

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

Why Enclosures Create Insurance Surprises

- Enclosure performance issues often evolve over time
- Early decisions can be re-labeled later as professional judgment
- Coverage outcomes hinge on timing, notice, and documentation
- Today's emphasis: Professional Liability

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 BI, PD, P&AI damages caused by your work.

Professional Liability

Claims-Made

Third-Party Insurance

Provides defense and pays for third-party BI, PD, economic damages caused by professional error.

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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 Completion

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



Later / Formal Dispute

- **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

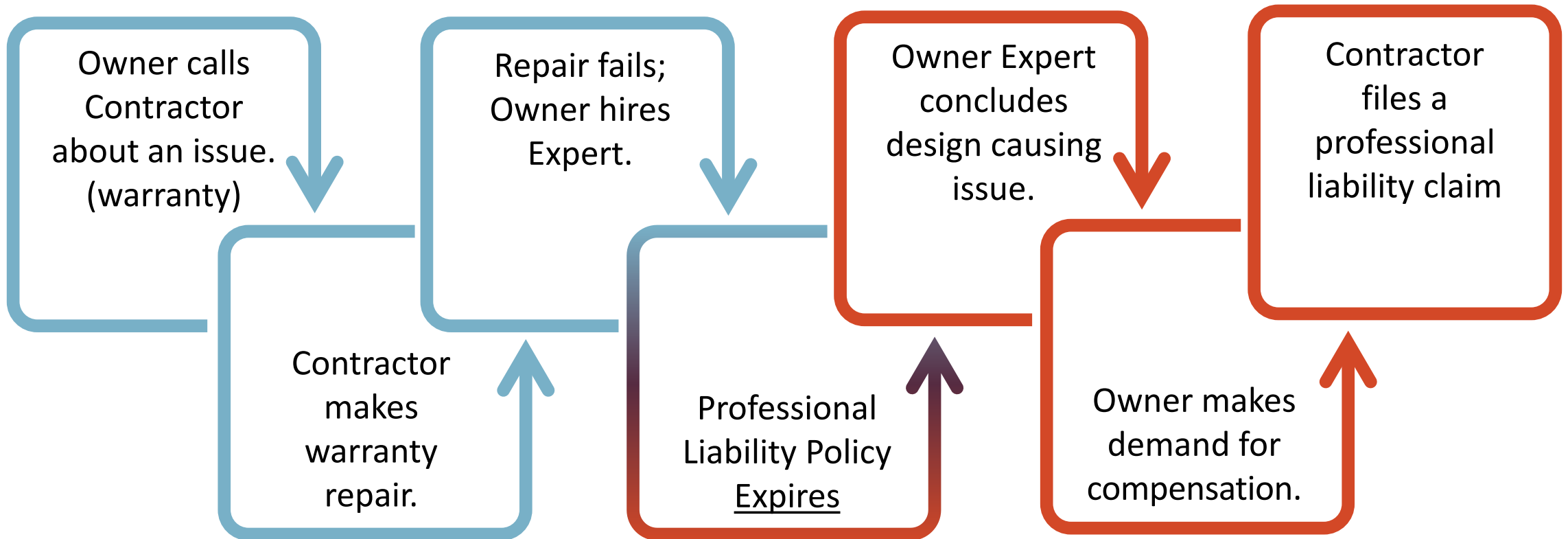
- Sometimes Defined
- Sometimes Reporting Optional
- Demand not made yet; not clear if will be a claim

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.

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.

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.	
[REDACTED]	

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.

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.

Scenario #4 – Manufacturer Consultant Recommendation



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

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.

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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Background 1

Background 2

Background 3

