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## 5 Common Claim Mistakes

*The material provided in these articles is for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your unique circumstances.*

Navigating the world of Design Professional Liability claims can be intimidating. This article sheds light on five common mistakes that architects and engineers often make in professional liability claims. Understanding and addressing these pitfalls is paramount for those committed to delivering high-quality services.

### 1. Not Reporting

If a claim situation arises and you would like insurance to be available at any point, then you must report it to the insurance carrier. A claim is defined as a “demand for money or service.” This is true even when the damage amount is believed to be below your deductible and regardless of the validity of the demand. The carrier of your Professional Liability coverage can (and likely will) exclude coverage if the insurance company is not notified in a timely manner.

#### Why you should report a claim.

1. **Expert Guidance:** Insurance companies often have legal experts who deal with claims and can advise on effective steps to mitigate damage or potential legal action.
2. **Insurance Requirements:** If a design professional carries professional liability insurance, they are often contractually obligated to report any potential claims. Failure to report may lead to coverage denial for that specific claim.
3. **Avoidance of Larger Consequences:** By reporting a claim early, design professionals may prevent a small issue or dispute from escalating into a larger problem or lawsuit.
4. **Defense and Resolution:** Reporting allows design professionals to get necessary support and resources for defense or claim resolution.

### 2. Waiting to Report

It is wise to inform your insurance carrier of circumstances that could lead to a claim EARLY, even if there has not yet been a “demand for money or service.” Most insurance carriers will provide pre-claim assistance outside of your deductible. According to AXA XL data, more than 80% of circumstances that receive pre-claim assistance are resolved without turning into a

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claim. With Professional Liability, the earlier your insurance company is involved, the better.

## **When you should report a claim**

1. Incident Occurrence: Once an incident or mistake has occurred, it should be reported immediately. According to most professional liability policies, potential claims must be reported "as soon as practicable" or within a specified time frame.

2. Client Complaints: Any complaints from clients regarding the work provided, especially those implying intent to seek compensation for damages, should be reported at once.

3. Legal Action Threats: If there is any suggestion or threat of legal action, even if it seems unlikely or unfounded, it should be reported.

4. Contractual Disputes: Disputes relating to contracts, particularly those implicating errors, omissions or negligent acts may evolve into a professional liability claim. These should be reported as early as possible.

Remember that the key is to report as soon as the professional becomes aware of any circumstance that could lead to a claim – whether it is a mistake or error, a client complaint, or a threat of legal action.

## **3. Directly or Indirectly Admitting Fault**

If you admit any degree of fault or fix the problem, without consulting the insurance carrier, you could have your claim denied. An obligation in your Professional Liability policy is that you “agree to not to admit any liability or assume any obligation without the written consent of the insurance company.” There may be additional factors involved beyond your awareness, and you need to give your insurance company a chance to defend you.

## **4. Negotiating a Settlement**

Make sure that any dialogue relating to a settlement is led by your insurance carrier. If you agree to a settlement without their consent, you could have your coverage excluded and still be responsible for the agreed upon amount. In your Professional Liability policy, you have agreed

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not to “make any payment or settle any claim(s) without the written consent of the Insurance Carrier.”

## **5. Going it Alone**

Our team desires the best outcome for you and your organization. We deal with claim situations on daily basis and would be happy to provide guidance based on our experience. Let’s talk!

### *Can We Be of Assistance?*

*We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We’re a member of the Professional Liability Agents Network (PLAN). We’re here to help.*

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