



Professional Liability Program for the IDSA
“White Paper”
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IDSA Program: CRB Insurance Agency developed a Professional Liability Program that has the endorsement of the IDSA back in the early 90's. We found when we went to market with an industrial design firm we were asked to complete an Architects and Engineers application which had many questions that simply did not pertain to most industrial design firms. We also found that the underwriters who were looking at the account many times did not really understand the business of the design firms. We created our own application and have narrowed the market to a couple of companies that have expressed both a willingness to entertain this type of account, but also have a better understanding than most

A design firm's first course of protection comes from their engagement contracts. IDSA provides great benefits to designers by helping you create contracts that will hopefully provide you with the first layer of protection. A good contract will specify your obligations and responsibilities along with that of your client. If you are signing contracts that have been prepared by the client and not yourself you can assume that those contracts will favor your client, possibly to your detriment. Your Professional Liability policy should always be your last line of defense.

A design firm must also be careful that they are only doing design work for clients. It is easy today to become a virtual manufacturer. Any design work performed for the design firm itself should be done in a separate legal entity. That entity must purchase its own general liability insurance with products liability protection. Our markets will typically not offer a professional policy to a firm that is creating any of its own products.

Industrial design firms have some unique insurance needs that CRB Insurance Agency of Wisconsin has tried to address with a long standing partnership with the IDSA trade group. In order to understand the Professional Liability Program that we have developed it is important to have a basic understanding of insurance, some terminology, and procedures within the insurance industry. Please feel free to contact Debbie Guillermo at 262-884-6144 or myself (John Rowland) at 262-884-6140 or by email: debbieg@crbins.com or johnr@crbins.com if you have additional questions or wish to complete an application.



Terminology:

Insurance Regulation: At this time the Insurance Industry is regulated by each individual state they operate in. Each state also controls the licensing of insurance agents and brokers. CRB Insurance Agency is licensed in many but not all states. We find that we are in almost all the states where the IDSA has membership.

Admitted vs Non-Admitted: Insurance companies can be admitted in your state of domicile or operations. This means that it is specifically licensed by that state, under its regulation, and pays premium tax for policies written in that state. It also means that a customer who purchases an admitted policy has some additional protections of financial monitoring and possibly a state guarantee fund in the event of an insurer insolvency. Non-admitted companies are allowed to write business in that state but are not scrutinized as closely and also do not directly pay the premium tax to the state. That is the responsibility of the broker and/or agent. CRB has a surplus lines license in Wisconsin but rely on a broker to handle the payment of the surplus lines tax in other states. Many (but not all) professional liability policies are written with non-admitted carriers. Lloyd's of London policies are always non-admitted. If your professional liability policy billing has the taxes and fees shown separately then you know your policy is non-admitted. All things being equal (price, coverage, limits, etc) an admitted policy would be preferred.

Occurrence Liability Policy: Most liability policies are written on what is termed an occurrence form. This means that the policy that responds to a covered claim is the policy that is (was) in effect the date of the negligent act to which it is responding, or to the date of the injury or property damage as caused by the negligent act. Personal policies, like an auto policy or a homeowner's policy, all trigger on an occurrence basis.

Claims-Made Insurance: A claims made policy is a special type of liability policy that has a different coverage trigger from an occurrence based policy. With a claims-made form you must have a policy in effect when you become aware of a claim. It is that policy that responds to the claim. Claims made policies also have another important aspect called the retroactive date. When the policy is first written it will contain a retroactive date of the first day of the policy inception or it may use an earlier date or even be unlimited. This is important because for a claim to be covered under the policy it must be presented while the policy is in effect AND the claim must not have occurred before the retroactive or retro date. The other important aspect to a claims-made policy is when you stop renewing the policy you should have an option to purchase an extended reporting period of 1 to 3 years. This allows for claims that have already occurred but are not known to you to have the opportunity to surface. Usually claims made policies are used for Medical Malpractice, Professional Liability, Directors and Officers Liability, as well as other specialty lines. All other things being equal, an occurrence policy is preferred but many times unavailable in certain classifications like professional liability.



General Liability Insurance: Most business insurance policies will provide a firm with General Liability protection. A GL policy covers bodily injury and property damage in the event that the firm is negligent in its business operations. Almost all GL policies now contain Professional Liability exclusion. Sometimes design firms can have difficulty in obtaining GL coverage because the premiums are usually small and the carriers are afraid of getting involved in professional claims even though they are excluded.

Professional Liability Insurance: These policies cover the professional exposure of many specialties. It attempts to protect a firm if a mistake is made in the performance of professional duties and there is a financial loss to their client. It is NOT designed to provide third party protection. Your client may mistakenly ask to be named on your Professional Policy but to do so would invalidate any protection the policy is providing since there is an insured vs insured exclusion.

Products Liability Insurance: Companies that manufacture a product usually have products liability insurance built into their GL coverage. Professional liability policies exclude product liability coverage and it is important for Design firms to understand that there is no coverage provided by the Professional policy if their design work is for their own product. Even if the firm is being compensated on the basis of the sales (an agreement with the manufacturer) of that product we find that work to be excluded. The professional policy may respond to a product liability situation caused by your design error due to the fact that it is causing your client a financial loss.

Regional Insurance Companies: These are companies that only operate in a specific area of the country. They may operate in only one state or they may operate in several; usually in a close geographic region. These companies can be very competitive on certain risks and are typically only available to local Agents. This may be a good option for obtaining your other insurance needs: General Liability, Auto, and Workers Compensation.

National Insurance Companies: These companies operate in most if not all states.

Surplus Lines Carriers: These are insurance carriers who are not admitted in that state and it becomes the responsibility of the agent or broker to file the necessary paperwork on the policy written. They must also collect the premium tax and make sure it is remitted to the state. If your billing shows a separate charge for premium tax and fees then you can be pretty certain that it is a surplus lines policy. Lloyds of London is almost always a surplus lines policy.

Independent Insurance Agents vs. Direct Writers: CRB Insurance Agency is an Independent Agency which means we represent a number of Insurance Carriers (both Regional and National) and have access to many other companies' surplus lines carriers



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through brokerage. A Direct writer only represents that one company. Allstate, and State Farm are examples of Direct Writers.

Minimum Premiums: Many insurance policies and programs have minimum premiums to issue. With the IDSA program the minimum premiums have been in the 5-10,000 dollar range. Design firms can and do get involved in many varied industries. Based on the size of the firm and the type of work that they have been involved in we see premiums average higher than the minimum. Due to the higher starting point very few small firms elect coverage unless it is a specific contractual requirement. Once the cost is determined we find that some clients are willing to strike the need for professional coverage.

Minimum Earned Premiums: Be sure and determine if your policy is subject to a minimum earned premium. Surplus lines, or non-admitted policies usually have one. A 25% minimum earned means once you request a policy and then change your mind and request cancellation you will be responsible for AT LEAST 25% of the earned premium plus 100% of any fees. Many times there is also a short rate penalty which is applied to policies cancelled before the expiration. Some policies may have a 100% minimum and earned.