

# Coverage Connection

How professional liability and general liability interact in covering contractors.

By Timothy Prosser

C

ontractors professional liability and general liability insurance provide different but complementary protections for construction firms. Each policy form has nuances that are important for agents and their insureds to understand.

The construction industry is a diverse sector with many different roles, each with their own liability exposures. For example, general contractors and design professionals are supported on projects by a wide variety of specialist subcontractors. Liability exposures vary depending on the project delivery type and the specific responsibilities of each entity in a construction project.

As a result, insurance programs tend to be assembled one piece at a time, ideally minimizing coverage overlap and deficiencies. To achieve this goal, it is crucial for agents to have a clear understanding of an insured's exposures and business needs, as well as which policies can offer protection for them.

General liability insurance is a standardized form of coverage that applies to bodily injury and property damage. General liability policies typically have endorsements that exclude liability arising from professional services. Some of these endorsements, however, contain meaningful coverage give-backs that can apply to certain situations in construction projects.

Meanwhile, contractors professional liability insurance offers broad coverage for direct and vicarious professional liability for a construction firm's services. Contractors professional liability is intended for general contractors, specialty trades, construction managers and design-builders. It typically provides coverage for first-party and third-party losses arising out of professional services delivered during construction. Unlike general liability, contractors professional liability is not standardized and therefore the policy form and coverages vary from insurer to insurer.

## General Liability Endorsements and Exclusions

Most general liability policies contain one or more of three standard ISO endorsements that limit or exclude coverage for professional services:

**CG 22 43.** This ISO endorsement excludes professional services rendered "by or on behalf of" the insured, involving engineers, architects and surveyors, and any supervisory activities related to those roles. It extends to a wide variety of services and is the strictest exclusion for construction firms.

**CG 22 79.** This is commonly referred to as the "construction means and methods" endorsement. While this endorsement does exclude professional services along the same lines as CG 22 43, it makes an exception for self-performed services that are "within construction means, methods, techniques, sequences and procedures." Those means and methods include setting up cranes, scaffolding, temporary bracing or shoring, and concrete formwork. This endorsement generally does not provide coverage for economic damages or vicarious liability from a third-party subconsultant but typically does offer a meaningful—if narrow—give-back to insureds.

For example, if a contractor erects scaffolding improperly and a third-party loss occurs, there is an avenue for coverage under this endorsement. If an insurer agrees to include this endorsement in the general liability policy, they will underwrite to this and price it according

to their appetite.

**CG 22 80.** This endorsement clarifies coverage for design-build professional services. While the endorsement still excludes professional services involving engineers, architects or surveyors, as well as the insured's self-performed design-build activities, it does not typically exclude professional services rendered by a design subconsultant. Even though economic damages are not covered, a general liability policy with this endorsement may provide a duty to defend if the named insured is brought into a claim because of professional services rendered by their design subconsultants. Again, it's a narrow exception but important to know.

Both CG 22 79 and CG 22 80 serve different purposes, so insureds should not consider one to be better than the other. Whether one or more of these endorsements should be added to a general liability policy depends on the insured's exposures, construction activities and subcontractor relationships.

## Professional Liability Exposures

Here are three common professional liability exposures that can arise for contractors:

### 1|

**Surveying.** Construction site layout and staking are surprisingly frequent sources of professional liability claims. For example, a general contractor is hired to build an overpass or bridge and, as part of that scope, hires a surveyor to confirm control points for foundations and footings. If the survey was performed negligently, the contractor could incur vicarious liability and economic losses, including project delays and additional expenses to correct errors. A general liability policy generally will not address the professional liability exposure arising from surveying, with or without an endorsement.

### 2|

**Design assist.** When there is a specific contractual responsibility for the contractor and design team to collaborate, usually determined in pre-construction discussions to make the process more efficient, this activity can lead to professional liability claims. A common example is the choice of product selected in the construction project, such as roofing. If the roofing material chosen is below the standard required by code, that is a professional error.

### 3|

**Delegated design.** While this seems similar to design assist, delegated design exposure has a few key differences. The design team on a project may delegate the design scope to a downstream specialist subcontractor. For instance, a project requires the design and construction of a retaining wall. The project engineer declines to perform this work, so the general contractor hires a specialist to erect the retaining wall. This can create a professional liability exposure for the trade contractor that installs the wall.

Other professional activities that general liability policies are not intended to cover fall into a category known as "construction management." These activities encompass: value engineering, which is making projects less expensive for the project owner; field changes to design, such as substitutions or placement of building components; oversight, direction, control and sequencing of trade contractors and other subcontractors; and advice and recommendations on the selection of design firms and specialty trade contractors.

## Benefits of Supplementing with Contractors Professional Liability

Because general liability insurance policies typically exclude construction management activities, such as supervision and inspections, these can be significant exposures from a professional liability perspective. To complement general liability coverage and provide financial protection, contractors professional liability insurance is available.

Contractors professional liability insurance is a third-party coverage that protects construction firms against claims of professional negligence. However, it also offers first-party coverages. One of the main first-party coverage grants is the rectification of professional defects, which is not triggered by a third-party claim.

For example, a general contractor or design-build contractor on a warehouse project is contractually responsible for the warehouse's fire protection system. After discovering an error due to professional negligence, the contractor realizes the problem with the system will prevent the issuance of a certificate of occupancy and cause delays in project delivery. The contractors professional liability policy's rectification coverage lets the insured put together a fix and report it in a timely manner to the insurer. The insurer considers the costs and benefits of paying to correct the error to prevent a third-party claim in the future.

Protective indemnity is another first-party coverage that offers a remedy after construction is completed. For example, the insured general contractor hires a professional subcontractor, whose negligence results in a loss for the insured. The general contractor spends its own money to correct the errors and sues the subcontractor for reimbursement. If the subcontractor's own professional liability policy is insufficient to cover the insured's loss, protective indemnity coverage can pay the general contractor.

The complex exposures of construction contractors and the differences in general liability and contractors professional liability policies are challenging to understand. It's important to note that both policies work together to mitigate contractors' exposures.

*Timothy Prosser (timothy.prosser@rtspecialty.com) is assistant vice president at RT Environmental & Construction Professional (rtspecialty.com).*

*RT Environmental & Construction Professional (RT ECP) is a part of the RT Specialty division of RSG Specialty, LLC. This article is provided for general information purposes only and does not constitute legal or professional advice. No warranties, promises, and/or representations of any kind, express or implied, are given as to the accuracy, completeness, or timeliness of the information provided in this article. No user should act on the basis of any material contained herein without obtaining proper legal or other professional advice specific to their situation.*

*This article is provided for educational and informational purposes only. It is not intended to be relied upon as legal or professional advice. Every insured's circumstances will differ, and all coverages are dependent on each individual insured's unique circumstances as well as applicable policy language. Whether an accident or other loss is covered by insurance is determined by the specific facts of the loss and the terms and conditions of the actual insurance policy or policies involved in the claim. References to typical terms or provisions of coverage are illustrative and may not apply to a specific situation. Please consult a legal or insurance adviser regarding specific insurance needs.*

previous page: [ISTOCK.COM/PHOTOESTELAR](https://www.istock.com/photoestelar)

# Liability Risk in Project Delivery

Construction projects are generally delivered to project owners in one of a few forms: design-bid-build, design-build, design-assist and construction manager at risk. Professional liability exposures differ in each method:

**Design-bid-build.** Under this model, a project owner first contracts with a design firm, which draws up the plans and specifications for the project. The project is then put out for bids by general contractors. The owner has separate contracts with the design and construction entities, and liability for errors in design remains largely with the design professionals, unless the general contractor changes or modifies the plans and specifications of the project design.

**Design-build.** In this arrangement, a project owner contracts with one entity, a design builder, which takes complete responsibility for the design and construction of the project. A design builder can be a firm with its own architects, engineers and construction professionals; a project-specific joint venture between separate design and construction companies; or, more commonly, a general contractor that subcontracts with architects and engineers for the design work. Construction often begins with less-than-complete design plans and specifications, making clear communication essential between the design and construction professionals. Liability for design errors resides with the design builder, making risk control and risk transfer a significant consideration for the design builder.

**Design-assist.** This form of project delivery is intended to increase collaboration before construction between the design professional, general contractor and specialty trade contractors. Under a design-assist delivery, the general contractor and specialty contractors are expected to assist in the preparation and improvement of the project design from a constructability standpoint. While this project delivery method can be used in any type of project, it often is employed on unique or complex projects where specialized expertise in mechanical, electrical or plumbing construction is a major element of the build.

**Construction manager at risk (CMAR).** Under the CMAR delivery method, the project owner has two contracts, one with the design professional and the other with a general contractor. The contract with the general contractor is typically subject to a guaranteed maximum price and the contractor acts as the construction manager, sharing the risk of meeting the budget and schedule of construction with the owner. Construction management activities include pre-construction services, hiring and managing subcontractors, inspecting work for flaws and quality, providing direction to subcontractors, scheduling and sequencing construction, and managing project budgets. Professional liability can result from errors in these acts.—TP