Practice Notes Webinar Series

Webinar 2 – Part 3: Avoiding and dealing with Professional Indemnity Claims

July 2021
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Introduction

- Purpose of Practice Notes 11, 14 and 43
- Avoiding PI Claims (Prevention)
- Common Causes
- Dealing with PI Claims
- Professional Misconduct
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Purpose of practice notes

Practice Note 14: To assist members in gaining a better understanding of good procedures to follow to prevent PI claims

Practice Note 11: To advise consulting engineers of the procedures and process followed when faced with a professional indemnity claim

Practice Note 43: Some common causes of PI Claims
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- Prevention
  - Communication
  - Technical Procedures
  - Human Error
  - Financial Implications
Useful definitions

• **Good Industry Practice** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

• **Reasonable person**: a fictional person with an ordinary degree of reason, prudence, care, foresight, or intelligence whose conduct, conclusion, or expectation in relation to a particular circumstance or fact is used as an objective standard by which to measure or determine something (as the existence of negligence)
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◆ Common Causes

1. Consulting Engineers signing contracts that they haven’t read

2. Construction Management: Specifically taking on the role of project manager which includes scope of work that is not necessarily covered by the PI policy

3. Fee Recovery: The Client refusing to pay outstanding invoices due to a claim from their side of consultant negligence (there must be a claim from the Client for negligence in order to be covered by the PI policy)

4. Under-quoting for a job, especially by young unexperienced engineers, resulting in rushing the work and using less experienced resources

5. Doing the work of contractors: allowing the Client to insert contracting scope into the consultant appointment for example as a subcontract.
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Managing a PI Claim

Continue contractual responsibilities

Dealing with mistakes

Notify broker

Alternative Dispute Resolution

Communicate often with your broker

DO NOT admit liability
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◆ Actions taken by your insurer

• Insurer will appoint an Attorney and a Loss Adjuster if required
• You are required to assist in a claim at your own costs
• You will be reimbursed for expert advice that you may give
• You will be compensated for costs incurred in providing evidence in court
• Legal costs will be paid by Insurers as part of the cover of the insurance policy
• You will only be liable for payment of your excess should you lose the claim
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- **Professional Misconduct**
  - Consult your broker on how to respond to any allegation of professional misconduct
  - ECSA will investigate
  - Examples:
    - Not to properly review documents but still sign off
    - Not disclosing design errors
    - Hiding project shortcomings to protect your client
    - Knowingly giving wrong evidence
    - Giving or taking bribes
Conclusion

• The best way to deal with a PI claim is to prevent it from happening
• When it does happen, DO NOT admit liability, rather contact your broker
• Always act professionally
‘Your Partner in Enabling Consulting Engineering Excellence’