within one hundred and eginy (183) days of the time it was reported to the Insurer's a Claim, and such resolution includes an indemnity payment by the Insurer's the deductible applicable to such claim will be reduced by 50%, up to \$10.000.



Policy Language CNA 2020 Policy Form W. Exclusions The Insurer will not defend or pay under this Policy for any claim: Contractual Liability W. Exclusions (8) arising out of: (1) The Insured's actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees, or (2) Any actual or alleged liability of others that the Insured assumes under any oral or written contract or agreement. However, this exclusion shall not apply to the Insured's liability that exists in the absence of such contract or agreement.

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Problematic Contract Language



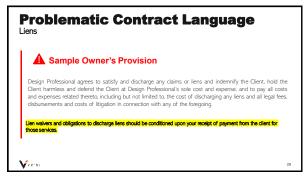
▲ Sample Owner's Provision

To the fullest extent permitted by law, Design Professional (DP) must defend, indemnify and hold harmless To the fullest extent permitted by Jav. Design Professional (DP) must defend, indemnify and hold harmless Client, its affiliates and their respective present, former, and future shareholdiers, personnel, successors and assign (collectively indemnified Parties) against all damages, losses, costs, expenses (including attorneys' fees, costs and expenses and other liabilities arising out of any claims, demands suits or causes of action arising out of or in connection with this Agreement, (including claims of negligence by the personnel of either party) which result or are claimed to result in whole or in part from; (i) any act or orbission of DP, its affiliates or its or their personnel. (ii) any breach of this Agreement by DP, its affiliates or its or their personnel or (iii) the violation by DP, its affiliates or its or their personnel of any law or regulation. Contractor will not be relieved of foregoing obligations of by any allegation of negligence or willful misconduct by Client, its affiliates or its or their personnel.

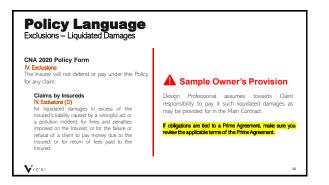
Indemnity obligations should be limited to liability for the damages caused by the firm's negligence, protect the client and client entity, and explicitly disclaim a duty to defend.

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AIA B103-2017 § 8.1.3	
The [DP] shall indemnify and hold the [Client] and the [Clients] officers and employees harmless from and against damages losses and ludgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the vichitect. It is employees and its consultants in the performance of professional services under this Agreement. The [DPs] obligation to indemnify and hold the (Client) and the (Client's) officers and employees namiless does not include a duty to defend. The [DPs] duty to indemnify the (Client) under this Section 8.1.3 shall be limited to the available insurance overage required by this Agreement.	✓ Limited parties ✓ Limited to negligence ✓ No duty to defend



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AIA Contract Language Liquidated Damages AIA B101-2017 § 11.10.2.2 The [Client] shall not withhold amounts from the The (Lient) shall not withhold amounts from the (DP)'s compensation to impose a penalty or liquidated damages on the (DP), or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the (DP) agrees or has been found liable for the amounts in a binding disease or the contract of the contraction of dispute resolution proceeding. Contract language should be drafted with the assistance of the Firm's attorney so it can be tailored to the Firm's sit **V**entas 31

Policy Language Exclusions – Additional Insured

CNA 2020 Policy Form

IV. Exclusions
The Insurer will not defend or pay under this Policy for any claim:

Claims by Insureds
IV. Exclusions (A)
Brought by the Insured or on the Insured's
behalf against another Insured covered by
this Policy.

A Sample Owner's Provision

Design Professional shall maintain, at its expense, insurance in the minimum amounts set fourth below, insurance in the minimum amounts set fourth pelox, listing Client as an additional lissured under its Professional Liability and Umbrella liability policies. The Additional Insured status will apply to both ongoing and completed operations. Insurance certificates indicating at least the required minimum coverage will be provided to Client prior to commencement of the Sentions.

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Problematic Contract Language Insurance Requirements

A Sample Owner's Provision

Professional liability or Errors & Omissions insurance with limits of not less than \$3,000,000 each occurrence and annual aggregate, covering all acts, errors, omissions, negligence, infringement of intellectual property (except patient and trade secret) and network risks (including coverage for unauthorized access, failure of security, breach of privacy perils, as well as notification costs and regulatory defense) in the performance of services for Client or on behalf of Client, hereunder.

Professional liability insurance coverage is provided on a claims-made basis, so if you switch insurance carriers, are being acquired, or winding down your business, inquire about prior acts coverage and extended reporting periods.

AIA Contract Language Insurance Requirements AIA B101-2017 § 2.5 The [DP] shall maintain the following insurance until termination of the Agreement. If any of the requirements set fourth below are in addition to the types and limits the [DP] normally maintains, the [Client] shall pay the [DP] as set forth in Section 11.9. AIA B101-2017 § 2.5.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than (\$_____) per claim and (\$______) in the aggregate. Contract language should be drufted with the assistance of the Firm's attorneyso it can be tailored to the Firm's situation. Years1

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