

ELECTRICAL AND ELECTRONICS ENGINEERS PROFESSIONAL LIABILITY INSURANCE INSIGHTS

Who (Else) is Covered Under Your Professional Liability Policy?

When does a Professional Liability policy cover individuals that work for an insured, an insured's related entities (such as subsidiaries), and/or the insured's contracting partners?

- Individuals working for an insured and an insured's related entities are not always automatically covered, meaning review of the policy's Declarations and/or definition of "insured" is crucial.
- Professional Liability policies do not typically provide coverage for an insured's contracting partners, but an insured may accomplish this by requesting coverage via endorsement for a risk-transfer obligation (such as an agreement to defend and indemnify) between the insured and its contracting partner, or (albeit rarer in the Professional Liability context) naming the contracting partner as an additional insured.

How are an insured's related individuals and entities covered under a Professional Liability policy?

- The first named insured is listed on the Declarations page. An insured may also request that other related entities be scheduled as named insureds. Typically, this is accomplished by attaching an endorsement to the policy that lists these entities as named insureds in addition to the first named insured. The policy's definition of "insured" may also include an insured's subsidiaries and other related entities.
- With respect to individuals who work for the insured, it is very common for past and present employees, partners, members, officers and directors to be included in the definition of "insured," with the caveat that those individuals' liability must arise from work performed for the insured.
- Automatic insured status for an independent contractor performing work on behalf of the insured is uncommon. While some "insured" definitions include these independent contractors, many do not—and will not—unless the policy is specifically endorsed to cover them.

How are an insured's contracting partners covered under a Professional Liability policy?

- In General Liability policies, a subcontractor's policy commonly includes additional insured endorsements, under which a general contractor will be covered as an additional insured if: 1 the subcontractor agreed in writing to name the general contractor as an additional insured and/or the general contractor is specifically scheduled as an additional insured; and 2 the general contractor's liability arises out of the subcontractor's work. An additional insured has all of the same rights under the policy as any other insured.
- Conversely, Professional Liability policies rarely have additional insured provisions, and especially not "blanket" ones. Thus, if an insured professional contracts with an owner, general contractor or developer on a project, one cannot assume that those entities will receive coverage under the insured's Professional Liability policy. In part, this is because, given the specific nature of a professional risk, those underwriting such a policy are unable to extend coverage to an entity whose risk exposure is unknown to them.
- Most Professional Liability policies exclude from coverage liability assumed by the insured under contract (including hold harmless and indemnity agreements) unless the insured would have been liable in the absence of the contract. While also uncommon, some Professional Liability policies will provide coverage for an insured's contractual agreement to defend/indemnify a contracting partner if the contracting partner is sued; that would typically be accomplished by endorsement.
- Before determining whether a policy provides coverage for any risk-transfer provision, an insured must confirm whether the risk-transfer provision is valid. Many states have rules prohibiting an insured from agreeing to defend and indemnify a contracting partner for claims arising out of the partner's own negligence unless the agreement to do so is sufficiently clear and conspicuous. Some states also have statutes prohibiting risktransfer provisions entirely (a common example is anti-indemnity statutes for the oil and gas industry). Thus, careful review of a state's laws regarding risk-transfer provisions is important before determining whether the policy may potentially cover the risk transfer.



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