

# abaa 2026 building enclosure conference

## When There's Something Strange and Your Enclosure Fails, Who You Gonna Call? Your Insurance Company

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## ***When there's something strange and your enclosure fails, Who You Gonna Call? Your Insurance Company***

On today's projects, contractors and trades are asked to interpret incomplete details, suggest substitutions, support testing, and troubleshoot performance issues—often under schedule pressure. Those day-to-day decisions can create liability when a loss occurs and trigger insurance coverages such as Builder's Risk, General Liability, and Professional Liability.

This session outlines key differences among these coverages, highlights common factors that can jeopardize them, and uses scenario-based examples to help professionals identify early red flags. It also connects these concepts to field practices—such as structured reporting, quality verification, and effective project documentation—that reduce rework, minimize disputes, and clearly demonstrate what work was performed, when, and why.



**Brian Callaghan**



**Mary Kilany**



### **Learning Objectives**

1. Distinguish how Professional Liability differs from General Liability and Builder's Risk
2. Identify when routine enclosure activities constitute professional services
3. Apply claim vs. circumstance decision-making under claims-made coverage.
4. Recognize documentation and reporting practices that improve insurance outcomes



**WATER INTRUSION**



**AIR LEAKAGE**



**FLASHING GAP**



**FAILED SEALANT**



**FACADE JOINT MOVEMENT**



**FAILED WATERPROOFING**



**PROFESSIONAL  
LIABILITY  
CLAIM /  
CIRCUMSTANCE**



Mixed Claims: One Event, Multiple Insurance Coverages



## Builder's Risk

Occurrence-based

First-Party Insurance

Physical damage to covered property during construction.

## General Liability

Occurrence-based

Third-Party Insurance

Provides defense and pays for third-party Bodily Injury/Property Damage caused by your work.

## Professional Liability

Claims-Made

Third-Party Insurance

Provides defense and pays for third-party Bodily Injury/Property Damage, Economic Damages caused by professional error.

# HOW A SINGLE ENCLOSURE EVENT IS REFRAMED OVER TIME

## During Construction

- **Builder's Risk Lens**
- Physical Damage Observed
- Mitigation / Repair Underway
- Expert review focuses on cause of damage.



## During / After Construction

- **General Liability Lens**
- Resulting damage or injury alleged
- Responsibility and scope questioned.
- Expert review focuses on workmanship and causal link.



## During / After Construction

- **Professional Liability Lens**
- Performance, design intent, or judgment questioned
- Economic damages alleged.
- Expert review focuses on professional decision-making

# “Claims Made and Reported” Coverage

## CLAIM

- Defined
- Demand for Money / Compensation
- Notice is Required

## CIRCUMSTANCE

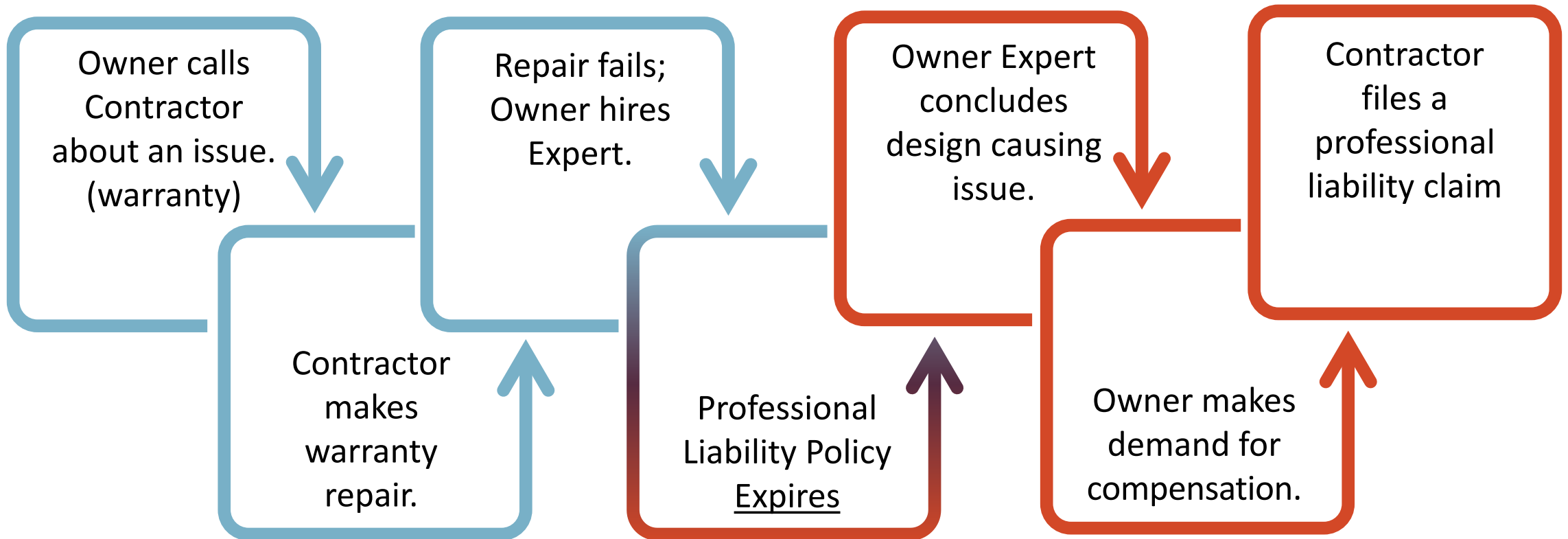
- Sometimes Defined
- Sometimes Reporting Optional
- Demand not made yet; not clear if will be a claim

**Notice of Circumstance: A situation or event that you reasonably believe may result in a claim.**

**Untimely reporting under a claims-made policy can void coverage—even if the work was performed years earlier.**

## Contractor Claims-Made Policy A

## Contractor Claims-Made Policy B



# Where Claims-Made Coverage Breaks Down — and How to Recognize It

## What Happens in Real Projects

- Issues show up as warranty calls, repairs, or coordination problems
- Teams focus on fixing the issue – not insurance framing
- Professional services are often recognized **after experts reframe the event**

## The Question to Ask Early

- Did we exercise **professional judgment**?
- Has damage or a performance issue now occurred?
- Would an expert later focus on that judgment?

*If the answer is “yes,” this may be a reportable circumstance — even if another coverage is responding.*

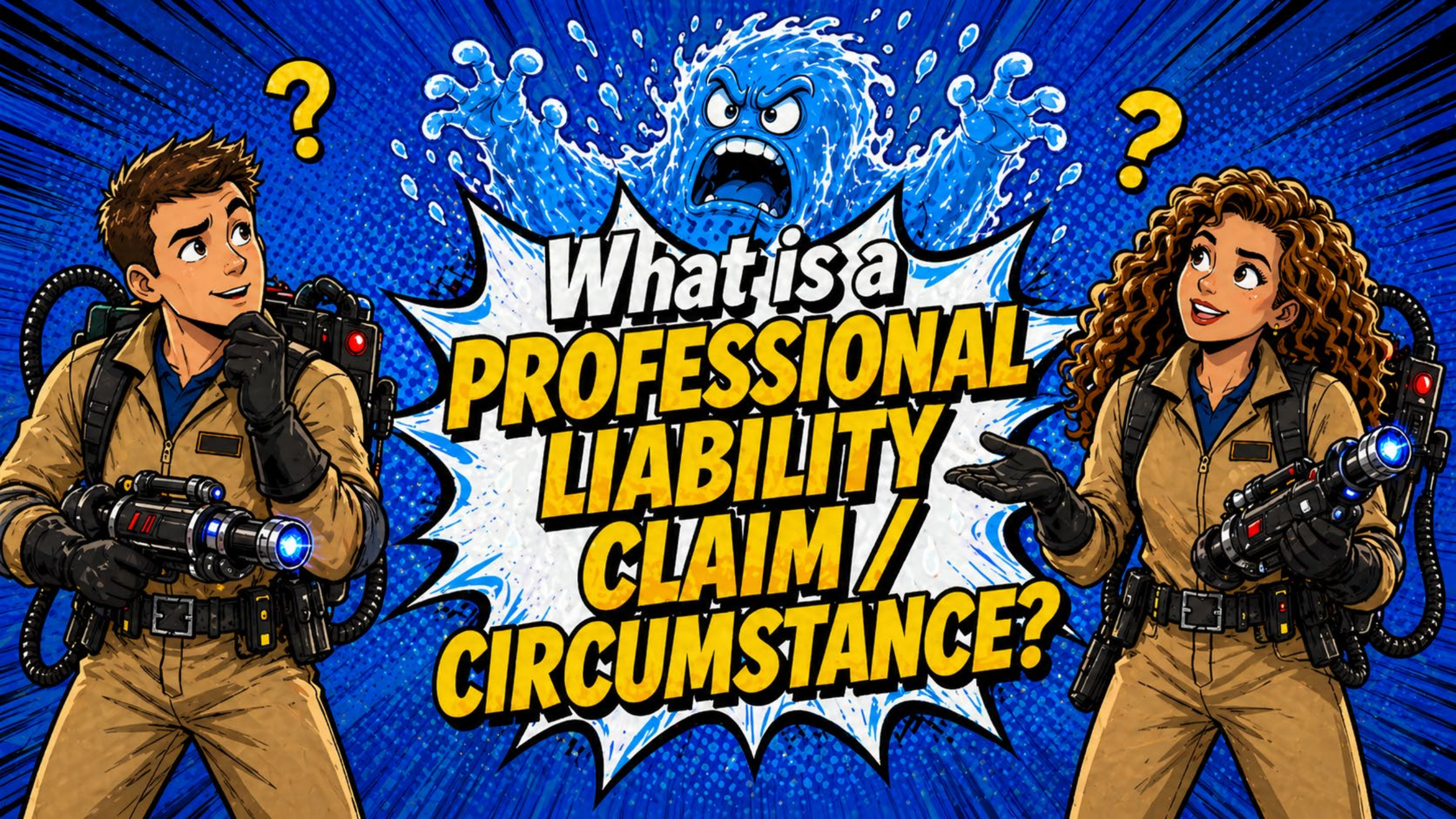
# What is a “Professional Service”?

**Professional Services = Specialized Judgment that affects performance.**

- Interpretation
- Recommendation
- Evaluation
- Acceptance

## **ABAA-Specific Examples**

- Value Engineering Substitutions
- Design-assist input or reviews
- Interpreting incomplete or conflicting details
- Sequencing or installation recommendations



What is a  
**PROFESSIONAL  
LIABILITY  
CLAIM /  
CIRCUMSTANCE?**

# What is a Professional Liability Claim / Circumstance?

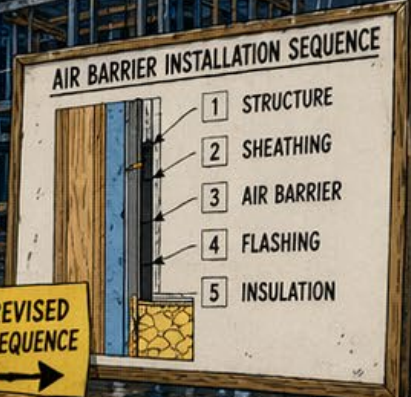
## Scenario #1 – Revised Installation Sequencing

You are contracted as part of the project team on an enclosure scope. During construction, weather conditions and site constraints prompt the team to recommend a revised installation sequence for the air barrier system to maintain progress. The revised sequencing is discussed, agreed to, and implemented. After installation, water intrusion is discovered. Repairs are performed, and a Builder's Risk or General Liability claim is submitted for the resulting damage. During the loss investigation, experts evaluate whether the revised sequencing affected system performance, and the project team is aware that it previously made the sequencing recommendation now central to that analysis.

# REVISED INSTALLATION SEQUENCING SCENARIO

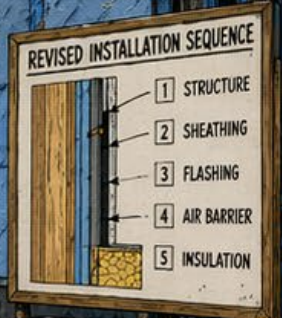
## 1 WEATHER + SITE CONSTRAINTS

WEATHER AND SITE CONSTRAINTS ARE DISRUPTING THE PLANNED SEQUENCE. LET'S REVISE THE INSTALLATION ORDER TO KEEP WORK PROGRESSING.



TEAM RECOMMENDS REVISED INSTALLATION SEQUENCING

## 2 REVISED SEQUENCING AGREED AND IMPLEMENTED



TEAM IMPLEMENTS REVISED SEQUENCING

A REVISED SEQUENCE IS TAKING SHAPE...

## 3 WATER INTRUSION DISCOVERED

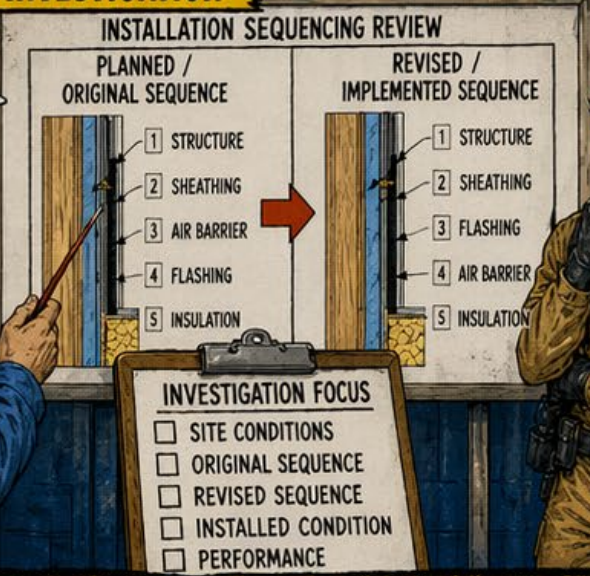
WATER INTRUSION ISSUE

BUILDER'S RISK

GENERAL LIABILITY

REPAIRS PERFORMED + CLAIM SUBMITTED

## 4 LOSS INVESTIGATION



DID THE REVISED SEQUENCING AFFECT ENCLOSURE PERFORMANCE?

THE INVESTIGATION EXAMINES WHETHER THE REVISED INSTALLATION SEQUENCING AFFECTED ENCLOSURE PERFORMANCE.

# Scenario #1 – Revised Installation Sequencing



## **ANSWER: Circumstance**



A Builder's Risk or General Liability claim does not eliminate the need to recognize a Professional Liability circumstance when known prior judgment is now connected to damage.



Experts evaluate whether earlier judgment affected performance

# What is a Professional Liability Claim / Circumstance?

## Scenario #2 - Interpretation of Incomplete Details

You are part of the project team during construction when it becomes apparent that the drawings are silent on a specific enclosure termination condition. To keep work progressing, the team interprets the design intent and agrees on a reasonable approach, which is then installed. During construction, water intrusion occurs. Repairs are performed, and a Builder's Risk claim is submitted for the resulting damage. During the loss investigation, experts evaluate whether the team's interpretation of the incomplete detail affected enclosure performance, and the project team is aware that it provided the interpretation now central to that analysis.

# ENCLOSURE TERMINATION DETAIL SCENARIO

## 1 DRAWINGS SILENT ON TERMINATION CONDITION

THE DRAWINGS ARE SILENT ON THIS TERMINATION DETAIL. LET'S INTERPRET THE DESIGN INTENT AND CHOOSE A REASONABLE APPROACH.



TEAM INTERPRETS DESIGN INTENT

## 2 REASONABLE APPROACH AGREED AND INSTALLED

MY INTERPRETATION IS TAKING SHAPE...

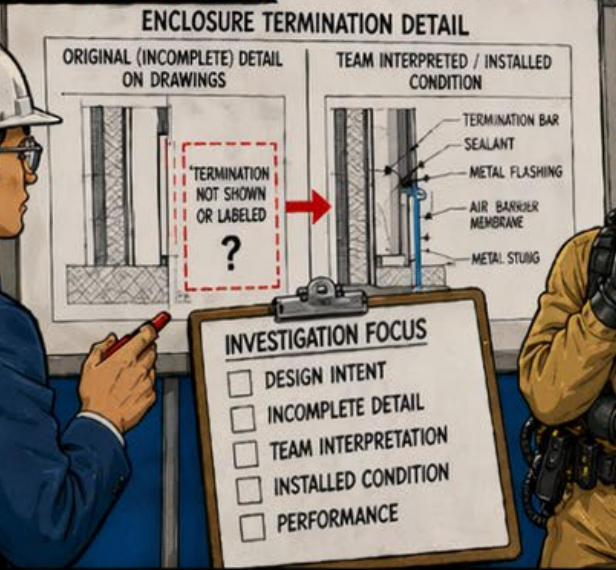


## 3 WATER INTRUSION OCCURS



REPAIRS PERFORMED + BUILDER'S RISK CLAIM SUBMITTED

## 4 LOSS INVESTIGATION



DID THE TEAM'S INTERPRETATION OF THE INCOMPLETE DETAIL AFFECT ENCLOSURE PERFORMANCE?

THE TEAM'S INTERPRETATION OF THE INCOMPLETE DETAIL BECOMES A KEY FOCUS OF THE INVESTIGATION.

## Scenario #2 – Interpretation of Incomplete Details



### **ANSWER: Circumstance**



Physical damage is repaired and addressed under Builder's Risk.



Experts evaluate whether the team's interpretation of incomplete details affected system performance.

# Design-Assist Services vs. Delegated Design

## Design-Assist

- Contractors provide input and recommendations
- Contractor does not assume full design responsibility
- Professional judgment is exercised and later evaluated; dispute often arise over recommendations and coordination

## Delegated Design

- Contractors take full responsibility for specific design elements
- Contractor provides detailed design and engineering
- Contractor is responsible for performance and quality of delegated elements

STRUCTURAL ENGINEER REVIEW	
<input checked="" type="checkbox"/>	NO EXCEPTIONS NOTED
<input type="checkbox"/>	EXCEPTIONS NOTED, REVISE AS INDICATED
<input type="checkbox"/>	REVISE AND RESUBMIT
<input type="checkbox"/>	REJECTED
1/17/2022	BY: [REDACTED]
THIS REVIEW IS FOR GENERAL COMPLIANCE WITH CONTRACT DOCUMENTS AND CONFORMANCE WITH THE DESIGN CONCEPT. REVIEW DOES NOT RELIEVE CONTRACTOR FROM RESPONSIBILITY FOR ERRORS OR DEVIATIONS FROM THE CONTRACT DOCUMENTS. THE CONTRACTOR IS RESPONSIBLE FOR ALL DIMENSIONS, PROPER FIT, QUANTITIES OF MATERIALS, AND COORDINATION WITH OTHER TRADES AND SUPPLIERS.	
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# What is a Professional Liability Claim / Circumstance?

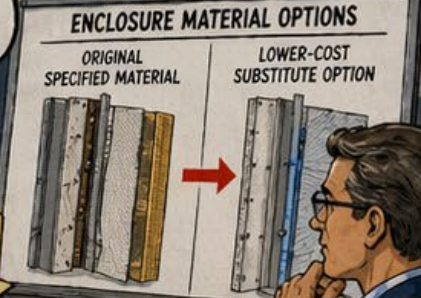
## Scenario #3 – Value Engineering Substitution

You are contracted to provide preconstruction services on a project. During value engineering, the Owner requests cost reductions. Based on prior project experience, the project team recommends a substituted enclosure material as a lower-cost alternative. The Owner approves the substitution before awarding the construction contract. After substantial completion, the substituted system fails, resulting in water intrusion and additional damage. Repairs are made, and a General Liability or Builder's Risk claim is submitted. During the loss investigation, experts evaluate whether the value-engineering recommendation affected enclosure performance, and the project team is aware that it provided the substitution recommendation now central to that analysis.

# VALUE ENGINEERING SUBSTITUTION SCENARIO

## 1 OWNER REQUESTS COST REDUCTION

BASED ON PRIOR PROJECT EXPERIENCE, THIS SUBSTITUTED ENCLOSURE MATERIAL COULD REDUCE COST.



VALUE ENGINEERING  
LOWER-COST ALTERNATIVE

## 2 SUBSTITUTION APPROVED BEFORE AWARD

APPROVED. LET'S PROCEED.  
CHANGE ACCEPTED BEFORE CONTRACT AWARD.

SUBSTITUTED ENCLOSURE MATERIAL

A SUBSTITUTION IS TAKING SHAPE...

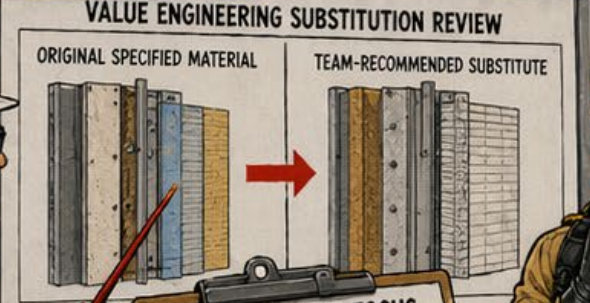
## 3 AFTER COMPLETION, FAILURE OCCURS

ENCLOSURE FAILURE / WATER INTRUSION ISSUE



REPAIRS PERFORMED + CLAIM SUBMITTED

## 4 LOSS INVESTIGATION



- INVESTIGATION FOCUS
- ORIGINAL DESIGN
  - SUBSTITUTED MATERIAL
  - TEAM RECOMMENDATION
  - INSTALLATION
  - PERFORMANCE

DID THE VALUE-ENGINEERING RECOMMENDATION AFFECT ENCLOSURE PERFORMANCE?

THE TEAM'S VALUE-ENGINEERING RECOMMENDATION BECOMES A KEY FOCUS OF THE INVESTIGATION.

# Scenario #3 – Value Engineering Substitution



## **ANSWER: Circumstance**



Physical damage is repaired and addressed under Builder's Risk or General Liability.



Experts evaluate whether the value-engineering recommendation affected system performance

# Common Allegations After Failed VE Substitutions

## Inferior Material Substitution

- Replacement of specified materials with lower-cost alternatives
- Allegations of reduced quality or performance

## Design Changes Affecting System Behavior

- Alterations that affect system behavior, sequencing, or integration
- Allegations the change altered intended performance

## Inadequate Technical Evaluation

- Limited analysis beyond cost or availability
- Allegation risks were not fully assessed before approval.

## Common VE Proposal Language

*“If and to the extent that Contractor provides value engineering proposals, Owner acknowledges Contractor is not certifying the technical efficacy of the proposal, only the price impact, and Owner will be responsible to have the technical aspects of the proposal reviewed and approved by its consultants.”*

# What is a Professional Liability Claim / Circumstance?

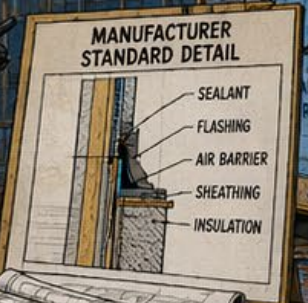
## Scenario #4 – Manufacturer Consultant Recommendation

You are part of the project team during enclosure installation when field conditions make it difficult to follow the manufacturer's standard details as published. The installer contacts a manufacturer's technical consultant for guidance. Based on the conditions described, the consultant recommends an alternative field approach to maintain continuity and allow work to proceed. The recommendation is followed. After installation, water intrusion is discovered. Repairs are made, and a Builder's Risk or General Liability claim is submitted. During the loss investigation, experts evaluate whether the manufacturer consultant's recommendation affected enclosure performance, and the project team is aware that it relied on that recommendation.

# MANUFACTURER FIELD GUIDANCE SCENARIO

## 1 FIELD CONDITIONS CONFLICT WITH STANDARD DETAILS

THE FIELD CONDITIONS DON'T MATCH THE STANDARD DETAIL. LET'S CALL THE MANUFACTURER'S TECHNICAL CONSULTANT FOR GUIDANCE.

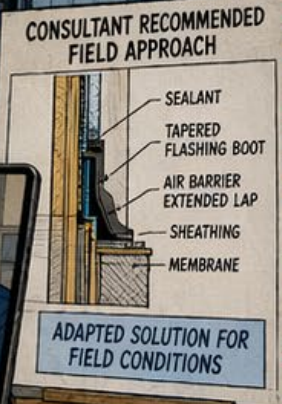


OBSTRUCTION CREATES AN AWKWARD TRANSITION

TEAM SEEKS MANUFACTURER GUIDANCE

## 2 ALTERNATIVE FIELD APPROACH RECOMMENDED

USE A TAPERED FLASHING BOOT WITH ADDITIONAL SEALANT AND EXTENDED AIR BARRIER LAP.



A FIELD FIX IS TAKING SHAPE...

TEAM IMPLEMENTS ALTERNATIVE APPROACH

## 3 WATER INTRUSION DISCOVERED

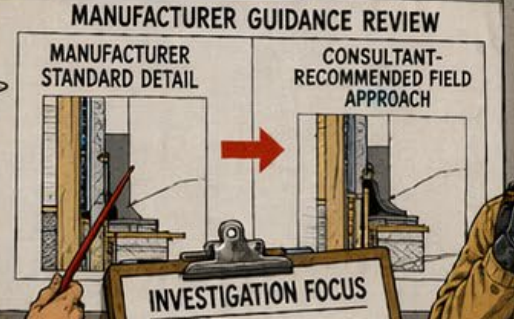
WATER INTRUSION ISSUE

BUILDER'S RISK

GENERAL LIABILITY

REPAIRS PERFORMED + CLAIM SUBMITTED

## 4 LOSS INVESTIGATION



DID THE MANUFACTURER CONSULTANT'S RECOMMENDATION AFFECT ENCLOSURE PERFORMANCE?

THE INVESTIGATION EXAMINES WHETHER THE CONSULTANT'S FIELD RECOMMENDATION AFFECTED ENCLOSURE PERFORMANCE.

# Scenario #4 – Manufacturer Consultant Recommendation



## **ANSWER: Circumstance**



Physical damage is repaired and addressed under Builder's Risk or General Liability.



Experts evaluate whether the manufacturer consultant's recommendation affected enclosure performance

# What is a Professional Liability Claim / Circumstance?

## Scenario #5 – Improper Installation

You are involved in the enclosure scope of a project where installation is performed strictly in accordance with the contract documents and manufacturer's published instructions. No substitutions, sequencing changes, interpretations, or performance recommendations are made by the project team. After installation, water intrusion is discovered. Investigation determines the issue resulted from improper workmanship that did not comply with the specified installation requirements. Repairs are made, and a Builder's Risk or General Liability claim is submitted for the resulting damage. The project team is not aware of any professional judgment or recommendations it provided that contributed to the failure.

# WORKMANSHIP COMPLIANCE SCENARIO

## 1 INSTALLATION FOLLOWS SPECIFIED REQUIREMENTS

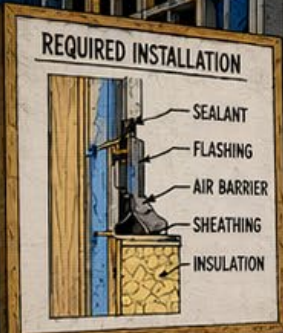
FOLLOW THE CONTRACT DOCUMENTS AND THE MANUFACTURER'S PUBLISHED INSTRUCTIONS EXACTLY AS SHOWN.



NO SUBSTITUTIONS.  
NO SEQUENCING CHANGES.  
NO INTERPRETATIONS.  
NO PERFORMANCE RECOMMENDATIONS.

TEAM RELIES ON SPECIFIED DETAILS

## 2 IMPROPER WORKMANSHIP OCCURS



INCOMPLETE MEMBRANE LAP

A WORKMANSHIP DEFECT IS TAKING SHAPE...

DEFECTIVE INSTALLATION DOES NOT MATCH SPECIFIED REQUIREMENTS

## 3 WATER INTRUSION DISCOVERED

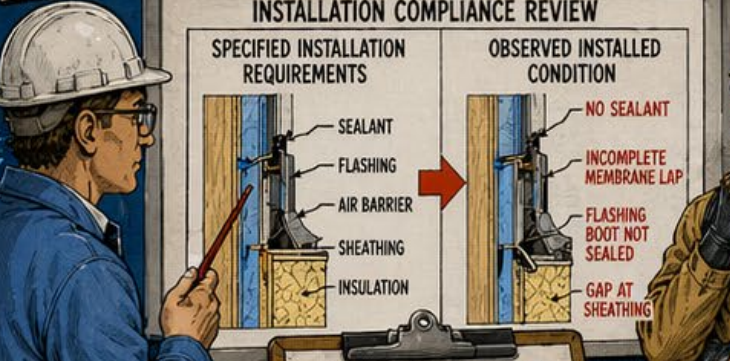


WATER INTRUSION ISSUE



REPAIRS PERFORMED + CLAIM SUBMITTED

## 4 LOSS INVESTIGATION



- INVESTIGATION FOCUS**
- CONTRACT DOCUMENTS
  - MANUFACTURER INSTRUCTIONS
  - WORKMANSHIP COMPLIANCE
  - INSTALLED CONDITION
  - PERFORMANCE

DID IMPROPER WORKMANSHIP CAUSE THE ENCLOSURE FAILURE?

THE INVESTIGATION FOCUSES ON WHETHER THE INSTALLATION COMPLIED WITH THE SPECIFIED REQUIREMENTS.

# Scenario #5 – Improper Installation



**ANSWER: No PL Claim**



Physical damage is addressed through Builder's Risk or General Liability as a workmanship issue.



No professional judgment was exercised; expert review focuses on execution, not decision-making.

# When Issues Arise: Questions to Pause and Ask Early

## Origin of Judgment

1. Who specified the design?
2. Who specified the product? (Value Engineering)
3. Did any work require specialized knowledge?

## Role & Reliance

1. Who reviewed or approved as a third party?
2. Did you or others perform Design-Assist?
3. Did you or others perform Delegated Design?

## Scope Expansion

1. Did you or others perform Design/Build services?
2. Does the issue potentially stem from work performed or recommendations provided?

# Best Practices Once an Issue is Identified



Provide Timely  
Notice & Engage  
Expertise Early



Preserve The  
Record



Track Loss-  
Related Costs  
Separately



Maintain  
Context



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