



Request for “Claims Experience”

Occasionally, provision of “Claims Experience” is a requirement of a Selection Process for architects. If faced with such request, act with extreme caution.

Most settlement agreements contain provisions prohibiting any of the parties from disclosing the terms of the settlement. You may not breach these provisions and the information in a report on your claims experience would do so if provided to others.

You have no way of knowing or controlling who receives this private information and both you and any client who receives it must be aware of the potential damage to others that may flow from its misuse. This could lead to claims against the client as well as yourself.

Accordingly, we strongly recommend not providing any information related to your “claims experience” to others.

In our view the only legitimate exceptions are:

1. The provision of a “claims history” to another insurer related to the underwriting of an insurance policy providing coverage to you.
2. A request from your own lawyer or accountant related to their services on your behalf.

In these instances we can provide a copy of a “claims experience” to you to forward directly to the insurer involved or your lawyer or accountant.

A POSSIBLE RESPONSE...

If faced with such a requirement from a potential client consider a response as follows:

“As is the case for any professional liability insurance, as a consideration of our insurance policy we are required to report to our insurers any circumstances that might give rise to a claim, including the actions of parties over whom we exercise no supervision or control.

We do this routinely and diligently to ensure that the protection afforded by our insurance is not compromised. Often reported “circumstance” have nothing whatsoever to do with our own performance but are reported out of an abundance of caution to ensure that we do not violate the terms of our insurance.

Our insurer has cautioned us that resolution of actual claims is normally subject to a confidentiality covenant prohibiting us from disclosing information regarding the claim to ANY third party.

Accordingly, our insurer recommends that we do not discuss this privileged

information with others as it may breach the confidentiality agreements, and may expose the recipients to claims for damages as well.

We trust that you will respect the reasons why we must decline to provide you the requested "claims experience".

If you have any questions please let us know and we can refer you to our insurers."

Disclaimer:

The contents of this PDF are derived from a website and offer information for general purposes only. The material presented does not establish, report or create the standard of care for Ontario architects. The information is by necessity generalized and an abridged account of the matters described. It should in no way be construed as legal or insurance advice and should not be relied on as such. Readers are cautioned to refer specific questions to their own lawyer or professional advisors. Efforts have been made to assure accuracy of any referenced material at time of publication; however, no reliance may be placed on such references. Readers must carry out their own due diligence. Professional Liability Insurance provides valuable coverages and benefits however does not cover everything. Please refer to the Policy wordings for specific coverages, benefits, exclusions and limitations. This PDF should not be reproduced in whole or in part in any form or by any means without written permission of Pro-Demnity Insurance Company. Please contact mail@prodemnity.com.