Why Your Contract Needs a Limitation of Liability Clause

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News headlines: *Architect pays $1 Million for Design Error on $15 Million Construction Project*; *Civil Engineer Tagged with a $250,000 Jury Verdict Because of Drainage Design Error* – I could go on. Want to avoid your name in a headline like this? Include a limitation of liability clause in all your contracts (or as many as you can) and then the headline might read: *Design Professional Only Pays $50,000 After $1 Million Verdict.*

Contracts are a valuable tool for protecting design professionals when considering and agreeing to participate in projects. One way a contract can do this is by including a limitation of liability clause to manage the potential financial risks involved. However, note that the enforceability of this type of contract clause varies from state to state.

Some things to keep in mind when drafting a limitation of liability clause:

- it should be reasonable (you're unlikely to get a client to agree to a limitation of $10,000 when your fee is $500,000). The limit can be a specific dollar amount, equal to your fee or limited to the available limit on your professional liability policy;
- it may need to be more visible than all the other contract terms and conditions (for example, underlined, bolded or a larger font), depending upon case law in the state governing the contract;
- and the contract is strongest if signed by both parties (in some jurisdictions the contract and/or its terms and conditions may not be enforceable if it's not signed).

An attorney is your leading source for the best limitation of liability clause. In addition, our policyholders have access to the BDP Risk® Learning Management System (LMS) where sample limitation of liability clauses can be found in the "Contract Review Guide". Alternatively, do a little research on the internet and/or with your applicable design professional organization (AIA, ACEC, NSPE, etc.) for sample clauses.

On a related note: if the contracts with your subconsultants include a limitation of liability clause, the amount should be no less than the limit in your contract with your client. And if your client won't agree to one, you shouldn't agree to one with your subconsultant.

Not all clients will agree but it can't hurt to ask and if you don't ask, you'll never know if you could have avoided that one big exposure. There's always insurance coverage, of course, but it's better to have multiple methods for risk transfer, reduction and avoidance in place whenever possible to protect you and your firm. So start working on a limitation of liability clause now that you can insert into your next contract!

About the Author

Cindy Russell is assistant vice president, senior claims examiner at Berkley Alliance Managers, a Berkley Company. She has more than 30 years' experience as a claim professional. For more than 20 years Cindy has handled professional liability claims with the last 13 years dedicated to architects and engineers. She earned her Bachelor of Arts degree in Psychology from Arizona State University and is based in Chicago, Illinois.
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