

UNDERSTANDING PROFESSIONAL INDEMNITY INSURANCE

Professional Indemnity – (PI) Insurance protects you against your legal liability for actual and alleged breaches relating to design. This includes cover for a:

- breach of duty
- act, error or omission
- breach of confidentiality

FAST FACTS



45% of buildings that fail are due to design issues – so design risk is ever present.



Builders who engage consultants are exposed to any liability that results from that consultant's work or advice. This exposure can be partial, for example, for simple defence costs – or total, where the consultant has ceased trading.

PROTECTION FOR YOU AND YOUR BUSINESS

As a builder, you know that when an owner commissions you to design and construct a building, they tend to have a close working relationship with you. Often, they don't deal with consultants and sub-contractors involved in the construction.

This can mean that you could be targeted for legal action if there are issues with the building – regardless of whether or not you're liable for the problem. That's why PI Insurance is vital, as it helps ensure your business will be covered for any actual or alleged design liability.

HOW IT WORKS

The following two case studies show how PI cover can work – and why it's essential for construction businesses.

A builder with PI cover

The roof of a newly constructed warehouse collapsed during a storm. The builder had a design and construct contract for the warehouse, but had subcontracted the design for the roof to a structural engineer, and had built to that design.

The owner claimed damages of \$10 million against the builder, who took a subrogated claim against the structural engineer. The builder's PI insurer successfully defended the builder and paid \$250,000 in defence costs under the policy.

What's more, if the structural engineer had ceased trading, the builder would have been liable for the \$10 million in damages, potentially without recourse. In that case, the builder's PI policy would have indemnified him.

A builder without PI cover

A home-owner engaged an architect to help with the design of their home. The architect specified that a polyurethane coating should be put over a natural stone tile floor to protect the stone and enhance its appearance. Some time after the builder completed the job, hairline cracks developed across the whole floor.

The architect claimed that the cracks were caused due to defective workmanship. Even though the builder refuted this, the owner began legal action against him for about \$1 million.

The builder was insured by a contract works policy and claimed against it. Evidence revealed that the polyurethane coating on the tiles caused the cracking, and the cause was therefore a design issue.

The builder's construction policies* excluded the defective floor, because the material damage section of the policy had expired on that contract. What's more, the liability section didn't cover design faults, or remediation of products. As a result, the builder had to fund his own defence costs of \$70,000. However, if the builder had taken out PI cover, it would have paid his defence costs. The builder's only hope of recovering these costs now is to sue and recover from the architect.

* The builder was not insured by MECON.

WHAT'S COVERED – AND WHAT'S NOT?

✓ Breach of duty (including act, error, omission, misleading statement, breach of confidentiality)	✗ Pollution in full*/asbestos
✓ Defence costs for actual or alleged breach of duty	✗ Dishonest acts
✓ Claims made and reported during policy period	✗ Product liability (unless caused by a breach of duty)
✓ Accusations of misleading or deceptive conduct	✗ Intentional acts
✓ Vicarious liability	✗ Contractual liability (unless liability would attach in the absence of the contract)
✓ Mitigation of costs coverage	✗ Non-conforming building products

POLICY DETAILS

The Agile/Mecon offer also includes the following benefits:

- Employment practices liability – cover for claims against you by your employees with a sublimit of \$25K.
- Fidelity – cover for financial loss caused by employee dishonesty with a sublimit of \$100K.
- Principals indemnity cover – when contractually required under a contract to Indemnify the Principal, the policy will automatically extend to cover this situation.
- Project Management - cover when you act in a Project Management role.
- Mitigation costs, privacy breach costs, seepage and pollution are all covered with a sublimit of \$250K each.
- PR expenses, third party cyber exposure are all covered with a sublimit of \$100K each.

Disclaimer: note that all coverage benefits detailed in this document are subject to the policies standard terms and conditions.



GET IN TOUCH

If you're in construction, **talk to MECON Insurance today** about our unique range of insurance options that can extend your cover to provide the protection you need.

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