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Business Insurance Solutions

Design and Construction PI



Over the last three years of the hardening PI market, we have heard on countless occasions, particularly recently, that:

"Our client does not design anything, there is no risk so they don't even need PI? It is too expensive so, they're going to leave it!"

With most firms now paying at least double or triple what they did in 2017, we completely understand your clients' frustrations. They have run claim-free, worked in high-risk sectors for years and never had a problem but unfortunately, this doesn't mean that the inevitable and unknown couldn't happen.

We are all human and can make mistakes if we don't make mistakes ourselves, we can be drawn into others, which we'll explain in this brochure.

So, as a contracting firm who do not undertake designs, where are the risks?

Duty to warn

This is an area of PI not many know exists until they read through a terms and conditions document, a PI wording or are hit with a claim.

We have seen this happen to two companies in two different claims and both were hit with large defence costs and settlements. On the face of it, you wouldn't have expected to be paid by their insurers.

After reading the initial notification, we believed that wouldn't go anywhere, however, after countless letters and reports the claim reached adjudication.

In laymen's terms, by law, a specialist contractor whether this is a groundwork on a job, piling contractor or another specialist. they are considered specialist professionals in their field and have a responsibility to highlight defects in designs they follow or any dangerous aspects of the works they undertake for a client.

“Contractors owe a duty of care to warn of design defects; and/or a duty to warn should be implied into construction contracts”

You wouldn't think of it like this until you spot an obvious error and ask the engineering consultant/architect to amend their drawings. In one such claim, the piling contractor dug their excavation the drawing they worked from was miscalculated by a few millimetres that resulted in subsidence.

This can even apply to cladding firms fitting panels that are inadequate for the job they are only contracting on, and have no responsibility for the design or materials being used.

Defence costs

It is common to see construction PI claims incur large defence costs, particularly with large contracts for top-tiered contractors.

On these sites, there are various specialist sub-contractors, whilst the cause of the loss is identified, usually, all parties on the job will be notified while the matter is investigated. Each contractor will then notify their PI insurers and some will arrange legal representation which, comes with a cost.

Contingent Design & Build

Contingent design and build is where the contractor takes on the contractual responsibility for the design but subcontracts out such work to others. The design work would be completed by third parties, usually architects and engineers who would carry their professional indemnity. They will agree to accept some liability in the contract/terms and conditions and also accept responsibility for any errors and omissions which are a result of the design.





Tweaks, Adjustments and Hidden exposures

Similar to Duty to Warn, one could argue this type of exposure is more transparent. Frequently contractors who offer no design services are being asked to carry professional indemnity. A question they often ask is

"What risks do I face if I offer no professional services?"


The answer to some of the more hidden exposures :

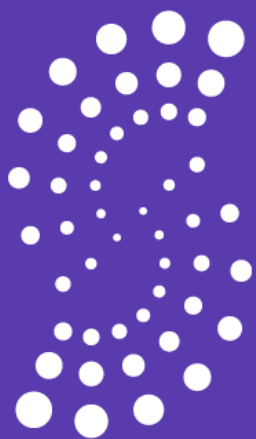
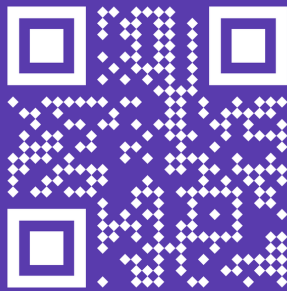
1. Design alterations: any firm involved in construction will nearly always need to tweak the plans a little. You could call this "buildability" and the problem is that an alteration here could have a knock-on effect, thus causing a real problem later in the job. A real liability can arise if plans are altered.

2. Design checking services: firms, formally or informally, double-check designs to ensure they work. Doing so can prevent future claims because due diligence has been carried out.

3. Temporary works: scaffolding, access roads, perimeter fencing, storage facilities are often part and parcel of a contract but are not designed and left to the contractor. Such works can be expensive and go wrong leading to further expense and consequential loss.

4. Unsuitability of materials: Contractors may erroneously utilise materials that do not meet the specifications and have not been agreed upon. This can be very expensive if the materials prove not to be fit for the purpose intended.





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