"What the heck. You're insured."

It's not uncommon to hear words like that from a client representative's mouth. Or to get the sense it's being thought. And what's so wrong with that? After all, isn't that what professional liability insurance is supposed to do? Transfer risk from the engineer and the client to the insurance company? Yes, it is, but that doesn't mean, after someone does something stupid, the insurance company asks, "You want that million in tens or twenties?"

Both owners and design professionals need to understand a few things about professional liability insurance. And that's what this column's about: A few things. There's more to know, and you should want to find out what. After all, whether you're an owner or an engineer, the insurance is in place for your protection.

Also known as PLI and errors and omissions (E&O) coverage, all professional liability insurance policies I'm aware of operate on a "claims-made" basis. That means the policy in effect at the time a claim is made (or, in some cases, at the time a potential claim is recognized and made known to the insurer) is the policy that provides the coverage. This contrasts with the "occurrence-based" coverage that's typical of most commercial general liability (CGL) policies. With occurrence-based coverage, the policy in effect at the time the "event" occurred is the one that covers, with the "event" being the circumstance that gave rise to the claim, like an underground storage tank release that happened ten years ago but was only discovered last week. Providing the insurance company that insured the tank ten years ago still is in business, no problem.

So, the engineer having a claims-made policy should put your mind at ease, right? After all, not only is the engineer insured, but the insurance comes from a source you know to still be in business. Not so fast.

Any claim arising from an "event" that occurs on a project you're working on today is not likely to be filed until two or more years from now. The question is, therefore, what

policy will be in place then? Will it be a renewal of the same one that's in place today? Will it be from the same company, but with different terms and conditions? Will it be from a different company altogether? Or will the insured even have a policy then? Some clients try to overcome that last possibility by contractually requiring their engineering firms to have PLI in place for X-many years into the future. But who knows what the future may bring and, when all is said and done, if there is no policy in place, what will the client do? Sue? Not likely. To be a good lawsuit target, a firm needs deep pockets. Firms without PLI have no pockets at all. (Of all the loss-prevention methods yet devised, poverty still remains number one.)

But let's say a policy *is* in place. That would be good news, but only to the extent of maybe. Most PLI policies have a "prior acts" provision, meaning they will only cover those claims arising from an event that occurred after a certain date; e.g., after December 31, 2002 in the case of a five-year prior acts provision in a policy renewing January 1, 2008. In some cases, the December 31, 2002 date will stay in place if the same policy is renewed for January 1 – December 31, 2009, converting prior-acts protection to six years. In other cases, December 31, 2002 would change to December 31, 2003, keeping the five-year limit just that.

Aggregate limits is another issue to be concerned about. The policy may have a limit of, say, $500,000, meaning that, if the policy pays on a $500,000 claim, the policy's capacity will have been exhausted. To counter this potential, some clients insist on ridiculously high coverage limits, evidently not realizing that, had the policy limit been $1 million instead of $500,000, the claim would have been for a million.

Per-incident limits should also be a concern. Policies incorporating this feature might provide $2 million in aggregate, but only $500,000 per incident, meaning the most the insurer would "shell out" for any given claim would be $500,000.

There could also be a problem with the claim itself. For example, some PLI policies do not cover claims arising on a project that moves forward without a written agreement.

This includes situations where the engineer thought an extra service was covered under the original agreement's terms and conditions, only to learn later the extra actually constituted a separate project for which a written agreement was not prepared.

And speaking of the contract, that's something that needs to be looked at closely, too. If the engineer accepts the client's demand to be a "named insured" on the engineer's PLI, or the demand that the engineer abide by "the highest standard of care" rather than the one that applies to the rest of the known universe, the insurer may be able to say, "Sorry. We're only able to provide a lot less than you thought we could." And that applies to indemnities too, and any number of other "things in writing," whether or not they're actually part of the formal agreement; e.g., third-party reliance letters and certifications.

"What the heck. You're insured." Except that, when the quintessential biohazard strikes the impeller blade, maybe you're not really insured, which is why relying on an insurance policy can be risky business. Face it: Real insurance comes from a quality-oriented client that works with a quality-oriented firm to establish a scope, general conditions, schedule, and fee both consider fair and reasonable.

'Nuff said.