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Design and construct projects expose contractors to significant liability risks requiring robust professional indemnity protection

Professional Indemnity insurance

Claim examples: design and construct contractors

Design & Construct contractors (D&C) are often required to provide multidisciplinary services to a construction project, which exposes them to potentially serious client disputes and a host of liability risks, with potentially catastrophic financial consequences.

The following examples illustrate why every D&C contractor needs the certainty of a robust and comprehensive Professional Indemnity (PI) insurance policy. With Liberty, the insured has access to the consistency and significant local authority of our experienced underwriters, risk engineers and claims managers, and the certainty of our strong financial credentials.

Defective work resulting in underwater tunnel leakage

Under a lump sum D&C contract, a consortium successfully tendered for a project to build an underwater tunnel in a major Asian city. As the owner/operator of the proposed tunnel, the consortium engaged "Tunnel Constructions" (TC) to design and build the tunnel. Among other things, the contract stipulated that TC would ensure that the tunnel be waterproof (as defined in the contract) for a period of 100 years from the date of practical completion. TC sub-contracted the waterproofing works to "Specialist Contractor" (SC).

Two years after the date of practical completion, and during the defect liability period, a serious leakage in the tunnel forced closure of the entire tunnel for a period of two weeks. It was subsequently discovered that SC had made some serious errors in their materials specifications for the project and that the waterproofing carried out by SC was inadequate and failed to meet the contractual requirements of a waterproof tunnel.

The consortium suffered substantial loss of revenue as a result of the tunnel closure and proceeded to claim that loss against TC together with the costs of remedial works to the tunnel.

Inadequate designs and misleading statements

"Consortium XYZ" (XYZ) put out to tender a project to design, construct and install an underwater observatory in a major city. In its tender documents, "ABC Constructions" (ABC) made certain claims in relation to its previous experience in designing and building such projects and provided estimated costs for the project. ABC won the tender and was engaged by XYZ to carry out the design and construction works for the project.

ABC in turn entered into a consultancy agreement with engineering firm "MNO". Under the consultancy, MNO was contracted to manage the project, including the design requirements, and to ensure that the works were suitable, appropriate and adequate for the purposes of the proposed project.

Before starting construction, ABC discovered that the marine ground anchors securing the underwater observatory to the seabed were inadequate, requiring extensive design changes and resulting in a US$2 million increase in construction costs.

XYZ claimed the increased construction costs against ABC. It is also suing ABC for, amongst other things, misleading and deceptive conduct on the basis that the eventual costs of the project far exceeded the initial cost estimates provided by ABC and that ABC's claim to previous experience in projects of this sort was grossly exaggerated.



Bridge design errors and personal injuries

"123 & Co." (123) is an engineering company whose business includes the design, fabrication and supply of steel bridges. A product commonly sold by 123 is a bolted-steel truss bridge, which it describes generically as a unit construction bridge (UCB). 123 customises the design and arranges for the construction of UCBs for various projects. In May 2006, 123 was commissioned to design, fabricate and construct 3 UCBs for a major Asia Pacific provincial government (Client A). The contract between the parties specifically stipulated that 123 would guarantee the safety of the UCBs and their suitability for the purpose for which they were built.

In November 2007, 123 discovered that the steelwork structure for a UCB supplied by 123 to another Asia Pacific provincial government (Client B) and erected in a major Asia Pacific city five years earlier had become unstable and had partially collapsed, causing serious injury to three people. Client B made a claim against 123 for the loss following the partial collapse of the UCBs designed and constructed by 123 and for the cost of remedial works. The client also secured an indemnity from 123 for liability claims that were made against it by the three injured persons.

In view of what had happened with Client B's UCBs, 123 was forced to review the current design and construction of their UCBs, including those which had been erected, or were due to be erected, for Client A's project. (Two UCBs had already been erected and the third was due for construction.) The review revealed serious design errors, in which certain fairly basic miscalculations had been made. The UCB awaiting construction required redesign, and the two UCBs that had been erected had to be replaced with redesigned bridges.

Client A made a claim against 123 for all the remedial and redesign works that were required on the UCBs, amounting to over US$1.5 million.

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