

## A claim could happen to you!!

### Claims examples and exclusions to consider.



“I think I have a suitable policy, I pay the premium each year, but have never made a claim or had an incident to report to my Insurer. What types of actions are taken against Professionals in my occupation? Would I ever need to utilise my policy?” This is a common thought pattern or conversation for many well intending professionals who carry Professional Indemnity Insurance. You may renew your policy year after year without incident, but importantly, the policy is in place in the event of an unexpected ‘rainy day’ where an allegation of a wrongful act, error or omission is made against you.

Let’s take a look at some claims examples:

This circumstance demonstrates the serious consequences of faulty and negligent design:

#### **Scenario 1**

The Insured “Radiant Architecture” designed a balcony for an office building in Adelaide. The deck section of the balcony collapsed during the opening celebrations. Approximately twelve people sustained injuries when they fell 5 metres to the ground. This resulted in seven separate proceedings arising from the same accident. Writs were issued against the occupier of the property, the Body Corporate and the council. A third party notice was served on “Radiant Architecture” by the Body Corporate alleging faulty and negligent design. Experts determined that there had been a fundamental flaw in the Architects drawings and value of the claim settled on behalf of “Radiant Architecture for their portion in the loss was \$600,000.

The next scenario is an example of a matter where parties involved were drawn into the action, albeit may be substantially the fault of others:

#### **Scenario 2**

The insured “Brilliant architects” were retained in respect to construction of a residential dwelling. The claimant sought damages from the engineer, the builder and the insured architect for damage sustained to their residence. The claimant

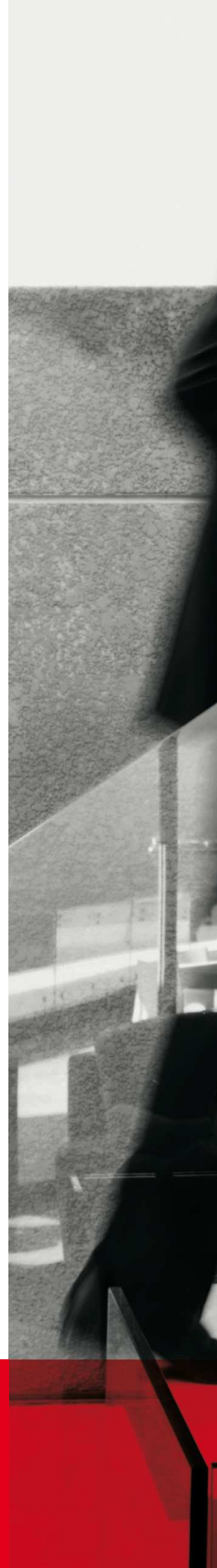
alleged that the foundation concrete slab had 'dished', i.e. deflected upwards at the sides causing slopes in the walls and floors of the residence, and the roof had lifted completely away from the exterior walls on the corners of the building. The primary problem was the inappropriate fill and the excavation, which caused the slab to dish. Experts believed this was primarily an engineering problem with some minor involvement by the insured architect. The claimant was unwilling to negotiate and wanted the residence demolished and rebuilt at a cost of \$1,000,000. It was found that the failure was 85% the responsibility of the engineer and 15% of the insured "Brilliant architects", however the insured architect had a contractual liability for everything the engineer did. Judgement was awarded in favour of the claimant against the Insured. "Brilliant architects" was granted leave to recover from the engineer on a cross claim. Unfortunately, the engineer went into voluntary liquidation, as did its insurer. "Brilliant architects" Insurer paid up to the limit of indemnity, but for the Insured there was approximately \$200,000 that was uninsured. "Brilliant architects" went into liquidation and the liquidator settled with the claimant. The Insurer was advised that they would be unlikely to recover any of the total cost of the claim which was \$1,208,308 including defence costs.

There are a number of common scenarios where Architects find themselves embroiled in legal action where they may not think they have any responsibility. Here are some other examples:

- Alleged failure to identify items that were installed by the builder that were not in accordance with specifications. Customers disputing quality of products and actions then taken against both the architect and builder;
- Failure to comply with building permits / regulations. For example a Building height of the corner of a building didn't comply with the building permit and regulations and an action was taken against the architect, engineer and surveyor;

There are some activities you should avoid as architects as your policy may not respond due to common exclusions:

- If you plan to act as a Project manager in addition to the architect you must ensure you are contracted as both Project Manager and Architect as cover may not be provided if you are loosely acting as a Project Manager throughout the tenure of the job. Otherwise, this may be considered a presumed duty or obligation under the exclusions of the policy. The better you can define your role/scope of works in the contract, the greater the clarity for all parties.
- Many policies have costs estimation exclusions therefore the policy is not likely to respond to claims for underestimated costs of a project. It is best to avoid cost estimates, unless you have engaged in independent suitably qualified professional, either refer your client to a Quantity surveyor or get a builder involved early.



- Many policies have a construction exclusion, which does not cover any liability directly, or indirectly arising out building, construction or engineering work including erection, demolition, alteration and/or additions to buildings.

It is important to take time to consider the types of scenarios your policy will respond to in the event of that 'rainy day' and activities better avoided that may be outside the scope of your profession and corresponding insurance policy. If you are uncertain, discuss the matter with your Insurance broker and ask that they confirm the position with your Insurer.

This advice and comments are provided in the capacity as an insurance broker and should not be construed as legal advice. Separate legal advice relating to the interpretation and implication of this article for your individual contracts should be obtained.

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