

## Are You Covered for All Your Service?

What scope of services does your firm offer? Are you “plain vanilla,” or “rocky road”? Do you offer services outside of what an underwriter typically expects from an architect or engineer? How well does your professional liability insurance (PLI) sync up with your services? While most architects’ and engineers’ operations fit well within the scope of professional services covered by their PLI policies, some firms offer additional services that may not be covered. Particularly in this economy, some may be looking to expand their scope of services as an additional source of revenue. Whether your firm has already ventured beyond the norm or is just now looking to do so, it’s important to be sure your PLI coverage is broad enough to cover all the components of your business model.

When it comes to PLI policies, one size does not fit all. In this article we look at some atypical services and some standard policy wordings. We also discuss what you should do so that your policy fits your operations.

### Some Atypical Services

Some firms offer pre- or post-design services that exceed the norm. Others offer pieces of the puzzle that do not normally stand alone. And some of these services may not be covered by their PLI policies.

#### Pre-Design Services

Certain types of owners prefer to commission studies to help them determine the need for new facilities. Hospital corporations, educational conglomerates, and hotel and restaurants chains are very deliberate in planning construction. They give serious consideration as to whether a new facility will meet a community need. If there are already enough psych beds or hotel rooms or training facilities in a particular area, building another will likely not be profitable.

Some firms provide pre-design services, helping to analyze whether there is a need for a new facility in a particular area and whether the need is sufficient to create the potential for turning a profit.

What if your analysis indicates a need, but it turns out there is too little traffic, and the business loses money? Or what if your analysis indicates no need, but a competitor builds a similar facility and makes a bundle?

#### Post-Design Services

Some firms offer continued support after a new facility has been built: maintaining a bridge, monitoring a spring-water bottling plant, or handling other continuing operational needs.

Your firm’s design services were successful, and your client wants ongoing help with its operations. You comply by providing technicians to monitor the system.

What if a technician makes an error that results in contamination of cases of bottled water? What if there’s a costly recall?

#### Data Entry for Business Information Modeling

Business information modeling (BIM) is now a required component in some contracts—for example, with the General Services Administration (GSA). But not all firms have BIM capability. When BIM is an adjunct of the design services your firm provides, most underwriters consider it to be part of your professional services, a tool just like a drafting table.

But what if another firm without in-house BIM capability must provide BIM deliverables? What if that firm hires your firm to translate its two-dimensional design to three dimensions? Your firm is not designing the project, just translating another firm’s design into BIM software.

What if your data transfer results in a design conflict that is not discovered until the project is well underway? What if the teardown, redesign, and reconstruction are costly and lead to a lawsuit?

#### And Other Services

The foregoing examples are not typical services for most architect and engineering firms, but some firms perform these services for some of their clients. Other examples include management consulting, economic forecasting, and graphic design. In the broadest sense, we think these are all professional services, but not every insurer may agree with that perspective. And certainly not every PLI policy will respond if things go wrong and a claim is filed.

## Typical Policy Wordings

PLI policies are not standardized. Various insurers offer different descriptions of what constitutes a professional service, and each definition of professional services governs what that policy will cover. Some are broader than others.

### Common Policy Language

All PLI policies include descriptions of what constitutes professional services. For example, one policy uses this definition:

"Professional Services" means those services specifically described in the application which you are legally qualified to perform for others, including but not limited to your "Professional Services" as an:

1. architect or engineer;
2. landscape architect, land surveyor or planner;
3. construction manager; or
4. interior designer/space planner.

Another policy provides a similar definition:

Professional services means those services that the Insured is legally qualified to perform for others in the Insured's capacity as an architect, engineer, land surveyor, landscape architect, construction manager, planner, interior designer, scientist, technical consultant, expert witness or as defined by endorsement to the policy.

Perhaps the biggest hurdle in both of these definitions is the words "legally qualified to perform for others." This might exclude such services as operating a software system or helping to analyze the need for a particular type of facility. The former would likely be included as part of an in-house project, but not as a standalone service; the latter may not be covered at all. What would be covered by these policies tracks with the professional licenses held by the architects and/or engineers in your firm. There may not be much wiggle room.

### Broad Policy Language

Other PLI policies include broader language. For example, one policy uses this definition:

Professional services means those services that you perform for others on behalf of a Named Insured in your practice as an architect, engineer, land surveyor, landscape architect, construction manager, scientist, or technical consultant.

This definition is significantly broader. While the services still must be "professional," they are not tied to legal qualification. Further, it adds "scientist" and "technical consultant" to the mix.

### Your Firm's Policy Language

The extent to which your firm is or is not covered is in the definition of "professional services," both in the basic policy form and as amended by any endorsements to your policy. If you are not certain how your PLI policy defines professional services, you should contact your broker or insurer to determine the details.

And if it appears that some of your services are not covered, you should ask your insurer to amend the definition to include those additional services. The insurer may or may not be willing to do so. If not, it may be time to find a new insurer.

## The PLI Application

PLI policies are based on the applications for coverage. These applications can range from a couple of pages to tens of pages. The applications are sufficiently generic enough to be used by many different types of firms with services that may not all be quite the same. To be sure the underwriter really understands what your firm does and what its coverage needs are, it is important to provide a description of any unique or different services in a supplement to the application.

If your firm is providing anything beyond typical architectural or engineering services, describe in detail the types of services being performed. Be sure when you receive a quotation from your insurer that the quote specifically addresses whether it includes coverage for the specifically described services. Otherwise, your insurer may not intend coverage for those extra services, and you may be left without the protection your firm truly needs.