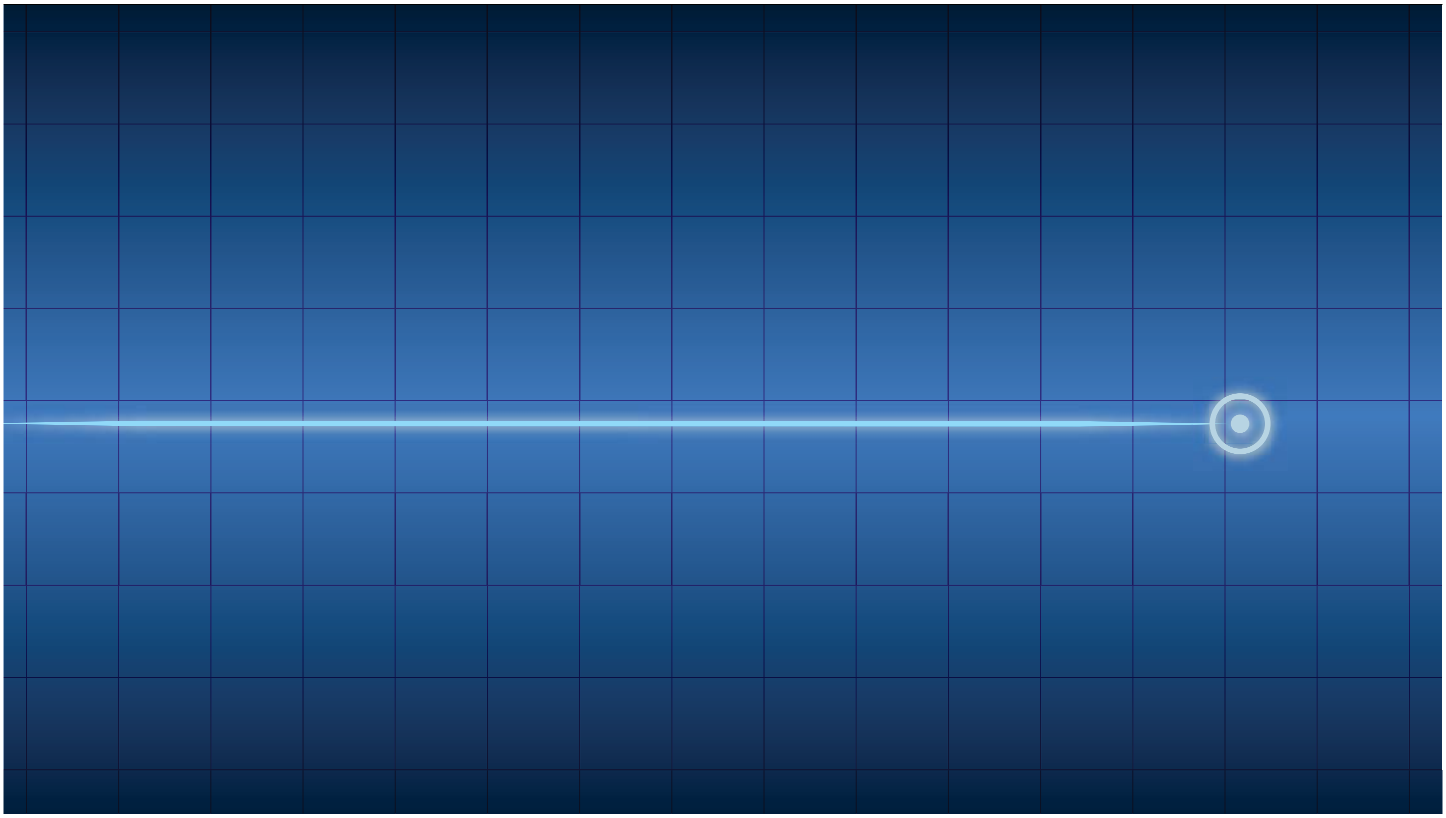

Flat lining

A/E firms with sound risk management may benefit most from a competitive professional liability market, and should take the opportunity to increase coverage.

Joan DeLorey

GUEST SPEAKER

Design firms that practice sound risk management, have good loss experience, and maintain what underwriters consider a desirable project mix, stand to benefit most from an increasingly competitive market for A/E professional liability insurance. A recent survey of A/E professional liability insurers reinforced that while they may be more flexible on premium pricing, they maintain adherence to prudent underwriting standards.

Ames & Gough's survey of 19 leading A/E professional liability insurance companies finds 68 percent are planning to keep their rates flat this year, with another 11 percent planning modest rate decreases. These decisions are being influenced by a continued high level of competition and better-than-expected claims experience in the last two years.

UPTICK IN LARGE LOSSES. Although claims experience generally has been improving, the potential for large claims still exists. Last year, 53 percent of the insurers surveyed paid a claim of $1 million or higher, including two insurers who reported their largest claim paid was between $5 million and $9.9 million and one insurer with a claim between $10 million and $19 million.

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As A/E firms plan for their insurance renewals, they should evaluate and consider increasing their coverage limits – not only to meet higher contractual requirements (limits such as $5 million or $10 million are frequently being

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required), but also to make sure their protection is adequate.

Despite the large losses, the claims experience of most insurers generally has been stable. For the second consecutive year, 79 percent of the insurers surveyed reported no change in their overall claim activity compared to prior years; in 2016, however, a greater percentage of insurers (21 percent) than in the past saw their claims experience improve and none had worse experience.

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Still, there are red flags. Nearly one in three insurers reported an increase in claim severity and 37 percent noted an increase in defense costs impacting overall claim payments. Additionally, 42 percent indicated specific project types – single- and multi-family residential, schools, roads/highways (including bodily injury type claims), and parking structures – as the cause for a higher number of claims.

Besides factors already contributing to claims, insurers surveyed are keeping a close eye on emerging issues, including: judicial rulings eroding protections for design firms under state statutes, such as economic loss doctrine (79 percent); evolving project delivery methods (e.g., design-build and public-private partnerships), cited by 68 percent; innovation, such as the use of BIM and technology and new construction materials/methods; and international exposures (each at 32 percent).

The fact that insurers are monitoring these issues underscores the need for design firms to maintain a sharp focus on risk management. The same applies to potential opportunities to develop and repair the U.S. infrastructure. Asked about underwriting concerns related to this work, 63 percent of the insurers cited the failure of A/E firms to adhere to effective contractual best practices when negotiating new projects. Most (53 percent) also expressed concerns about A/E firms accepting contractual responsibility outside their expertise and 32 percent were wary about the inability of A/E firms to effectively assess and manage subconsultants.

KEY TAKEAWAYS IN ASSESSING BUYER’S INSURANCE MARKET. The bottom line is that it remains a good time to be a buyer of A/E professional liability insurance. With an array of insurers willing to offer competitive terms, it may be an appropriate time to test the market and obtain pricing from other insurers. That stated, while it is possible to achieve savings, making such decisions requires careful assessment.

First, consider the potential benefits of maintaining a long-term partnership with your existing insurer. Those that have a continued relationship with their insured may be more willing to consider further policy enhancements or be more flexible with providing coverage when presented with a claim that falls in a “gray area.” Other key considerations:

- **Policy differences.** Are there key differences in coverage terms and conditions between your current policy and the proposed new policy?
- **Rating formula.** What billings are insurers using for rating purposes? Each insurer has its own rating formula (i.e., past-year billings, average or weighted average of billings, etc.), which can have a direct impact on the premium. Depending on the billings used by each insurer, a more competitive premium one year may not have the same result the following year.
- **Claims handling.** Some insurers have well-developed claims networks and processes, while others may not have the same capabilities (i.e., in-house claims staff versus outsourced to a third party administrator).
- **Financial condition and longevity.** Be sure to assess the insurer’s financial strength, as well as how long it has been in the A/E marketplace.

Don’t overlook claims. If you change insurers, check the new insurance company’s requirements for reporting a claim or circumstance that could evolve into a claim. Work with your broker to report any known claims or circumstances to your incumbent insurer prior to the policy expiration and start of a new policy.

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JOAN DELOREY is a senior vice president and partner at Ames & Gough. She is based in the firm’s Boston office and can be reached at jdelorey@amesgough.com.