

A photograph showing two construction workers in silhouette on a roof. One worker is kneeling on the left, and another is sitting on the right. They are working on a large, flat roof structure under a clear blue sky. The image is partially overlaid by a dark blue vertical bar on the left side, which contains the title text.

Product and Process Design Liability: The Missing Construction Piece

Your construction crew is working on erecting a new manufacturing facility, complete with specialty manufacturing equipment. Does your professional liability policy cover the installation of this equipment?

In most cases, unfortunately, the answer to this question is no.

Every contractor in business today has professional liability exposures. Therefore, every contractor has– or should have – professional liability insurance. Simply stated, this insurance covers losses that result from errors in the provision of professional services. Professional services for a contractor can be defined in many ways, including design services and construction management, project management and incidental professional services that may result from the realities of directing activities on a job site. Such errors can lead to increased design and construction costs and problems after construction is completed, but thankfully, the professional liability policy is meant to cover such losses. Additionally, an often overlooked feature of contractors’ professional liability insurance is that it can cover losses that result from project delays caused by scheduling errors.

THE GRAY AREAS

Yet what many contractors and project owners do not have – and may not realize they need – is insurance covering the components and products installed as part of your project. Suppose there is an error in the design or manufacturing of equipment. In that case, whether incorporated into the building itself or installed for use in a facility, such as a manufacturing facility or hospital, there likely is no coverage under a contractor’s professional liability policy. These policies contain specific exclusions that apply to such “products.”

There are potential gray areas, such as specially-designed components that are incorporated into the structure and that are not mass-produced. However, in this instance your professional liability policies would cover the design and professional services provided during the installation of these components.

The same is not true if, for instance, your construction team is installing manufacturing equipment in a new production facility. The process design and the specially designed equipment itself are not considered part of the construction project. Therefore, the design and installation of the equipment are not covered under contractor professional liability policies.

This is an important distinction and deserves careful consideration when planning your risk management approach.



WHAT IS COVERED?

All of this begs the question, is the building you are working on considered a product? Yes, it is, but it is a covered part of your work under the professional liability policy. Contractor professional liability policies are meant to provide coverage for your work product and should provide an exception to the product's exclusion to allow for this. This also is why specially-designed building components may be covered, such as certain earthquake roller systems designed to ensure the safety and security of buildings in California.

The distinction between items specifically designed for your project and other components, products and equipment is critical.

WHAT DO YOU NEED?

It pays for contractors and owners to have a conversation with their brokers about product liability and what is covered, or not, by their professional liability policy. With each project, you should be considering:

- What activities and products are covered under my current policy?
- What exposures potentially are not covered from a process or product design perspective?

It is paramount that you understand and address the risks not covered by your professional liability policy.

PROTECTION GOING FORWARD

Every contractor needs to understand all the terms and conditions of their professional liability policies, especially what is not covered. In most cases, product and process design liability exposures are not included.

NFP recommends that contractors and owners talk with their brokers and insurance carriers about this topic specifically. Having contractor professional liability coverage is an essential start to protecting your firm and your projects.

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