2022 CLIENT SURVEY LAUNCHES OCTOBER 28

Share your experience by November 8!

PRO-DEMNITY HAS MOVED OFFICES AS OF NOVEMBER 1, 2022

Update your records! We're heading to Bloor St.

PRO-DEMNITY PROTECTS + DEFENDS ARCHITECTS EFFECTIVELY. HERE ARE THREE THINGS WE CAN'T DO FOR YOU.

We regularly hear requests for us to tell architects' clients they "are wrong" (or their contracts are bad, or the fees are too low, or the requested limits are too high). *"Why can't Pro-Demnity do something?"* we are asked.

We are always humbled that our community of practice believes we have dominion over issues affecting the profession, or situations that are seemingly out of their own firm's ability to control. We are, however, an authority on risk, and in this area, we can and do share our expertise.

As the architects' professional insurer and trusted ally, Pro-Demnity helps guide architects as to how they can act on these issues and manage or mitigate the risks, but, ultimately, we are not able to force or forbid anyone or any entity to do anything.

As an insurance company [regulated by the Financial Services Regulatory Authority (Ontario)], Pro-Demnity:

1. CANNOT TELL ARCHITECTS OR THEIR CLIENTS WHAT A CONTRACT MUST SAY. WE ARE NOT A LAW FIRM AND CANNOT PROVIDE LEGAL ADVICE.

Pro-Demnity can and does advise architects on the potential negative risk consequences of proposed contract wording and what parts may be uninsured or not covered by our policy, meaning it will be up to your own resources to defend and indemnify.

- For government and publicly funded entities, this is a matter of good public policy and safeguarding the public (poor risk management increases and sometimes even creates risk).
- For commercial entities, this is a matter of minimizing total costs (again, poor risk management ultimately increases costs), reputation management, and completion of future deals and projects.

Pro-Demnity can and does direct architects to retain qualified lawyers who are already familiar with architectural practice and the many issues that can arise in practice. Architects are encouraged to reach out to these professionals as a resource for their practice.

2. CANNOT TELL ARCHITECTURAL PRACTICES WHAT THEIR FEE MUST BE.

Pro-Demnity can and does advocate for robust architects’ fees generally. It is our strong belief that the public well-being is threatened when architects take on work for too low a fee, as practices are then unable to assign the necessary resources to do the job properly, potentially endangering public safety.

We do believe that fees should reflect the architect’s unique value proposition and capabilities, as well as account for project risks.

But we also accept that only the architect ultimately determines how much they are willing to work for: only you can say yes or no.

3. CANNOT TELL ARCHITECTS (OR THEIR CLIENTS) WHAT LIMITS OF PROFESSIONAL LIABILITY INSURANCE COVERAGE ARE ENOUGH.

Pro-Demnity can and does share information regarding the mandatory minimum limits of coverage, and we do share concerns when high limits are requested by clients. Sometimes these requests may be a sign the client is planning to use the insurance policy as a contingency relief fund rather than for legitimate alleviation when unanticipated mistakes, errors or events arise. This costs every architectural practice in the form of higher insurance premiums. But we also understand that there is always risk.

We are aware that claims against architects may arise from both *inside* the contract and *outside* the contract, meaning that contractual indemnity limitations and caps are not the complete definition of how much insurance may be enough.

We know that many Third-Party claims (such as personal injury claims) are unrelated to project size or fee received. On large, complex projects we have also experienced that even a relatively minor apportionment of liability on a claim of tens of millions of dollars can represent a significant dollar amount.

As your professional liability insurer, Pro-Demnity cannot make decisions for you or tell you how to run your practice.

Ultimately, Pro-Demnity can and does provide valuable risk education, guidance and assistance – through our Risk Services team – to architects and practices about the factors to consider in deciding upon the risks you and your firm take.

PRO-DEMNITY INSURES THE ARCHITECT’S PROFESSIONALISM – NOT PRODUCTS, PROCESSES OR MATERIALS

We frequently get questions about whether Pro-Demnity insures a certain method of design, or a certain material, or a process, etc. We have even been asked if we insure walls.

The short answer is we do not insure any of those items.

We insure YOU, the architect, against liability from allegations of professional error or omission in your work as an architect. When there is a professional liability allegation against an architect (and it often involves materials, design methods, processes, etc.), every claim is treated on its own merits, with a defence to the architect being offered in line with the Pro-Demnity policy.

In a similar vein, Pro-Demnity does not endorse or pre-approve any products, materials, or processes.

Whether a product meets the requirements and standards for your and your client’s purposes – and whether, for example, a product or system might meet the water ingress coverage requirements within Pro-Demnity’s policy – is a decision you, as a Professional Architect, are responsible for making.

We hear there are companies that advertise their product as meeting Pro-Demnity’s requirements. We cannot comment on whether it is true or not, but we can assure you that we have not endorsed the product. The proof of whether this is a true or false statement will depend upon how the product is used, the design you create, and if a claim of error, omission, or negligence against you arises as a result etc.

There is no product that is “pre-approved for use” by Pro-Demnity, so be mindful and wary of any such public claims and do your own due diligence.

It’s also helpful to understand the benefits, coverages, limitations, and exclusions of your professional liability insurance policy, as this may help you to be more aware of potential risks (both insured and uninsured).

Ultimately, it is up to every architect to decide how to apply their professional skill and experience in their project, including the specification of materials, processes, or products as relevant to your work.

CLAIMS AND ARCHITECT EXPERTISE EXPANDS AT PRO-DEMNITY. ARCHITECTS POISED TO BENEFIT.

Pro-Demnity is enhancing claims expertise and expanding access to architects.

CLAIMS EXPERTISE DEEPENS TO SERVE ARCHITECTS BETTER

New Claims Specialists Join Pro-Demnity.

PRO-DEMNITY SPONSORS THE 2022 CANADIAN CONFERENCE OF BUILDING SCIENCE AND TECHNOLOGY

Proud to be a Silver Sponsor of the 2022 Canadian Conference of Building Science and Technology.

FOREIGN JURISDICTIONS AND ARCHITECTS’ LIABILITY

WHEN THE WORLD IS NOT ENOUGH

Almost every liability (professional or otherwise) insurance policy has a territorial or jurisdictional limit, often referred to in terms such as “Your Policy Territory”. Some policy territories can be relatively narrow (“actions arising in the Province of Ontario”, for example), others broader or even global, with wording such as “The Insurer’s obligations under this Policy apply to Claims arising out of actual or alleged acts which occur anywhere in the world.”

You might be tempted to think that “anywhere in the world” means you have coverage anywhere in the world.

You are probably wrong.

There are at least two reasons you are probably wrong.

First, many liability policies cover you for acts that occur anywhere in the world but only if the resulting lawsuit is brought within the defined jurisdiction. This might look something like, “The Insurer’s obligations under this Policy apply to Claims arising out of actual or alleged acts which occur anywhere in the world provided that in the case of an act occurring outside of Ontario, Claims are made and proceedings are instituted in the Province of Ontario.”

Second, even if there is not a jurisdictional limit built into the policy, there are legal limits. Canada maintains a list of sanctioned countries, companies, and individuals that Canadian companies cannot do business with. This means your insurance company cannot transact with them either, including engaging local lawyers or making claims payments. In addition, most financial institutions operate internationally and, therefore, follow EU and/or USA sanctions as well. So even countries that Canada is OK with doing business with might very well be blocked because funds cannot flow to the country, company or individual.

For example, as of April 1, 2022, Pro-Demnity Insurance Company is barred from conducting business in Iran, Syria, Cuba, North Korea, North Sudan, Crimea, Venezuela, Russia, Ukraine, and Belarus.

These lists change over time – they are largely driven by political forces rather than economic ones – and you also need to pay attention to them from your own business perspective of where you choose to do business.

What To Do

There are several actions you can and should take in managing the risks associated with foreign projects. Specifically related to sanctions, some actions to take include:

- Consult your lawyer to ensure you are not violating current law by engaging in a foreign project.
- Ask your lawyer about what happens if the rules change part way through a project and the jurisdiction (or individual or company you are working with) gets added to a sanctions list. Does your lawyer recommend a Termination clause allowing you to cancel your obligation with no penalty should that event happen? How will you get paid in such a circumstance, and in what currency?
- Talk to your current insurer about what they can do to help. For your professional liability with Pro-Demnity, for example, we can sometimes add foreign jurisdiction coverage. Although these endorsements cannot address sanctioned countries, individuals or companies, they may be able to address some other local issues.
- Consider arranging local insurance in the jurisdiction you are operating in. This can be challenging as insurance rules and practices (and availability of products) varies significantly around the world. Just because a product might have the same or a similar sounding name does not mean it is the same thing. Insurance law also varies significantly, so ensure you understand your rights and entitlements under local law. Use an agent or broker who does business in the jurisdiction you are going into, so that they know the local practices, terminology, and language.

Foreign projects always involve some level of heightened risk, and we always recommend you engage legal counsel familiar with (and licenced in) the jurisdiction where you are working. This includes “friendly” jurisdictions like the USA, UK, etc.: a legal issue in London UK is very different than a legal issue in London ON.

Foreign projects can be a great opportunity … for either great success or great failure. Sometimes, winning a foreign project is a steppingstone to expanded opportunities; sometimes it is an indication that the local firms know something you do not know. Do your homework, know your strengths and capabilities, and be prepared. An important part of that preparation should be a careful look at the impact of sanctions and other international restrictions.

2022 ANNUAL UPDATE

From our early beginnings as an indemnity plan in 1987, Pro-Demnity was designed to be the architects’ trusted, protective, professional ally, providing Ontario’s architectural practices with professional liability insurance solutions and risk management services.

We enable the architectural profession to improve society and human interaction through better design, by supporting the wise, effective, and efficient management of risk.

Read our 2022 Annual Update and learn how we are protective by design.

ARCHITECTS’ CLAIMS STORIES: REAL AND UNREAL

Every insurance claim tells a story of human behaviour. There’s the factual side: what happened and why? And there’s the outcome: the physical, economic, emotional, social, relationship or professional consequences.

Pro-Demnity has played a central role in Ontario architects’ claims for 35 years, helping architects when they’ve experienced allegations of error or negligence. The situations were so interesting in fact, that David Croft (retired VP of Claims) – a keen observer of human behaviour – noted many of them over a period of 20+ years, spinning them into a treasure-trove collection of 72 accounts of architects in trouble: what got them there, how Pro-Demnity helped them deal with it, how they recovered from it, and what this tells us about human nature.

Now, Pro-Demnity is adapting many of the 72 claims stories into a podcast series, to share them more broadly with diverse audiences through a popular, growing media format.

“The Claims Stories, and the podcast series based on them, provide architects and interns with insight into many of the situations which can lead to claims,” explains Iliana Arapis, VP Marketing. “These are very human stories that offer up learning moments about professional practice, in a light, and accessible way.”

The podcast also touches on how professional liability insurance helps to support a strong, viable defense for architects whenever there are allegations of design error, omission or negligence.

The 22-minute pilot episode *No Written Record* contains three claim stories, dealing with the consequences of an architect failing to keep written records. The Stories have been fictionalized, to protect the identity of the parties involved, but each recount the circumstances of a real claim, inspired by the 6,000+ that Pro-Demnity has defended over the years. The “cast of characters” involve the Architect, the Client/Owner, the Sub-Contractors and others – whose situations are part of an unfolding drama, from the origin of the claim right up to the often-surprising outcome.

As with all good stories, Pro-Demnity’s Audio Claims Stories impart practical lessons. Architectural practice may be deeply rewarding, but there are very factual risks – insured and uninsured. The Stories alert the listener to some of the pitfalls (mostly avoidable), while reminding us that architects are only human after all.

The inaugural, pilot episode is available to download now on Apple Podcasts, Google Podcasts and Spotify.

Listen on Apple Podcasts

Listen on Google Podcasts

LISTEN ON Spotify

THE BACKSTORY

The story of Claims Stories began nearly 30 years ago, in August 1993. Like every architect, David Croft has always been a keen observer of human behaviour. As a reflection of this interest, and as a down-time “hobby,” he began recording his extraordinary experiences as Pro-Demnity’s claims manager in August 1993.

The stories grew in number until there were six dozen of them – 72 factual accounts (20 booklets) of architects in trouble: what got them there, how Pro-Demnity helped them deal with it, how they recovered from it, and what this tells us about human nature. The objective of the stories – then and now – is to keep architects out of trouble by demonstrating how easy (and usually avoidable) getting into trouble can be. Every Claims Stories issue began with the admonition: “There but for the grace of God go I.”

The idea for audio Claims Stories came to us as a suggestion from the OAA Interns Committee: Wouldn't it be great if Pro-Demnity's Claims Stories were distributed in audio form as well as in print and online? The wisdom of this suggestion is easy to confirm considering the perpetual overbooking of our Claims Events, and the popularity of our one-on-one risk management call-in service.

In our 2019 Client Relationship Survey, many respondents reported a deep affection for the Claims Stories booklets, and went on to suggest that we provide more communications vehicles of different kinds, in different forms. One respondent confessed that he or she had difficulty finding the time to read Pro-Demnity bulletins. We hear you. After staring at a screen all day who has the energy to read strings of words, no matter how important and interesting they may be? Also, you can't watch a screen when you're jogging or driving. At this point, an audio version of Claims Stories had become more than just a good idea. It had become a project.