

Liability Insurance Considerations

Kip Haggerty, Ph.D., P.E.

- IEEE LA Council Legislative Coordinator
- Delegate, California Legislative Council of Professional Engineers (CLCPE)

Disclaimer: The discussion herein of legal issues is presented for educational purposes only. All statements made about legal issues are the opinions of the presenter. Please review any actions with your attorney or other legal counsel.

1

IEEE Offering Professional Liability and Investigating General Liability

- Offering claims made insurance
 - Looked for occurrences insurance
 - None available
- General liability is other concern
 - Need ≥ \$500k
 - Can't get for home office
 - Often can get client to waive requirement
- IEEE will:
 - Continue to look for occurrences prof liability
 - Investigate adding general liability to its homeowners insurance
 - Look into prepaid legal plan (for defense costs)

2

Claims Made vs. Occurrences Insurance

- Occurrences covers you in perpetuity
 - Pay premiums during private practice
 - Covered for claims arising out of private practice
 - Similar to whole life insurance or single premium insured deposit (SPID)
 - No longer offered
- Claims made covers you only as long as you pay
 - Must continue to pay as long as you need protection
 - Like term life insurance
 - This is the kind IEEE is offering

3

Will You Get Sued? ... For What?

- Construction industry is basis for risk analysis
 - EEs sued once per 12-15 years
 - ~1/2 of lawsuits are frivolous
 - Typical IEEE member should have far fewer lawsuits
- CA: Providing services to manufacturers
 - Lawsuits for negligence only
 - Failing to follow the "standard of care"
 - Much easier to defend than product liability
- Required time frame for coverage (construction)
 - 4 years for "obvious" defects
 - 10 years for "hidden" defects
 - Forever for "hidden" defects that cause injury or death

4

IEEE Prof Liability Insurance Cost Example

- \$500k each claim
- \$500k annual aggregate
- \$500k defense costs
- Extended reporting period

Year	Cost for B (75-100k\$)*	Cost for C (100-250k\$)*
1	1,000	2,000
2	1,200	2,400
3	1,400	2,600
4	1,500	2,800
5	1,600	2,900
6	1,700	3,000

Tail (years)	Cost for B (75-100k\$)*	Cost for C (100-250k\$)*
1	1,500	3,000
2	2,200	4,500
3	2,800	5,800

* Annual gross billing

5

How Else to Protect Yourself from Lawsuits

- Get registered as a P.E.
 - For lawsuit against a P.E.: Certificate of Merit law requires:
 - » Review of lawsuit by P.E.
 - » File a certificate stating that case has merit
- Limit liability to fee in contract
 - The liability of the Consultant with respect to this Agreement shall in any event be limited to the total compensation for the services provided under this Agreement and shall not include any contingent liability.
- Specify arbitration in contract
 - Any dispute between Client and Consultant regarding this agreement will be settled under the commercial rules of the American Arbitration Association by mediation and if not resolved, by arbitration of the last offered mediation positions.

6

Liability Insurance

By Kip Haggerty, Consulting Engineer

IEEE Liability Insurance Focus Group

An IEEE Focus Group on Liability Insurance, was held Friday, 2/16/96. The consultants' Networks were well-represented with members from the San Diego, Orange County, and Los Angeles Area networks in attendance. The panel included IEEE staff, Benefits Committee members, and insurance industry representatives. This article summarizes the contents of my report to the AICNCC and Dr. Myron Kayton's report to IEEE describing the results of the meeting.

Professional liability insurance was the main topic of discussion. There are two types: occurrences insurance and claims made insurance. Occurrences insurance covers you in perpetuity based on a premium paid during the time that the work is performed. Claims made insurance requires that you be insured at the time at which you did the work and be continuously insured up through the time that you are sued. IEEE tried to get occurrences insurance for professional liability, but no insurance companies will offer it. Therefore IEEE is going to offer claims made professional liability insurance starting in May. Most of the consultants in attendance wanted occurrences insurance rather than claims made insurance.

Electrical engineers in the construction industry are sued once every 12-15 years and approximately one-half of lawsuits against engineers are frivolous. If you perform a service for a manufacturer in California, you can only be sued for negligence which is easier to defend against than product liability. The construction industry is the basis of the professional liability rates even though most IEEE members would probably have significantly lower probabilities of being sued.

Statute of limitations start when the person could reasonably know deficiency exists. For the construction industry in California, there is also a statute of repose of 4 years for patent defects and 10 years for latent defects (loosely meaning obvious and hidden respectively). However, there is no limitation for personal injury and death if due to a hidden defect. The bottom line is that you will need to maintain coverage long after you stop consulting to ensure that your financial assets are protected.

IEEE will continue to search for occurrences insurance and ensure that the advertising on the claims made policy makes clear the fact that the policy holder will have to pay premiums throughout their lives to maintain coverage. Because, one of the consultants' biggest concerns is the cost of defending against frivolous lawsuits, IEEE will look into a prepaid legal plan for defending engineers in liability suits.

Many independent consultants operate out of offices in their homes and because of that cannot get general liability insurance. Therefore, IEEE will investigate offering general liability insurance as an add-on to its soon to be offered homeowners policy and as a separate policy for consultants operating out of a leased office.

After seeing the details of the professional liability policy, I decided to price it and purchase it if one of our clients requires it. Probably, I would cancel after projects requiring it and start over again on new projects that require it, passing the cost through to the client. I think a better approach for most consultants is to limit liability to your fee and specify arbitration in your contract.

Copies of my report to AICN and Dr. Kayton's report to IEEE are available via e-mail. To request a copy of either or both reports send e-mail to k.haggerty@ieee.org.

Sample Contract Clauses

Liability Limitation. The liability of the Consultant with respect to this Agreement shall in any event be limited to the total compensation for the services provided under this Agreement and shall not include any contingent liability. (Source: Sample Agreement in consulting book at Small Business Development Center)

Arbitration. Any dispute between Client and Consultant regarding this agreement will be settled under the commercial rules of the American Arbitration Association by mediation and if not resolved, by arbitration of the last offered mediation positions. (Source: Gordon Mitchell, Future Focus, Inc. and member of IEEE Member Benefits Committee)

See also the book on consulting contracts by Henry Burger, HB Engineers.

IEEE Claims Made Professional Liability Insurance

The premium worksheet for the IEEE professional liability insurance policy is enclosed. The pricing is structured to provide a reduced premium in the first five years for a new policy holder. The full policy cost is the value in the table for the selected coverage times the 5 or more years prior acts factor (1.6). If the additional coverage for legal expenses is desired, then the subtotal is multiplied by the defense costs factor (1.1). You are covered for work performed during the time for which you pay, provided that the first notice of claim is submitted after your coverage begins and within sixty days after your policy ends.

If the policy is canceled or not renewed an extended reporting period (tail) can be purchased to provide from one to three additional years of coverage for work performed during your policy period (but not new work during the tail). The tail cost factors are listed below.

Years	Additional Premium (percent of this policy's last annual premium)
1	100%
2	150%
3	185%

The policy is underwritten by Coregis Insurance and administered by KVI. For information on the policy, call: Ms. Deb Scieszinski at (800) 435-7931 or the general KVI number (800) 375-0775.