

## **Why Architects Should Not Hire Contractors for Investigative Work**

Have you been asked by a client to hire a contractor for investigative work?

Recently, we've received several inquiries from architects whose clients (often through RFPs) have asked them to engage a contractor to perform destructive investigative work on their properties. These clients have reasoned that it is too onerous for them to retain the contractor directly through their own procurement department.

Architects should be aware that your Pro-Demnity professional liability insurance policy only covers services considered 'Usual and Customary' for an architect, as defined in the policy. It does not provide coverage for retaining a contractor to perform destructive investigative work – such work would not be considered 'Usual and Customary' architectural services as per the policy definition. Moreover, Exclusion 29 excludes 'Delivery of Construction Services' from coverage.

### **Your Client Should Be Responsible for Providing Information on Their Own Building**

Existing buildings are complex.

When you are considering projects involving existing buildings, it's essential to understand what information on the existing building is available – and what further investigative work is required. As your design progresses, you and your engineers will typically identify areas where destructive investigative work is necessary to see what's behind walls and above ceilings.

When these conditions are identified, you then notify your client when and where such destructive work will offer a more complete picture of the site. Having this more complete picture of the site will reduce your client's financial risk during construction.

Notifying your client – in writing – about the benefits of this investigation will also reduce your own risk.

However, your responsibilities should not extend to hiring the contractor to perform the investigative work. As discussed above, this would be outside the scope of 'usual and customary' architectural services.

## **Risks of Engaging Contractors for Investigative Work**

It's often hard to say 'no'.

Even after informing architects that they will not have coverage for retaining contractors, some are still reluctant to say 'no' to their clients and risk losing a project. They want to quantify their risk, reasoning that since the scope of work is small, their risk cannot be that large.

But the risks could still be significant:

- **Potential Damages:** Even though the destructive investigative scope of work may be small in terms of dollar value, a personal injury or a water damage claim resulting from that work can be out of proportion to that value.
- **Contractual Risk:** A claimant may add you to their claim simply because you hold the contract with the investigative contractor, even if you had no part in their work.
- **Joint and Several Liability:** Joint and several liability is a legal term meaning that if multiple parties are responsible for a claim, each party may be held liable for the full amount of the damages.
- **Insurance Coverage Limitations:** If you are considering being added to the contractor's policy, it is important for you to understand any coverage limitations through consultation with your insurance broker, as well as any implications to your professional liability coverage. You should also consider the scenario where the contractor performing the work

goes out of business or declares bankruptcy, which could mean that you could be held responsible for any errors on their part with no recourse.

In short, our recommendation is that if a client requests that you retain a contractor for destructive investigative work, your response should be no.

The purpose of these requests is often to save the owner bureaucratic headaches in issuing additional RFPs for small scope projects for their own buildings. You, as an architect, gain nothing from this arrangement. It also increases your risk of being sued without professional liability coverage.

**For more personalized architectural practice risk management advice, you may request a complimentary and confidential meeting to [Speak with an Expert](#) or [Report a Claim](#).**

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**Our Contributor**



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