

PROFESSIONAL LIABILITY AGENTS NETWORK

NEWSLETTER

PLAN

The Claim That Did Not Have to Get Worse

How early decisions can turn a defensible professional liability claim into an expensive one

Editor's note: The following story is a composite narrative based on common professional liability claim patterns involving architects, engineers, professional liability insurers, and defense counsel. Although fictional, the situations described reflect issues that arise repeatedly in actual claims.

Monday Morning – The Phone Call

At 8:07 on a rainy Monday morning, Michael Turner's phone rang. Michael was a senior project manager with nearly twenty-five years of experience, and the caller was one of the firm's best clients: a municipality for which the firm had completed nearly a dozen public projects over the past decade.

Michael answered expecting a routine project discussion, but the tone on the other end of the line made clear this call would be different.

"Mike, we've got a serious problem."

Over the weekend, a severe thunderstorm had moved through the area. Employees arriving Monday morning discovered water leaking into several offices of a municipal administration building that had achieved substantial completion only three months earlier. Ceiling tiles were stained, carpet was soaked, computer equipment had been moved, and maintenance staff had already placed buckets throughout portions of the building.

The owner was not simply reporting a leak. The contractor had already suggested that the architect's details around portions of the roof drainage system were deficient; the roofing subcontractor disagreed; and the mechanical contractor insisted that rooftop equipment penetrations contributed to the problem. Everyone had a theory, but no one ~~yet~~ had reliable facts. Before Michael could ask a single technical question, the owner added, "Our attorney is involved now."

That changed the nature of the call. What had begun as a project problem was now also a potential claim. Michael understood that in theory. In the moment, though, he was not thinking about litigation, document discovery, expert testimony, or mediation. He was thinking about a long-time client with water in its building and elected officials demanding answers.

For nearly ten years, Michael had built his reputation by being responsive, practical, and solutions-oriented. He answered his phone, visited projects, and solved problems, the same qualities that had helped create a relationship that generated years of repeat work for the firm. His instinct was exactly what most good project managers would feel: help. Within minutes, he assured the owner that the firm would investigate immediately and do everything possible to resolve the situation. Then he hung up. The next half hour mattered.

The First Instinct Is Usually the Wrong One

When architects and engineers receive notice of a potential professional liability claim, they rarely react like lawyers. They react like professionals. Their first impulse is to understand what happened, preserve the client relationship, protect the firm's reputation, and solve the problem. Those instincts are admirable. They can also make an otherwise defensible claim substantially more difficult to resolve.

Experienced professional liability attorneys frequently observe that many claims do not become expensive because the design professional failed to satisfy the applicable standard of care. More often, the cost grows out of what happens during the days and weeks after the problem is first reported. The technical issue may be manageable. The firm's emails, file handling, preservation decisions, and early statements may not be.

Every Claim Begins with Uncertainty

The first report of a problem is almost never complete. Owners are frustrated, contractors and subcontractors are protecting themselves, and employees are trying to reconstruct events from memory. Long before reliable facts emerge, theories begin to harden into positions. In Michael's case, no one knew whether the water had entered through defective flashing, improperly installed roofing materials, HVAC penetrations, clogged drains, temporary weather protection removed by the contractor, or maintenance issues that developed after occupancy. Every possibility remained on the table.

That uncertainty creates one of the greatest dangers during the early stages of a professional liability claim. People naturally try to fill gaps in what they know, and speculation can quickly find its way into emails, meeting notes, text messages, and internal conversations that may eventually become discoverable. The first day of a claim is not the time to decide who is right. It is the time to preserve what exists, avoid creating unnecessary admissions, and set up a disciplined process for finding out what actually occurred.

That discipline is hard because everything in a good project manager's training says to respond, reassure, and solve the problem. Michael did exactly that. Still, the pressure to act was strong. Michael opened Outlook, clicked New Email, and began typing a message that seemed helpful in the moment and costly eighteen months later.

Monday, 9:12 a.m. – The Email

Michael stared at the blank message for only a few seconds. He knew the owner was under pressure, and he wanted to reassure him that the design firm was taking the matter seriously.

His email was brief, professional, and well-intentioned:

"I'm very sorry this happened. We'll do whatever we can to make this right and determine where we missed something."

He clicked 'Send' without a second thought.

At that moment, the email accomplished exactly what Michael intended. The owner thanked him for responding quickly and said he appreciated the firm's willingness to stand behind its work. Unfortunately, the words did not stay in that context. Nearly eighteen months later, that same message appeared on a large screen during mediation, where the owner's attorney highlighted only five words: "where we missed something."

The attorney argued that the firm's own project manager had admitted responsibility before anyone had inspected the building. Defense counsel responded that the email expressed concern for the client, not a technical conclusion. By then,

however, the damage had already been done. Hours of testimony were devoted to explaining what Michael meant instead of discussing the engineering evidence.

When Empathy Becomes an Admission

One of the most difficult lessons for design professionals is learning that empathy and liability are not the same thing. Clients deserve prompt, respectful communication when problems arise. They deserve reassurance that the firm will investigate thoroughly and work cooperatively toward a solution.

What they do not need, and what the design professional should avoid, is any language that appears to admit fault before the facts are known. Phrases such as ‘we missed it,’ ‘our mistake,’ ‘we’ll make you whole,’ or ‘we’ll pay for it’ may seem harmless in the heat of the moment. Read months later by someone who was not part of the original conversation, they can be interpreted very differently.

A better response would acknowledge the owner’s concern, confirm that the firm will investigate promptly, and reserve conclusions until the facts are known. For example:

“We understand your concern and will promptly investigate the reported conditions. At this point, we do not have enough information to determine the cause. We will coordinate with the appropriate parties, preserve relevant information, and provide our findings once the facts have been reviewed.”

The Internal Investigation

While Michael’s email made its way through the owner’s organization, activity inside the design firm accelerated. The structural engineer searched calculations, the architect reviewed roof details, and the mechanical engineer looked at equipment penetration drawings. Soon, a group email began circulating: “Does anyone remember discussing this during construction?”

Within minutes, replies began arriving.

“I thought the contractor wanted to substitute flashing.”

“I remember warning them.”

“Didn’t the owner reject our recommendation?”

Each employee was honestly trying to reconstruct events, but the conversation was driven more by memory than documentation. As the discussion continued, opinions slowly began to sound like facts. Internal speculation can become some of the most damaging evidence in a professional liability claim. Emails exchanged among employees are often discoverable unless protected by privilege. Casual opinions expressed before the investigation is complete may later be compared against sworn testimony, creating the appearance of inconsistency where none exists.

The Meeting Minutes

That afternoon, another employee noticed something troubling. The construction meeting minutes from six months earlier contained only a brief reference to discussions about roof flashing. The architect remembered a longer conversation and believed the minutes should better reflect what had occurred. Acting with the best intentions, she opened the document, expanded the discussion, and saved the revised version. She did not appreciate that the document management system preserved the earlier draft.

During litigation, opposing counsel compared the original and revised versions side by side. Instead of debating whether the contractor had properly installed the flashing, the attorneys spent valuable time discussing why project records had

been modified after a claim arose. The architect had not attempted to deceive anyone. She simply wanted the file to be more accurate. Nevertheless, the revision created an issue that never needed to exist.

The Better Practice

The better practice is not to improve the old record; it is to preserve it. Do not rewrite meeting minutes. Do not clean up emails. Do not replace field notes with polished narratives. Preserve the project record exactly as it exists when a claim is reasonably anticipated. If new information needs to be documented, prepare a separate, current-dated memorandum explaining what has recently been learned and why it matters. That approach protects the historical record while allowing the investigation to continue.

By the close of business Monday, Michael believed the firm had responded well. The owner had received a prompt email, employees were actively reviewing documents, and the principal had scheduled a site visit for the following morning. Everyone felt they were getting ahead of the problem. No one realized the claim had already begun drifting away from the technical issues and toward the firm's own communications and claim handling.

Tuesday Morning – Facts Before Opinions

Michael pulled into the municipal parking lot before sunrise. Inside, maintenance personnel were still drying carpet and replacing ceiling tiles. The owner, contractor, roofing subcontractor, and mechanical contractor had all arrived early, and the explanations began before anyone reached the roof. Each party had a theory. Each theory pointed somewhere else.

Michael reminded himself of a lesson learned over decades in practice: the first explanation offered after a loss is rarely the complete one. Rather than debating responsibility, he opened his notebook and documented what he could actually see: water staining, ceiling locations, weather conditions, occupied spaces, and physical conditions. Opinions could wait; evidence could not.

The owner pressed for answers. "Can you tell me whether this is a design problem?"

"Not yet," Michael replied. "We owe you an honest investigation, and that starts with facts instead of assumptions."

The answer disappointed the owner, but it preserved the firm's credibility.

Notice, Preservation, and Evidence.

By mid-morning, the firm's professional liability carrier had been notified. Some firms hesitate to make that call because they fear it signals an admission of wrongdoing. It does not. Early notice can bring experienced claims professionals and defense counsel into the matter while the evidence is still fresh. In Michael's case, that guidance proved invaluable, and the first instruction was simple: preserve everything.

Every employee received the same direction: do not delete emails, erase text messages, clean up meeting minutes, or rewrite field notes. If additional information becomes available, create a new dated memorandum rather than altering the historical record. The advice seemed almost excessive until everyone realized how many project decisions had been discussed through informal texts and emails.

Meanwhile, the contractor requested immediate authorization to remove roofing materials before another storm arrived. The request sounded reasonable. It also threatened to destroy the very evidence needed to determine the source of the leakage. After consultation with the owner and carrier, temporary protection was installed while key conditions were photographed, measured, and documented. It was a small decision that prevented a much larger problem later.

Eighteen Months Later

Over the following weeks, forensic consultants examined the roof assembly, construction photographs, weather data, shop drawings, and maintenance records. The investigation revealed what experienced claims professionals often expect: there was no single cause. Portions of the flashing had been installed improperly, several rooftop penetrations differed from the contract documents, and drainage maintenance had been inconsistent after occupancy. The engineering questions were far more nuanced than the initial finger-pointing suggested.

Eighteen months later, Michael found himself seated in a mediation conference room. Enlarged copies of project emails were projected onto a screen. The owner's attorney highlighted Michael's early message expressing concern that the firm would determine 'where we missed something.' Defense counsel explained that the statement reflected empathy, not an admission of liability. Although the explanation was persuasive, hours of testimony were devoted to clarifying words written in less than a minute.

Fortunately, opposing counsel found very little else to criticize. The firm's records had not been altered, employees had avoided speculative emails after receiving direction from management, photographs retained their original dates and metadata, and new information had been documented in separate memoranda instead of rewritten meeting minutes. Because the record remained intact, the discussion repeatedly returned to technical evidence instead of document integrity.

The mediation eventually concluded with a negotiated resolution reflecting the shared responsibility of several project participants. No court found that Michael's firm had violated the professional standard of care. Still, the claim cost more, took longer, and consumed more attention than it should have because several early decisions gave the dispute issues it did not need.

Practical Takeaways

When a potential professional liability claim arises:

- Communicate promptly and empathetically, but avoid language that appears to admit fault.
- Notify the professional liability carrier early.
- Preserve the project record exactly as it exists.
- Keep speculation out of emails, texts, and internal discussions.
- Document new information in a separate, current-dated memorandum.
- Protect physical evidence before repairs or removals occur.
- Let qualified investigators determine cause.

Closing Thought

The irony of Michael's experience is that the roof leak itself was manageable. What threatened to transform a defensible claim into an expensive dispute was not defective engineering, but ordinary human instinct: reassure a valued client, solve the problem immediately, and improve the record after the fact. Those instincts are part of what makes people good professionals. When a claim arises, however, they must be balanced with disciplined claim management.

Every architect and engineer hopes never to receive the Monday morning phone call that Michael received. Yet virtually every experienced design professional eventually will. When that day comes, the quality of the firm's response during the first forty-eight hours may become just as important as the quality of the design services performed over the preceding

two years. A manageable claim can become harder, more expensive, and more distracting than it needs to be. The goal is to keep that from happening.