Design Professional Liability Episode 2

PLUS Staff: [00:00:00] Welcome to this PLUS podcast, Design Professional Liability, Episode 2. We would like to remind everyone that the information and opinions expressed by our speakers today are their own, and do not necessarily represent the views of their employers, or of PLUS. The contents of these materials may not be relied upon as legal advice.

And now I'd like to turn it over to our host, Andy Treloar.

Andy Treloar: Thank you and welcome to today's podcast, Design Professional Liability Episode 2: What is risk management and why does it help? My name is Andy Treloar, and I am Claim Counsel at Travelers located in Denver, Colorado. Joining me today is Alison Weinstein, also Claim Counsel at Travelers out of the Hartford, Connecticut office.

How are you today, Alison?

Alison Weinstein: I'm good. Hi, Andy.

Andy Treloar: Hi, thanks for joining us. I think this will be a really good opportunity to chat today. This is the second podcast in a three-part introductory design professional series, and we look forward to covering some interesting ground today. [00:01:00] Risk management is a crucial component of a design professional's practice and should be undertaken on a constant and proactive basis.

Given the technicality and complexity of a design professional's work, a robust approach to risk management can not only assist design professionals if a claim comes, but it can also help head off claims before they arise. Today, we hope to equip our broker and insurance professional listeners with the tools necessary to help guide design professionals down the path to success.

But before we begin, please remember that this material is for general informational purposes only and is not legal advice. It is not designed to be comprehensive, and it may not apply to your particular facts and circumstances. Consult as needed with your own attorney or other professional advisor. And with that, Alison, as we start this talk today, let's think big picture to start and what should the goals of risk management be for design professionals?

Is there just one goal? Are there a few goals? Please walk us through that.

Alison Weinstein: Yeah, that's a [00:02:00] great question. I really think about risk management as having kind of 3 main goals. I think it's; you really want to expand your knowledge; you want to expand the knowledge of the design professional in many different areas.

You want to identify the risks, be able to pick out these risks ahead of time, spot them. And then, the last goal is tools. We want to give tools to the design professionals to help them handle these risks, avoid these risks and mitigate these risks. So that's really how I think about it.

Andy Treloar: That's a good summary for the three. Can you start with the first one, the expanding knowledge? Can you walk us through that?

Alison Weinstein: Sure. The goal of risk management is really to broaden the design professional's knowledge in a lot of different areas.

And with specifically focusing on areas that might lead to risk. Talking about common occurrences that they might come up in their everyday practice that could lead to increased risk. Talking about best practices, things that would be helpful for them to do to really protect themselves and hopefully [00:03:00] avoid risks.

So best practices in terms of, documentation and communication, things like that. And then just staying, current and staying on top of new topics, new issues, new trends in the industry things like, what we're seeing right now with sustainable design, green design, design build, different new trends that are helpful to know about from the practice perspective, but then also think about how these might lead to different risks, increased risks, increased exposure and how to deal with that.

And then also expanding the design professional's knowledge on what to do when something goes wrong, what to do when there may have been an error or omission, what steps should they take?

Andy Treloar: Okay, so expanding knowledge; very important. I think that's a good takeaway for the listeners today. Moving to your second point, identifying risks.

Tell us about that. Once you've established that expansive knowledge, tell us about the next step. The next big goal.

Alison Weinstein: Yeah, I think this is a really important goal of risk [00:04:00] management is just helping the design professional learn how to spot these risks ahead of time before they get in too deep.

In risk management, we spend a lot of time talking about which projects are risky, which clients might be more risky, what contract terms might be problematic or more risky, different scenarios that may come up that may be more risky.

And by allowing and teaching the design professional how to spot these risks, it's really helpful because it allows them to go into projects with eyes wide open, give them options. They can see these risks and they can decide if they want to go forward with the project or if maybe they want to pass on the project. And if they do decide to go forward, what are they going to do to protect themselves and what are they going to do to mitigate that risk?

So that's a really important part of risk management.

Andy Treloar: Yeah, that's a good lead in sounds like to the third main goal for tools for mitigation. Please go through that a little bit, Alison.

Alison Weinstein: Yeah. So, the, kind of the culmination of risk [00:05:00] management is giving design professionals tools on how to protect themselves and how to mitigate these risks that come up really all the time on projects, and so we talk a lot about things like helpful contract provisions.

Contract provisions that are going to help to protect the design professional. Other tools, like go no go checklists or client selection tools. And then tools on what to do when there is a mistake or issue, different tools that you can do in terms of reporting to your broker, your carrier and things like that.

So, the tools really brings it all together in the end.

Andy Treloar: I like how proactive a lot of that advice is, Alison, and going to my next question, now that we've identified the main goals of risk management for design professionals, let's go on the practical side. So, expanding a design professional's risk assessment knowledge seems really important, and what will this ultimately, practically, allow a design [00:06:00] professional to do in their practice?

Alison Weinstein: Yeah. The overall goal of risk management is that the design professional goes into a successful project, gets a profitable project, and comes out with a good client relationship and no claims that really is the goal.

So, some practical ways to achieve that is trying to get fair contracts. And we spend a lot of time in risk management talking about contracts for design professionals. Trying to get fair contracts, what to do when there may be an error or omission--that's really important, teaching design professionals how to respond and how to act once there maybe is an issue because that can really make or break the outcome a lot of times on claims. What to expect when they get a claim or a lawsuit, how should they respond then, we spend a lot of time talking about that as well.

Andy Treloar: Okay. And what are some ways, Alison, that a design professional, staying on this kind of practical angle, what are some ways that design [00:07:00] professional can build solid foundation to build and manage their own risk management practice?

Alison Weinstein: Yeah, I think a great start is internal contract reviews.

The contract is your--the 1st start for a design professional. That's their 1st kind of entry into the project. And that's really going to govern a lot of the outcome of the project. And if there is a claim down the road, I think it's really important for design professionals to really be going through these contracts with a fine-tooth comb before they sign them, not just signing, whatever comes in the door, but looking out for these problematic provisions and pushing back on them.

I also think it's really important for design professionals to be establishing best practices at their firm with respect to documentation, communication, how they handle certain things. Really trying to develop a best practice at the firm. And then, again, staying on top of current trends and hot topics, staying on top of maybe [00:08:00] new codes different things going on in the industry and how that impacts the design professionals practice all really important things that the design professional can do.

Andy Treloar: Sure. And this all sounds, and correct me if I'm wrong, but this is a very active process. This is not just something that is done in one day. This is an ongoing process that is really an integral part of a design professional's practice. Does that sound fair to you?

Alison Weinstein: Definitely. Yeah, it's really something they are doing every day, in and out. It shouldn't really be a separate endeavor. It should really be intertwined with their everyday practice, for sure.

Andy Treloar: Good. And I think the more, the more that the broker side and the insurance professional side is aware of this reality, I think the more helpful they can potentially be.

Those individuals are able to be a resource to the design professional, trying to undertake all this. Cause it may sound kind of daunting, but I think the more support that's available, the better. What are some common risks that design professionals should be aware of? What should they be looking [00:09:00] for when they're out doing their job?

Alison Weinstein: Sure, and really, to be honest, there are so many different risks that come up every day on projects and that design professionals have to deal with. It's a very complicated technical profession and there can be a lot of risks associated with it, but some common ones that we see are risks with business issues, things like termination.

The scope of your project, the delivery of services, payment terms. There can be a lot of risks with all of that. Practical matters things like communicating with your client, managing client expectations, maybe taking over from another professional mid-project, dealing with a difficult contractor or contractor who's maybe not doing their job.

And another big area of risk we see is with retaining sub consultants. Making sure that you're properly vetting your sub consultant, making sure you have the right contract provisions, [00:10:00] making sure you understand about vicarious liability, and that you could be on the hook maybe for your sub-consultant if they have an error or omission.

Andy Treloar: It sounds to me like risk management is something that's going to--is you know, there's, there's never a point where really it stops during a project. It's really tied in. It's integral, like you said that from inception to a project close out. This is an ongoing churn.

It's an ongoing process. So, I think that's a really important takeaway that there isn't just a point where a design professional stops thinking about this. It really continues throughout the practice. So, with that in mind, it's ongoing concept that risk management is something start to finish.

It's part of the deal. What are some resources brokers and also from carriers that can be offered to a design professional for support?

Alison Weinstein: Yeah, there are a lot of great resources out there coming from brokers and carriers on risk management. A lot of brokers and carriers offer [00:11:00] contract reviews where the design professional can actually send in a contract before they sign it, and a broker or carrier can actually go through it and identify areas where there might be potential coverage issues or insurability issues.

It's a really great tool because you can really have somebody take a look at your contract. There's brokers and carriers also offer webinars, podcasts, and presentations on so many different topics within the world of risk management. I especially love the podcast format because it allows you to take a deep dive into a topic maybe for 10 or 15 minutes, and it's just a great easy way to learn more about a different area. A lot of brokers and carriers also offer newsletters and bulletins and articles about hot topics, hot trends, new developments in the law or in the industry.

A lot of brokers and carriers also offer claim studies where they will actually take you [00:12:00] through a sample claim. "What went wrong? And then what was the outcome? How was it resolved?" And you could really learn a lot from that. You can really see how a claim would actually play out.

And then contracts and carriers. Brokers and carriers provide a lot of guides. Contract guides, different areas of information to help, help a design professional go through their practice.

Andy Treloar: It sounds like there's really no shortage of ways for the industry to assist design professionals. And I think that's a really good takeaway. All those different options are great ways for brokers and insurance professionals to be able to help design professionals through their practice, to help mitigate risk, mitigate the chances of claim activity and keep things on the smooth and easy path.

So, Alison, thank you for everything that you were able to share with us today. It was great insight. Glad we had the opportunity to talk. And I'm hopeful that this was helpful to the listeners. So, thank you so much today for PLUS for having us here. And thanks again to all the listeners. Have a great day. [00:13:00]

We'll talk soon.

PLUS Staff: Thank you to our speakers for sharing their insights with PLUS, and thank you to our listeners for listening to this PLUS podcast. If you have ideas for a future PLUS podcast, you can share those by completing the Content Idea form on the PLUS website.