PROFESSIONAL INSURANCE

MY PROFESSIONAL INSURANCE PORTFOLIO

presented by the

Insurance Program Committee

of the TEXAS SOCIETY *of* ARCHITECTS

ARE YOU PROTECTED?

This handy check list of the more common risks against which Architects and their clients need protection, is presented as a guide by the T.S.A. INSURANCE PROGRAM COMMITTEE:

I. Architect's Protection

A. Professional Protection

1. Professional liability.....?
2. Business interruption.....?
3. Provision for continuity of practice and completion of work in hand .....?

B. Personnel Protection

1. Workmen's compensation .....?
2. Accident — Surgical.....?
3. Hospitalization.....?
4. Loss of time.....?
5. Pension.....?

C. Liability Insurance

1. Public liability.....?
2. Property damage .....?
3. Contingent liability.....?
4. Automobile (owned and non-ownership) .....?
5. Aircraft (owned, chartered and scheduled) .....?

D. Office Protection

1. Fire and windstorm .....?
2. Explosion.....?
3. Water damage (including sprinkler system).....?
4. Vandalism — Malicious mischief.....?
5. Valuable documents damage and replacement .....?
6. Public liability.....?
7. Premise and occupancy liability.....?
8. Collision and comprehensive insurance..... ?

The foregoing guide is not represented as being all-embracing, but the practitioner who can check "yes" to each suggested provision, may well judge that he has acted with more than normal prudence.

PROFESSIONAL INSURANCE SEMINAR
presented by the INSURANCE PROGRAM COMMITTEE
21st ANNUAL CONVENTION - Hotel Cortez, El Paso, Texas
2:00 - 3:30 p.m., Wednesday, November 2nd, 1960
TEXAS SOCIETY of ARCHITECTS

Program Participants:

Moderator ..... Baldwin N. Young
Judge Roy Bean ..... Joseph J. Patterson
Perry Mason (Plaintiff's Lawyer) ..... James T. Swanson, Jr.
Angelo Palladio (Defendant) ..... Ben F. Greenwood
Bailiffs and Ushers ..... Herman G. Cox, R. B. Pardue, Earl E. Koeppe
Properties and Scene Dressing ..... Robert D. Garland, Mace Tungate
Librarians ..... Robert L. Peters, Wilbur Kent
Seminar Readers ..... Daniel Boone, Douglas E. Steinman, Jr.

SEMINAR PAPERS - and - DISCUSSION LEADERS

Court Docket (done wrong and fergits) Session - attached

Are You Protected? ..... Douglas E. Steinman, Walter Bowman

Necessity for Liability Insurance ..... R. Turner Kimmel, John W. Gary

Construction Bonds ..... R. Graham Jackson

Workmen's Compensation Insurance ..... Hamilton H. Brown

II. Client's Protection

Obviously the checking of the interests of clients and members of the Construction Industry pertains to each project as an individual operation.

A. Contract Period

1. Performance, completion and payment bonds
2. Builder's risk (fire and windstorm)
3. Public liability and property damage
4. Workmen's compensation
5. Owner's contingent liability

B. Post-completion Insurance

1. Fire, windstorm and comprehensive coverages
2. Public liability

Respecting any and all matters of insurance, the Committee deems the application of specific coverages to be the function of insurance counselors, and urges reference be had to such specialized services.

YOUR RESPONSIBILITY IS INCREASING

from DESIGN FOR PROTECTION

PROFESSIONAL INSURANCE SEMINAR
presented by the INSURANCE PROGRAM COMMITTEE
21st ANNUAL CONVENTION - Hotel Cortez, El Paso, Texas
2:00 - 3:30 p.m., Wednesday, November 2nd, 1960
TEXAS SOCIETY of ARCHITECTS

Program Participants:

Moderator ..... Baldwin N. Young
Judge Roy Bean ..... Joseph J. Patterson
Perry Mason (Plaintiff's Lawyer) ..... James T. Swanson, Jr.
Angelo Palladio (Defendant) ..... Ben F. Greenwood
Bailiffs and Ushers ..... Herman G. Cox, R. B. Pardue, Earl E. Koeppe
Properties and Scene Dressing ..... Robert D. Garland, Mace Tungate
Librarians ..... Robert L. Peters, Wilbur Kent
Seminar Readers ..... Daniel Boone, Douglas E. Steinman, Jr.

SEMINAR PAPERS - and - DISCUSSION LEADERS

Court Docket (done wrong and fergits) Session - attached

Are You Protected? ..... Douglas E. Steinman, Walter Bowman

Necessity for Liability Insurance ..... R. Turner Kimmel, John W. Gary

Construction Bonds ..... R. Graham Jackson

Workmen's Compensation Insurance ..... Hamilton H. Brown

An Associateship Retirement Plan ..... S. I. Morris, Jr.

An Insurance Plan for Partnerships ..... C. Herbert Cowell

Pre-rating Structures for Insurance Purposes ..... Grayson Gill

Questions and Discussion -

********** ********** **********

My Professional Insurance Portfolio -
Portfolios, presented with the compliments of the Insurance Program Committee, will be available at the conclusion of the Seminar. This is a limited edition, so it is requested that only one Portfolio be accepted for any one office.

****

JUDGE ROY BEAN'S (The law west of the Pecos) COURT
Done-wrong and fergits DOCKET

Session - El Paso - November 2, 1960

Cases Set For This Session:

11/2-1-60	The Not Enough Refrigeration Case
11/2-2-60	The Case of the Angry Surety vs. The Too Lenient Architect
11/2-3-60	The Case of Too Little
11/2-4-60	The Case of the Fallen Arch
11/2-5-60	The Offensive Odor Case
11/2-6-60	The Collapsed Retaining Wall Case
11/2-7-60	The Defective Materials Case
11/2-8-60	The Case of the Incompatible Soils
11/2-9-60	The Case of the Expanding Roof Deck
11/2-10-60	The Plaintive Workmen Case
11/2-11-60	The Negligent Design Case
11/2-12-60	The Case of the Trembling Hospital
11/2-13-60	The Case of the Unsafe Girders
11/2-14-60	The Case of the Dimly Lit Library
11/2-15-60	The Case of the Hidden Utility Lines
11/2-16-60	Case of the Angry Client and the Premature Certificate
11/2-17-60	The Case of the Misplaced Screen
11/2-18-60	The Not Enough Juice Case
11/2-19-60	The Unfit Playground Case
11/2-20-60	Doors Too Narrow, or the Case of the Camel's Eye

NOTE: The cases set for this session of Judge Bean's Court are actual cases, real allegations, and exact amounts in judgments. Only the names have been omitted or altered, and conditions and locations obscured to prevent further suffering to some who may have suffered injustly or too much.

If some levity may have crept into the retelling of these cases, remember: "Many a true word is spoken in jest".

Importantly - these cases (though not brought out in this retelling) each had knowledgeable, experienced, skilled, energetic defense.

Moreover, new meanings to words such as: supervision and inspection with which architects contractually bind themselves, are reflected in a costly decision, wherein the judge interpreted these words to make it the architect's duty "to snoop, pry, and prod".

****** *** *** ******

MY PROFESSIONAL INSURANCE PORTFOLIO

For the 21st Annual Convention - El Paso, Texas presented by the
INSURANCE PROGRAM COMMITTEE

November 2, 1960

CONTENTS

****** ****** ******

INSURANCE PROGRAM COMMITTEE - TEXAS SOCIETY OF ARCHITECTS

Harry D. Payne, Chairman — Douglas E. Steinman, Jr. Secretary

Chapters	The Committee	Alternates
Abilene	Daniel Boone	John M. Bridges, Jr.
Brazos	William E. Nash	. . . . .
Central	Doyle M. Baldridge	Howard Barr
Coastal Bend	Ben E. Christian	Delbert Jones
Dallas	Edward C. Davis	Grayson Gill
El Paso	Robert D. Garland, Jr.	Harry D. Lane
Fort Worth	Herman G. Cox	Joseph J. Patterson
Houston	Hamilton Brown	Seth I. Morris, Jr.
	C. Herbert Cowell	Baldwin N. Young
Lower Rio Grande	Walter Bowman	William C. Baxter
Lubbock	R. Turner Kimmel	Robert Messersmith
North	Robert Pardue, Jr.	. . . . .
Northeast	B. W. Crain, Jr.	Joe M. Evans
Panhandle	Arthur E. Vaughan	. . . . .
San Antonio	W. R. Pounders, Jr.	Lee R. Buttrill
Southeast	Douglas E. Steinman, Jr.	. . . . .
West	John W. Gary	Robert Peters
Ex Officio -	Jack Corgan - T. S. A. President Karl Kamrath - Houston Chapter President L. W. Pitts - T. S. A. President-Elect	

Members-at-large - Philip D. Creer, G. Douglas Gill, Earl Koeppe, Marvin Eickenroht, James D. Witt

GROUP EMPLOYEE RETIREMENT

(Prepared especially for the Professional Insurance Seminar - El Paso Convention, Texas Society of Architects,
by Albert B. Thomas (Sacramento, California), member
The American Institute of Architects Committee on Professional Insurance.)

Every company has an employee retirement problem, even though it may not have an employee retirement plan.

Social Security benefits are substantial, but they are not meant to be adequate. A retirement plan will provide the necessary supplement enabling the employee to stop working and receive his Social Security when it is first available.

To improve the position of aged people, the federal government encourages the use of advance funded retirement plans. This tax treatment is to provide the employer with a full tax deduction for his contribution in the current year, and yet to defer tax to the employees until they receive the money as annuities or in a lump sum. (IRS. Code No. 404)

When the money accumulated in a retirement plan is paid to the retired employee in the form of a monthly pension it will be taxable as ordinary income, but only in the year received.

There will be some instances where even after retirement certain employees will continue to remain in a high tax bracket. In lieu of a monthly pension, an employee may receive a lump sum, such amount will not be treated as ordinary income for tax purposes, it will be treated as a capital gain.

Employees contributions do not enjoy any significant tax advantages. The employee would have to pay current income tax on any part of his salary which he would contribute to a retirement plan, whereas, if the money is contributed directly by the employer, no part of it is current taxable income to the employee. (IRS. Code No. 404)

To meet the needs of an Employee Pension Plan, these specifications should be met:

1. It should be low-cost economical plan whose costs reflect the size of the group.

2. It should be a plan which provides a basic pension income sufficient when added to Social Security to provide a modest living.

3. It should be a plan which in the event of severance of employment prior to retirement would not involve charges or forfeitures for the one paying the cost of the plan.

4. It should be a plan which includes adequate guarantees to the pensioner.

The actual design of the plan must include certain criteris - eligibility, retirement age, pension formula for past and future services, limitation on amount of monthly retirement income, pension options at retirement, vesting rights and options prior to retirement, disability benefits, etc.

The principal obstacle to securing pension proposals for the principals or partners of a firm is the tax situation, as they may not participate using a tax deduction.

For those offices that are incorporated, the principal officers and active stockholders are considered employees and are, of course, covered under the employee plan and their premiums are tax deductible.

INSURABLE ADVANTAGES of CORPORATE PRACTICE by ARCHITECTS

(Prepared especially for the Professional Insurance Seminar - El Paso Convention, Texas Society of Architects, by Frederic R. von Grossmann (Milwaukee, Wisconsin), member the American Institute of Architects Committee on Professional Insurance)

NOTE: This is a very abbreviated digest of a report made on special directive of The Board of The American Institute of Architects. Basically the Committee treats only with insurance matters, and in relation to matters such as: ethics, judiciary, office practice, documents, etc.; its concern is with insurable values.

A Three-Year Experience. In a state permitting the Corporate Practice of Architects, a four-member partnership, succeeding to a fourteen-year sole ownership, incorporated and established a federally approved insurance pension trust of ten members. The sum of $17,400 has been set aside each year to a current year $52,200 aggregate. The tax obligation has amounted to only $1,000 and that applying only to the insurance premium portion.

The advice and guidance of the Equitable Life Assurance Society of the United States was secured in the details of setting up the trust. You readers can secure this or similar advice and guidance through your own insurance counselor.

The former sole practitioner, the founding architect, now enjoys the benefits of a preferred employee status with accruals not allowed under his original status. To date this has been a wholly advantageous status, without occurrence of any disadvantages.

To the Senior Director or President (age 53) there has been allocated annually $8,000 of the $17,400 amount. The other partners (average age 36) have had an annual allocation of $1,800 each. The remaining $4,000 of the amount set aside annually is apportioned to the remaining eligible staff members. All apportionments must be understood as in the insurance pension trust, certainly not as a cash payment to the individual, though all such pension trust funds and equivalent cash values are 100% vested to each individual. The actual net advantage over the three-year period on the Senior Director's $24,000 apportionment figuring taxes is $14,400.

Plan eligibility is for males only and requires two years of employment. The payments are all out of "expense", and are scaled to the annual income and age of the individual insured. The average staff consists of fifteen (two female secretaries). With the usual turnover (due to lack of experience, advancement in other firms, desires to enter own practice, etc.) participation in the pension plan has averaged about 9-11 insureds.

Other Advantages of Corporate Practice. These include: mutually agreeable pre-established provisions for continuity of the firm, a pre-determined market for sale of an individual's interest, acceptable procedures for advancement and assimilation of key personnel, tax relief and simplification in estate settlement (value of stock continuously established), means of gracefully retiring super-annuated personnel, opportunity for accumulation of surplus reserves (up to $60,000), and immediate tax relief for professional men.

****

PRINCIPAL ADVANTAGES OF PROFIT SHARING RETIREMENT PLANS WHICH QUALIFY UNDER SECTION 401 (a) OF THE INTERNAL REVENUE CODE OF 1945

Prepared Especially for T.S.A. El Paso Convention Professional Insurance Seminar, November 2, 1960, by S. I. Morris, Jr. and B. W. Crain, Jr., Members T.S.A. Insurance Program Committee.

To an employee, a qualified profit sharing retirement plan has two principal advantages. First, the employee can be granted a share in the profits of his employer without having to pay an income tax on his share until his retirement. Second, he is able to accumulate a fund for his use at retirement or for the use of his beneficiaries at his death.

Because of our present Federal tax structure, a yearly cash bonus loses much of its appeal to an employee. However, if this bonus is paid in the form of a contribution to the employee's account in a qualified plan, it does not shrink initially because of an income tax and, in fact, increases in value because its earnings are not subject to tax. When the employee receives his share at retirment or other termination of employment, he does, of course, pay a tax. However, if he received his entire share in one year, he pays only a capital gains tax, and if he receives his share in the form of periodic payments, his ordinary income tax on the payments as received is usually lower than it would have been had he received the payments as additional compensation during his higher income years. If the employee dies before receiving his account in the plan, certain tax benefits accrue to his named beneficiaries. Among these benefits are (1) that the value of the employee's account is not subject to the Federal estate tax and (2) that up to $5,000.00 of a lump-sum distribution of the account is not subject to income tax.

For an employer, there are many benefits to be derived from a qualified profit sharing retirment plan. Since plan contributions are geared to profits, employees are encouraged to see that profits increase. Further, if an employee quits the employment before he is entitled to all of his account (usually on a years-of-service basis), the amount he leaves behind is added to the accounts of those who stay, thereby furnishing an incentive for continued employment.

Another benefit from a qualified profit sharing plan is that any obligation an employer might feel it has to provide for the retirment of its employees can be met through tax deductible contributions. Generally, a given year's contribution is deductible to the extent that it does not exceed 15% of the compensation paid plan members during the year. At the same time, since contributions are dependent on current or accumulated profits, the employer avoids the danger of incurring a fixed liability that is difficult to discharge.

Retirement funds may be deposited and administered as trusteed bank accounts, as investor's fund accounts or as insured annuities. Regardless of the method or form of the deposit, the proceeds serve as assurance of retirement income. This is insurance.

One final observation is that a qualified profit sharing plan is one method of building up substantial retirement funds for those who cannot save enough after-tax dollars to build up their own. Generally, if the Internal Revenue Service rules with respect to discrimination of benefits are satisfied, plan contributions can be allocated to members' accounts on the basis of compensation to corporate officers. For this reason, many proprietors and partners, who cannot participate as such in profit sharing plans since they are not "employees", are seriously considering incorporation or, if they are prohibited by ethics or law from incorporating, the formation of an association taxable as a corporation under the tax laws. This latter method of operation relates itself to the Kintner case and is the subject of a proposed Internal Revenue Service regulation (Federal Register, page 10450, December 23, 1959).

AN INSURANCE PROGRAM FOR PROFESSIONAL PARTNERSHIPS

TEXAS SOCIETY OF ARCHITECTS INSURANCE PROGRAM COMMITTEE

Prepared by C. Herbert Cowell, Member T. S. A. Insurance Program Committee

NOTE: This report was formally presented to the T. S. A. Board at the Januray 24, 1959 Meeting and heartily endorsed, for circulation throughout the entire T. S. A. membership.

The law grants partners unusual personal freedom in the conduct of their business. But in the event of the death of a partner, it rigidly prescribes the course to be followed. There is no escaping two alternatives. The firm must either liquidate or reorganize. With foresight, business liquidation can be avoided; reorganization can be accomplished; and the interests of all can be equally and surely safeguarded.

A partnership is usually a small group in which the individual experience, skill, judgment and driving force of each results in a combination that works together harmoniously and effectively. As long as partners can go along together, the business can look forward to continued successful operation. But when the break comes because of the death of one of the partners, unless this situation has been anticipated and properly provided for, the business must come to a halt. The interests of all are affected; and serious problems face all concerned: the business itself, the surviving partners, the heirs of the deceased partner, the employees of the firm. This loss, always unpredictable and usually unexpected, presents immediate problems of major consequence.

An essential difference between the business partnership and the professional partnership lies in the value of the firm's assets. The assets of a business partnership . . . real estate, land, tools, machinery, equipment, inventory, accounts receivable, good will, etc . . . may be of tremendous value, requiring a very large outlay of money to buy the interest of any partner.

On the contrary, the assets of a partnership of professional men are usually of only nominal worth. The real value of the firm lies in the training, skill, experience and character of the individual partners. If we assume that such a professional man leaves nothing in his partnership except his share of the firm's assets we would find a value that is negligible in amount. Good will, in the usual technical sense, seldom adheres to a professional partnership. Such a viewpoint, of course, presents only a limited and false picture. To deny that a professional partner contributes to the firm something else of value which survives his death . . . something in the way of the firm's reputation and standing in the community that helps to assure the continued patronage of the clientele . . is to deny an apparent and generally recognized fact. Most professional partners acknowledge this fact and are willing to pay the retired partner, or deceased partner's estate, for this intangible contribution.

This is one reason for a mutual agreement between professional men to share the profits of their firm with the wife or estate of a deceased partner for a limited time after the partner's death. Another compelling reason is the desire, which professional men share with all others, to protect their dependents after death puts an end to their earning power.

The Treasury Department and the Courts, depending mainly upon how the partnership agreement is worded, may take either of two different attitutdes toward after-death payments:

1. They may look upon them as the price paid for the purchase of a capital asset . . the deceased partner's interest . . . and apply the so-called "purchase" rule; or

2. They may look upon them as income to the deceased partner's beneficiary . . applying the so-called "income continuation" rule.

THE PURCHASE RULE

Since the survivors are considered to have received all future income earned by the firm, and that they use a portion of it to purchase a capital asset, they are required to pay income tax on all of the future earnings of the firm. And, they will not be allowed a deduction for the share of those profits which go to the widow. The present value of the right to the payments under the agreement is included in the gross estate of the deceased partner for estate tax purposes. The widow is not required to pay income tax on the share of the profits she receives. (It should be noted, however, that if payments actually received by the widow are in excess of their estimated value as included in the gross estate of the deceased, then the widow will have to pay a capital gains tax on the excess.).

THE INCOME CONTINUATION RULE

Here it is considered that the surviving partners never receive the share of profits paid by agreement to the widow, but rather that it goes directly to her as income, therefore the surviving partners do not pay income tax on the share of earnings going to the widow. And, they may deduct this amount from total firm earnings as a distribution of profits or a business expense. The present value of the right to the payments under the agreement is included in the decedent's gross estate for estate tax purposes. The widow must pay income tax on the annual payments made to her. (However, the widow may deduct from the income tax due the increase in estate tax caused by inclusion of the value of such income).

The Internal Revenue Code of 1954 says, in effect, that a partnership can obligate itself to make payments to retired partners or heirs of partners, and that these payments need not be in the nature of a distribution of partnership profits. Thus, all of the "good business" reasons for a Buy and Sell Agreement can now be realized without penalty. The tax and estate benefits of deferred compensation can be simultaneously brought to fruition.

THE PLAN IN GENERAL

1. A Buy and Sell Agreement is executed covering only the book value of capital assets of the professional partnership. Accounts receivable, work in process, and good will are not included.

2. Either in a separate agreement or in a separate section of the same agreement, a provision is made obligating the partnership to make certain payments to the heirs of the deceased partner as additional compensation for services rendered before death by the deceased partner.

3. The agreement provides for payments to a partner in the event of Retirement or Disability.

4. A method of funding is provided.

FUNDING WITH LIFE INSURANCE

Life insurance bought by the professional partnership makes an ideal funding device for the agreement because: (1) It provides the cash funds at the very time they are required. (2) That cash is bought at a discount. (3) Proceeds taken lump sum are received by the partnership income tax free. (4) The reorganized partnership is assured of funds to meet the obligation to the heirs of the deceased. (5) The cash and loan values in the policies are a source of funds to be used in event of retirement or disability. (6) The disability provisions in the policies assist in carrying the disability load. (Premiums are waived yet values increase just as though premiums were being paid). (7) The accumulation in the fund is built regularly, systematically, with no current tax on its growth.

**** ****** ****

A DISCUSSION OF THE McGREGOR ACT OF 1959 prepared especially for the Professional Insurance Seminar - El Paso Convention, Texas Society of Architects by R. Graham Jackson, immediate past-President, Houston Chapter A. I. A.

(Texas Public Works Bond Law, Articles 5160 and 5472a, Vernons Texas Statutes as amended by Act of 56th Legislature, 1959)

This Act was passed as a result of the joint efforts of the Texas AGC Executive Council, The Surety Underwriters Association and The Texas Statewide Credit Group. *

Article 5160 provides for two separate 100% bonds to be furnished by any contractor entering to a contract in excess of $2000.00 with the State of Texas, any County, municipality or school district of the State, or any agency or subdivision or board authorized under any law of the State. Both bonds are payable to the owner as obligee. One guarantees performance only and only the owner has right of action. The other guarantees payment of all bills for labor and materials and each creditor has the right of action. Any creditor may secure a certified copy of the Payment Bond from the owner upon making Affidavit that he is a creditor and has not been paid.

The Payment Bond covers all labor and materials used in direct prosecution of the work by any subcontractor or the Prime Contractor. This includes materials, rental of construction equipment, repairs of construction equipment, power, water, fuel and lubricants used or ordered and delivered for use in prosecution of the work.

Any laborer employed by the Prime Contractor or any subcontractor, or any material vendor to the prime contractor or any subcontractor or any subcontractor to either the prime contractor or another csubcontractor may be a claimant.

The Act sets out specifically the time within which various types of claims shall be filed and the method of filing the claims. For example: Notice and claim for retained percentage must be filed within 90 days after final completion of the prime contract. It must be given to both the Prime Contractor and surety by registered or certified mail. It cannot exceed 10% of the contract sum. The Notice must state the amount of the Agreement, the amount paid and the balance due.

The method of filing of claims for other than retained percentages, claims not based on written agreements, claims for multiple items of material and labor and claims based on a written unit price agreement are specifically set out in the Act.

Procedures for claimants not having direct contractual relationship with the prime contractor, but whose relationship is with a subcontractor are also set out, together with specific limts of time upon the various notices to be filed.

The Act further provides that a claimant may assign his claim; provides a penalty for fraudulent claims; and provides for termination of the contract through default of Prime Contractor or termination by the Owner.

*NOTE: The iniquities and inequities of prior statutes had long been a matter of concern to the T. S. A. Insurance Program Committee, and hopeful of securing some measure of improvement and relief, the Committee joined in efforts to pass the Act.

Suits must be filed in court in County where project is located. Limit on Performance Bond is one year after final completion of Prime Contract. Suits may not be filed under Payment Bond until expiration of 60 days after filing of claim. Limit on Payment Bond is one year from expiration of the 60 day period.

Under Article 5472a the right of lien against funds is limited to projects where the amount of the prime contract is less than $2000.00. This Article also sets out specifically who may have a lien and the methods of filing and times within which liens must be filed.

This Act seems to have a great deal of merit in that it clarifies the status of all claimants under the Payment Bond. It follows the pattern set by the A. I. A. in requiring two separate 100% bonds (one for Payment and the other for Performance).

This is essentially a good law. It represents the joint efforts of the Texas Associated General Contractors' Executive Council; the Surety Underwriters Association and the Texas Statewide Credit Group. It spells out specifically and definitely the responsibilities and rights of all claimants, contractors, owners and bonding companies so that there can be no misinterpretations of these rights and responsibilties. (Refer to previous note.)

The Act has several shortcomings that should be pointed out and corrected at the next legislative session:

1. The Attorney General has ruled that the standard A. I. A. Bond form is not acceptable. His ruling requires the Bond to state that "This Bond is executed pursuant to the provisions of Article 5160 of the revised Civil Statutes of Texas as Amended by the 56th Legislature, Regular Session, 1959, and all liabilities on this bond shall be determined in accordance with the Provisions of said Article to the same extent as if it were copied at length herein".

2. Since the A. I. A. form is not acceptable, and since the law does not prescribe a specific form, each governmental agency contracting for construction workhas, through its attorneys, prepared its own bond form, with the result that no two bonds are exactly alike in wording. This has resulted in much confusion and delay in the preparation and checking of contract documents.

3. The law stipulates that in the case of contracts with the State or any agency, department or board thereof, bonds shall be made payable to the State of Texas. When a state agency is permitted to negotiate a loan or issue bonds for buildings, the Bonding Company or Financial Agent handling the financing wants the Performance and Payment bonds made payable directly to the State agency or department contracting for the construction in order to insure completion of and payment for the specific structure for which the loan was negotiated. If funds are paid to the State, they go into the State Treasury and it could take a special appropriation act of the legislature to complete the structure originally contracted for. In view of this clause in the law, financial institutions and Architects should refuse to permit cash settlements by bonding companies on state work, and require that the bondsman instead complete or cause to be completed all contractual obligation of the contractor.

WAYS TO PROMOTE AWARENESS OF NECESSITY FOR PUBLIC LIABILITY INSURANCE IN ARCHITECTURAL PRACTICE

Inform Architects of need by:

A column in Texas Architect

Chapter Program.

Prepare pamphlet giving details of cases involving Architects as liable parties.

Make the Insurance Seminar a permanent part of the convention.

Distribute the pamphlet prepared by Victor O. Schinnerer and Company, Inc. giving Local Availability.

Prepared especially for presentation at El Paso Convention - Professional Insurance Seminar, by Turner Kimmel and John Gary, Members T. S. A. Insurance Program Committee

INSURANCE PROGRAM COMMITTEE
TEXAS SOCIETY OF ARCHITECTS

October 1, 1960

BRIEF EXPLANATION OF WORKMEN'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY AS IT APPLIES TO ARCHITECTS PRACTICING IN THE STATE OF TEXAS

Prepared By Hamilton Brown, F. A. I. A. - Member T. S. A. Insurance Program Committee

1. The main objective of workmen's compensation legislation is the payment of benefits to injured employees or to the dependents of employees killed in industry, regardless of who is at fault in the accident. The law provides that the injured employee shall recover a stipulated amount from the employer or his insurer, regardless of negligence, and in return for this shall not have the right to sue his employer at common law for injuries within the act.

2. The condition in Texas is such that all employees of Architects, including technical personnel, come under the law, and the rate charged by the insurer varies in proportion to the hazard the employee is faced with in his employment. The rate charged to the Architect is based also on the experience record of the individual firm as to its incidence of claims.

3. Architects need to maintain adequate payroll records, properly classifying the duties of each employee, so that insurance auditors may apply the correct rate. There have been instances where this has not been done and annual premium charges have been unnecessarily excessive.

4. Architects in Texas with three or more employees can elect to accept the provisions of the law and participate in the benefits specified. However, in case the Architect rejects the insurance he loses the three common law defenses: (1) Assumption of Risk; (2) Negligence of Fellow Employees; and (3) Contributory Negligence. As an example, the employer could lose his defense in the case of a job inspector who failed to provide himself with the proper safety apparel in a hazardous situation - (steel hat, hard toe shoes, etc.). Furthermore, if an employer of three or more persons rejects the insurance the complainant in a suit is not limited in the amount of the damages he may claim. There are, nevertheless, some large corporations in Texas who do not carry workmen's compensation insurance. The reasoning behind this, no doubt, results from economic studies of the risks one might say that, in effect, they carry their own insurance.

5. Architects with fewer than three employees may elect to carry workmen's compensation insurance and be included within the terms of the law. They can secure compensation insurance by grouping it with other casualty lines. They do not lose their statutory rights of defense, however, if they do not elect to carry the insurance.

6. Employees of Architects in Texas who carry on an out-of-state practice are covered by the terms of the Texas law when working out of the state only in the case of employees hired in Texas. The law of the jurisdiction governing the locale of the work applies in the case of employees hired out-of-the-state.

7. More detailed information on workmen's compensation insurance may be had from your local insurer. Some attorneys specialize in this type of action.

8. In conclusion, it may be stated that the effect of the law results in the following benefits to the employee, employer and society:
   a. Provides certain prompt, and reasonable compensation to victims of work accidents and their dependents.
   b. Frees the law courts from delay, cost, and the tremendous work load of this mass of personal injury litigation.
   c. Relieves public and private charities of the financial drain caused by uncompensated industrial accidents.
   d. Eliminates economic waste in legal expense and payments to witnesses.
   e. Saves the time consumed by trials and appeals.
   f. Supplants concealment of fault in accidents by a spirit of frank study of causes, thereby helping to eliminate accidents that are preventable, and reducing costs and suffering.

9. Furthermore, it is not unreasonable to conclude that these benefits of workmen's compensation insurance result in providing a measure of protection to the Architect's client, assisting in eliminating a source of concern deflecting him from his basic objectives, and providing better morale among employees.

INSURANCE PROGRAM COMMITTEE
TEXAS SOCIETY OF ARCHITECTS

October 1, 1960

WORKMEN'S COMPENSATION INSURANCE SURVEY QUESTIONNAIRE

Form Prepared by Hamilton Brown, F. A. I. A. - Member T. S. A. Insurance Program Committee

TO: All Practicing Architects in the State of Texas

SUBJECT: Questions and answers related to the status of coverage of Workmen's Compensation Insurance in the Architectural profession in Texas.

A. QUESTIONS

		ANSWERS YES	ANSWERS NO
1.	Are you a practicing Architect?		
	a. In Texas	____	____
	b. Out of the State of Texas	____	____
2.	How many employees have you had on your payroll in 1960? Maximum _____ Minimum _____		
3.	Do you carry workmen's compensation insurance on your employees?	____	____
4.	Are your records kept in a manner so that you are able to differentiate between the classes of employees in order to take advantage of the minimum rate schedule for workmen's compensation insurance?	____	____
5.	Do you pay "Construction Engineers" rate on your job inspectors?	____	____
6.	Have you ever had a claim against you by an employee who was injured?	____	____

B. OPTIONAL QUESTION (The following rhetorical question may be answered at your option.)

Premise: A. I. A. General Conditions of the Contract, Article 27, requires that Contractors carry workmen's compensation insurance as a form of protection to employees. A consequence of this is that it contributes a measure of protection to the Owner.

Question: Do you think Architects should provide their clients with a measure of protection corresponding to that stated in the premise by carrying workmen's compensation insurance? ____ ____

If the answer is "NO", will you explain?

Signed:

_____

_____
Address

P.S. Please Note: It will be of important benefit to the Insurance Program Committee if you would document the facts on any claims filed against you. Please furnish us with the details for our records. If this sheet does not provide sufficient space for answers to question, and any comments you wish to offer, please add sheets. Return to:

The T. S. A. Insurance Program Committee
c/o Harry D. Payne
Post Office Box 22311
Houston 27, Texas

October 15, 1960

INSURANCE PROGRAM COMMITTEE - TEXAS SOCIETY OF ARCHITECTS

REPORT CONCERNING JUNE 23, 1960 HEARING BEFORE STATE BOARD OF INSURANCE CONCERNING PRESENT SITUATION IN RESPECT TO PRE-RATING STRUCTURES AND THE PRESENT STATUS OF THE 1959 BRIEF FILED BY THE TEXAS CONCRETE ASSOCIATION

Prepared especially for the El Paso Convention's Professional Insurance Seminar,
by Doyle Baldridge and G. Douglas Gill,
members of the T. S. A. Insurance Program Committee

The 1959 Brief filed by the Texas Concrete Association was presented June 23, 1960 to a hearing of the Texas Board of Insurance by Mr. Hugh Keepers, assistant manager, Fire Prevention and Engineering Bureau, Mercantile Securities Building of Dallas.

Mr. Dennis B. DuPriest, Director Property Rating Unit - Casualty Division, State Board of Insurance, states that the Brief is now under serious consideration and is being reviewed by him and his staff. He made it clear that their work is in an intermediate stage and they are making line by line studies. He was not at all definite as to how long his work will take, but when they finish their review, and complete their recommendations the report will then be presented to the full Board of Insurance for consideration.

Mr. Hugh Keepers who made the Concrete Association presentation, on recent inquiry of Mr. DuPriest has been informed the Property Rating Unit proposes to make a number of modifying recommendations, but that Mr. Keepers will be afforded opportunity to review the Unit's recommendations prior to presenting the recommendations to the Commission.

Mr. DuPriest emphasized that the pre-rating of structures procedure when it is worked out will place great responsibility on the shoulders of the Architect. A very comprehensive questionnaire will be prepared and placed in the hands of the Architect for completion in each case to be submitted for pre-rating. It will be essential then that the structure be erected in conformity with the provisions of the rating questionnaire.

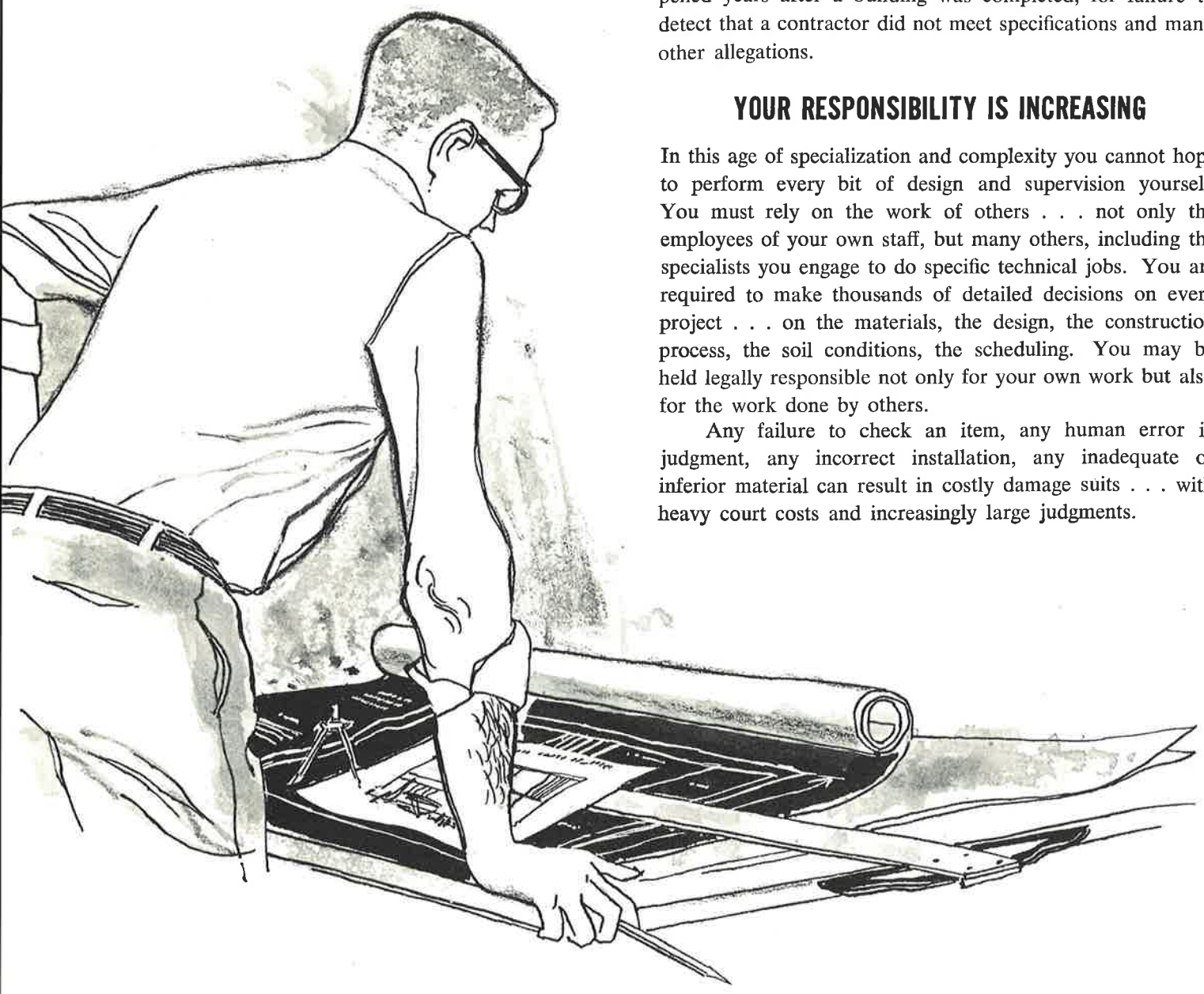
**** **** ****

NOTE: These interrelated subjects, the forwarding of which will prove advantageous in the practice of architecture, will be the subject of Committee Resolutions which will be recommended for Board action, at the January 1961 organizational meeting.

DESIGN FOR PROTECTION

YOU
MAY HAVE TO PAY FOR SOMEONE ELSE'S ERROR
. . . NO MATTER WHEN IT HAPPENED

Sounds impossible . . . but it's true. Recent court decisions have declared the architect responsible for financial losses due to a typographical error, for occurrences that have happened years after a building was completed, for failure to detect that a contractor did not meet specifications and many other allegations.



YOUR RESPONSIBILITY IS INCREASING

In this age of specialization and complexity you cannot hope to perform every bit of design and supervision yourself. You must rely on the work of others . . . not only the employees of your own staff, but many others, including the specialists you engage to do specific technical jobs. You are required to make thousands of detailed decisions on every project . . . on the materials, the design, the construction process, the soil conditions, the scheduling. You may be held legally responsible not only for your own work but also for the work done by others.

Any failure to check an item, any human error in judgment, any incorrect installation, any inadequate or inferior material can result in costly damage suits . . . with heavy court costs and increasingly large judgments.

CLAIMS ARE INCREASING

People have become more claims conscious than they were in the past and all signs show that this trend is increasing. When a person sustains real (or imagined) damages or injuries today, he may seek legal redress from anyone whom he conceives to be held accountable even in the remotest degree. Other professions have felt the impact of this . . . doctors, lawyers, accountants . . . and Professional Liability Insurance is available to them. Architects and engineers are in an equally vulnerable position. They may be held responsible not only for their own acts, but also for the acts, omissions or errors of all those who do work for them.

The amounts awarded by courts for injuries to people and damages to property, including resultant financial loss, run into large sums . . . thousands, sometimes hundreds of thousands of dollars.

LEGAL JUDGMENTS ARE INCREASING THE ARCHITECT'S AREA OF RESPONSIBILITY

Recently a single court case established a legal precedent which multiplied every architect's potential liability almost overnight. This was the case of an architectural firm that designed a hospital. There was nothing wrong with the design itself. There *was* something wrong with the plumbing sub-contractor's shop drawings and he failed to install a pressure relief valve that was called for in the architects' plans. Without even notifying the architects that the boiler had been installed, the sub-contractor ran a test, the boiler exploded and a workman was killed. His widow filed a suit against all parties in any way connected with the work, including the architects. Even though there was no "privity" (i.e., contractual relation) between the deceased workman and the architects, the court placed the sole responsibility on the architects and awarded a judgment of $58,700.00. The Court of Appeal upheld this ruling and increased the award to $84,000.00. The lower court held that architects were required to "snoop, pry and prod" and that if they had done so, they would have discovered the omission of the safety valve. The Court of Appeal enunciated the legal ruling that architects are responsible for "care toward the contractor and his employees and the sub-contractors and their employees so as to protect against injury to those who may be reasonably foreseen to be imperiled by defective or improper construction or lack of adequate supervision." The legal right of third parties to claim against architects was upheld.

Now, throughout the United States, claimants are in the courts seeking hundreds of thousands of dollars in damages for third party liability.

. . . BUT THE PROFESSIONAL LIABILITY INSURANCE COMMENDED BY THE AMERICAN INSTITUTE OF ARCHITECTS CAN PROTECT YOU.

Recognizing the lack of adequate insurance protection for its members, The American Institute of Architects appointed a committee some years ago to explore the entire field of professional liability insurance. After pursuing without success every avenue which held any hope of providing a suitable, broad form professional liability insurance, the committee secured the services of Victor O. Schinnerer & Company, Inc., as consultant. Working closely with this firm, the committee made a survey of all corporate members to determine the type of professional liability insurance that would best protect architects.

DESIGNED SPECIFICALLY FOR ARCHITECTS

Out of this American Institute of Architects-Schinnerer survey developed a broad form professional liability policy written by the Continental Casualty Company. This policy provides the truly broad form protection needed by architects for their professional practice.

CONTINENTAL CASUALTY POLICY CONTAINS ALL OF THESE IMPORTANT ELEMENTS OF PROTECTION

BROAD COVERAGE — Covers insured's liability for acts, errors and omissions arising from the performance of professional services as architects.

COMPLETE DEFENSE — Provides complete defense and pays its costs including investigation, law suits and arbitrations. These are paid in addition to the policy limit. The deductible amount does not apply to the costs of defense.

FULLY RETROACTIVE OPTION—Coverage is available for professional acts, errors or omissions discovered during the policy period even though they occurred in years past, back to the day the architect first began practice. This coverage is subject to certain limitations set forth in the policy.

BROAD DEFINITION OF INSURED—The policy insures not only the named insured but any partner, executive officer, director, stockholder or employee of the insured firm while acting within the scope of their duties as such. The legal representatives of the named insured are protected in the event of death, lunacy or bankruptcy of the named insured.

BROAD LIABILITY PROVISION—The policy covers the architect for the acts, errors or omissions of any person or firm for which he may be held legally liable, subject to certain exclusions.

EXTENSIVE SERVICE FACILITIES — Claim and policy service available throughout the United States of America, its territories and possessions and Canada. Worldwide coverage available where needed.

SPECIAL PROVISIONS —— Limits from $25,000.00 to $500,000.00 and up are available.

The policy can be bought with deductibles of $500.00, $1,000.00, $2,500.00 etc.

Expenses for immediate medical and surgical relief to others are covered without regard to liability and in addition to the policy limit.

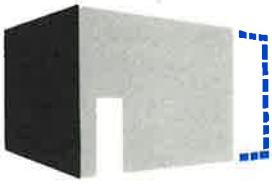
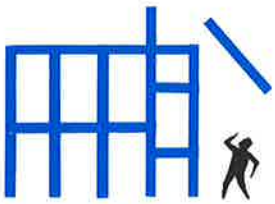
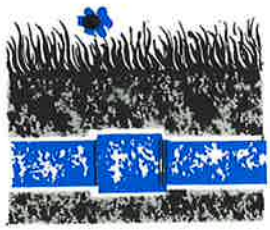
REASONABLE COST — The cost to architects is very reasonable in light of the broad coverage provided. Each architectural firm receives individual rating in accordance with its own practice, size and unique character.

SUPPORT YOUR OWN AMERICAN INSTITUTE OF ARCHITECTS COMMENDED PROGRAM

The only policy which is commended by The American Institute of Architects is the Continental Casualty Company policy under the program underwritten and administered through Victor O. Schinnerer & Company, Inc., Washington, D. C.

The more architects who join this program the stronger the program will become and the greater its ability to maintain the broad protection architects will need in the future. Widespread participation will also make it possible to provide this protection at the lowest cost consistent with security and service and to keep the program abreast of today's fast changing conditions. Policy improvements and rate reductions have already been secured as enrollment expanded.

IF THIS HAD HAPPENED TO YOU YOU WOULD HAVE BEEN PROTECTED BY THE A.I.A. COMMENDED PROFESSIONAL LIABILITY INSURANCE.

	THE SITUATION	COST
	**ALLEGED FAILURE TO EXERCISE NECESSARY DEGREE OF SUPERVISION.** In installing a domestic hot water system, the plumbing sub-contractor omitted a pressure relief valve provided for in the plans and specifications. Prior to notifying the architect of the installation of the system, the sub-contractor tested it, at which time the boiler exploded, killing one workman. At the trial level, a judgment of almost $60,000 was rendered against the negligence of the plumbing sub-contractor. On appeal, the judgment was not only sustained but increased by $25,000.00.	$84,000.00 plus several thousand dollars in expenses.
	**INCORRECT DIMENSIONS IN THE PLANS.** As the result of a typographical error in the dimensions of a building, the building was not of sufficient size for the use intended. At the time the error was discovered, the building was virtually complete and sufficient adjoining ground was not available to make the necessary alterations. As a result, certain equipment had to be redesigned, the lighting rearranged and other alterations made in the already constructed portions of the building. The owner also claimed loss of revenue due to the several months' delay in opening the building.	$20,000.00
	**ALLEGED IMPROPER DESIGN.** During erection of the steel skeleton, but before permanent welding had been completed, the steel framework collapsed, severely injuring a workman. The workman sued the contractor who, during his testimony, stated that the architect's drawings were incorrect and that this was the real cause of the collapse. The plaintiff immediately named the architect as an additional defendant. The charge was subsequently proved groundless.	$2,000.00 + for legal defense and investigation costs.
	**FAILURE TO DETERMINE CHARACTERISTICS OF NEW MATERIAL.** The architect designed a structure using a lightweight aggregate concrete which, he had been assured, had the same expansion characteristics as gravel aggregate concrete. The lightweight aggregate proved to have a far greater expansion co-efficient and, as a result, parapet walls on three sides of the building were seriously damaged. In awarding judgment against the architect, the court held that his failure to determine the characteristics of the material before specifying its use constituted negligence for which he was liable.	$23,000.00 plus trial expenses.
	**MATERIALS NOT SUITABLE FOR THE USE INTENDED.** Several architects designed schools in the same geographical area, all the architects using the same mechanical engineer in connection with underground piping. The piping specified proved to be incompatible to the soil conditions, to the extent that at several schools, it has taken less than twelve months for the effects of corrosion to completely destroy the piping. It is alleged that if proper soil tests had been obtained, the results would have clearly indicated the use of other materials in the pipes. Twenty-three schools are involved. The total final cost is not yet determined.	Between $150,000.00 and $250,000.00.

THE AMERICAN INSTITUTE OF ARCHITECTS

The Octagon · 1735 New York Avenue, N.W. · Washington 6, D. C.

PROFESSIONAL LIABILITY INSURANCE

TO PRACTICING ARCHITECTS
MEMBERS OF THE AMERICAN INSTITUTE OF ARCHITECTS:

After some years of study, the Committee on Professional Insurance of the Institute recommended that the Board of Directors commend to the favorable consideration of the membership, the Architects' Professional Liability Insurance presented by Victor O. Schinnerer & Company, Inc., of Washington, D. C., and written in the Continental Casualty Company. At its meeting in Houston, Texas on November 28th, 1956, The Board of Directors accepted and adopted the Committee report.

This A.I.A. commended policy, developed in close cooperation with the Committee on Professional Insurance of the Institute, has been enthusiastically received by the membership. This support has enabled the Committee, through its Insurance Consultant, to secure substantial policy improvements and some reductions in premium.

The A.I.A. Committee on Professional Insurance and their Insurance Consultant will continue to cooperate in improvement of the policy form and rates. In addition, studies are being made of claims and legal trends to identify and disclose danger areas and alerts which may be of value to all members of the profession. Informed counsel and advice on the prevention of claims can be one of the most valuable aspects of the program.

The continued success of this important program will depend on the support of all members of the Institute. To this end we urge your serious and favorable consideration of this most essential protection for the practicing architect.

Cordially yours,

COMMITTEE ON PROFESSIONAL INSURANCE

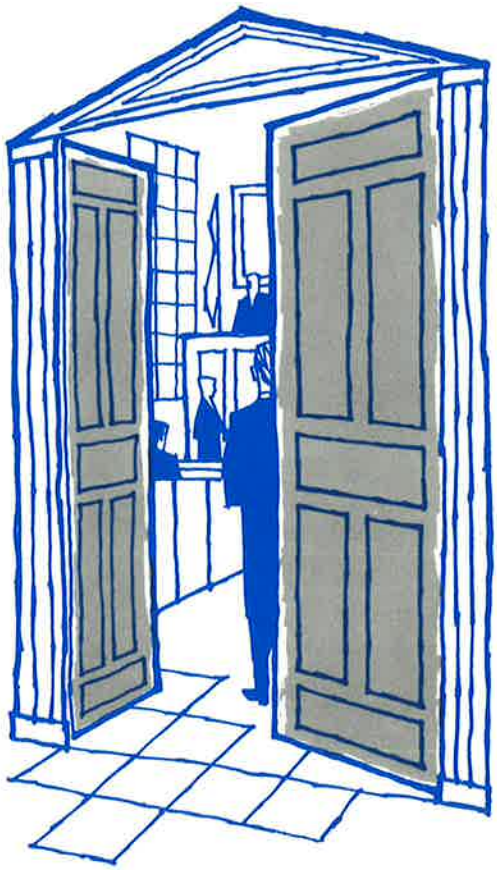
Harry D Payne.

HARRY D. PAYNE, A.I.A., CHAIRMAN

EVEN THOUGH YOU ARE RIGHT ...YOU MAY HAVE TO PROVE IT

False charges and unfounded allegations may have to be disproved in court. Investigation, legal fees, court costs, expert testimony, appeals and other expenses may cost thousands of dollars. You may face costly claims regardless of whether the damage or injury occurred through negligence, through error in judgment or through no personal fault of yours. The architect, today, may be held legally responsible not only for his own work but for the work of all the specialists he must engage to aid him in the completion of his assignment.

Lack of adequate Professional Liability Insurance can mean serious financial loss—even disaster. Protect yourself now by purchasing the A. I. A. commended policy—it's your basic protection!



Professional Liability Insurance
for Architects as commended by the
American Institute of Architects.

Underwritten and administered by
Victor O. Schinnerer & Company, Inc.,
in the Continental Casualty Company.

VICTOR O. SCHINNERER & COMPANY, INC.
Investment Building • Washington 5, D.C.

Underwritten and Administered by

VICTOR O. SCHINNERER & COMPANY, INC.

Professional Liability Specialists for Architects

Investment Building, Washington 5, D. C. Phone REpublic 7-1929

TEXAS
SOCIETY
OF ARCHITECTS

GROUP INSURANCE PLAN

(a development of the Houston Chapter AIA. Plan)

offered by authority of 1950 and 1952 T. S. A. Conventions

(in continuous, successful operation since April 1, 1949.)

●

ACCIDENT • HOSPITALIZATION • SURGICAL FEE
and
INCOME PROTECTION INSURANCE
for
MEMBERS • MEMBER'S STAFFS
and their
DEPENDENTS

●

also TERM LIFE INSURANCE

●

Underwritten by

WESTERN LIFE INSURANCE COMPANY

(The St. Paul Western Insurance Companies — founded 1853)

Schedule and Outline of Basic Benefits and Premiums:

TABLE OF MONTHLY PREMIUM RATES –

CLASSIFICATION PLAN NUMBER Monthly Salary or Income	Income Protection Weekly Benefit	Accidental Death– Principal Sum	(a)PARTICIPANT only or 1 Survivor only	PARTICIPANT with DEPENDENTS	
				(b) 1 Dependent	(c) 2 or more Dependents
IA–Senior/Retired	none	none	$6.75	$12.75	$12.75
IB–Survivors	none	none	6.00	10.00	10.00
II–up to $249	$30	$1,000	5.50	10.20	13.15
III–$250 to $399	40	1,000	6.00	10.75	13.70
IV–above $399	55	1,000	6.85	11.55	14.50
V–Executive above $600	85	1,000	8.50	13.20	16.15
$1,000 Term Life Insurance			$1.00 per month additional		

Basic Benefits

FOR PARTICIPANTS:

ACCIDENTAL DEATH – The principal sum in addition to any other benefits, and for dismemberment pro-rated amounts.

INCOME PROTECTION – The stipulated rate per week (total disability) up to 13 weeks, for any one period of disability (not to exceed 6 weeks maternity benefit). Beginning with–(a) first day of accidental injury, (b) 8th day of sickness.

FOR PARTICIPANTS AND DEPENDENTS:

HOSPITALIZATION – SURGICAL FEE – POLIOMYELITIS – OUTPATIENT – DIAGNOSTIC – Identical; for each Plan, and alike; for Participants and Dependents.

HOSPITAL EXPENSE – Maximum: Daily for Room – $10. (31 days during any one period of disability; for Miscellaneous Expenses (up to) – $200; for Maternity Benefit – $100 (total).

SURGICAL FEE – $15 to $300 scheduled amount (including obstetrical benefit).

POLIOMYELITIS – $2,500 in lieu of other benefits.

OUTPATIENT – For **Emergency Accident*** up to $25 for treatment incurred within 48 hours next following accident. For **Surgical Operation*** scheduled amount and up to $25 for miscellaneous expense incurred within a 24 hour period. *Unless other benefits are payable.

DIAGNOSTIC X-RAY – LABORATORY* (non-scheduled) up to $25 for any one stated injury or sickness within any one policy year, not in excess of $50 per policy year. *Unless other benefits are payable.

Eligibility ("Participants" and "Dependents"):

Any Member (Fellow, Corporate, Associate, or Junior Associate, resident in the State of Texas) of the Texas Society of Architects, and/or any Staff Member (associates and/or employees) of any participating Member is eligible for enrollment as an individual; and each such of the foregoing who actually participates is identified as and referred to as a **"PARTICIPANT."** There is no age limitation for enrollment or continued participation.

The Participant's spouse; and a Participant's unmarried children over fourteen (14) days, and under nineteen (19)* years of age are eligible for insurance as Dependents and each such actually insured is identified and referred to as a **"DEPENDENT."** *Extended in the instance of unmarried children under twenty-four (24) years of age enrolled in and pursuing regularly scheduled degree courses (full schedule) in a recognized educational facility (granting earned credits and degrees).

Retired Members (inclusive of Members Emeriti) sixty-five (65) years of age (or over) with not less than five (5) years' continuous prior participation in the Group Insurance Plans, inclusive of life insurance (to extent eligible), and Dependents (spouse and children) also heretofore insured as dependents for not less than five (5) continuous years are eligible to participate in the Senior/Retired Plan.

Survivor Dependents (spouse and children) of a deceased Participant with not less than five (5) years' continuous prior participation as a family unit in the Group Insurance Plans, inclusive of life insurance (to extent eligible) are eligible to participate in the Survivors Plans.

Features • Advantages • Limitations

IMMEDIATE BENEFITS — Effective for any disability commencing after issuance of certificate, regardless of prior date of origin of ailment, unless otherwise restricted or limited.

NON-CANCELLABLE — Individual certificates non-cancellable as long as: Plan exists, T. S. A. membership (or employment relationship) is maintained, and premiums are paid.

24 HOUR COVERAGE — Effective: at work, in travel, at home, and at play.

WORLDWIDE COVERAGE

NON-PRORATING — Benefits payable regardless of overlapping or duplicating insurance coverages.

RESTRICTIONS and LIMITATIONS — Hospital and/or surgical benefits not payable when provided without direct cost to Insured, as at philanthropic, fraternal or governmental expense, or under provisions of workmen's compensation insurance.

Maternity benefits for new enrollees (enrolling upon eligibility) are subject to a 275 day waiting period, otherwise a waiting period of 12 months is required.

Accidental Death and allied benefits not payable for loss caused by: war, suicide, or participation in aeronautics other than farepaid scheduled flights of commercial airlines.

COMPARISON with plans available to other professional groups evidences T. S. A. Plans to be of superior balance and greater practical benefit, and reveals only a few plans extended to staff members and families. No other such plans provide retired and survivor benefits.

Term Life Insurance

Effective September 1, 1956, Term Life Insurance in the face amount of one thousand ($1,000) dollars, was added to the Plans, on a level premium basis automatically reducing to five hundred ($500) dollar face amount at age 75 years.

Separate application accompanied by evidence of insurability is required for Term Life.

The granting of policies is subject to the Insurer's approval of applications, in accordance with regulations of the Texas Insurance Commission.

Non-cancellable provisions of the Accident-Hospitalization-Surgical Plans extend to Term Life.

Enrollment:

New Members Texas Society of Architects, and new employees of participating offices, applying within first 30 days of membership or employment are granted Accident-Hospital-Surgical insurance without submission of evidence of insurability.

TO ENROLL —

a) complete the Participant's Enrollment card and supporting information *(type or letter clearly).*

b) remit premium for the effective month at the applicable rate, making remittance payable to: T. S. A. Insurance Account.

c) forward the completed application material together with remittance, to T. S. A. Insurance Account at address set out below.

d) application material for Term Life Insurance will be provided each Participant upon request. Submission of satisfactory evidence of insurability required.

PREMIUM PAYMENT —

Premiums are due and payable in advance on the 15th of the prior month, for the premium of the next succeeding month. Remittances may be paid monthly, quarterly, semi-annually, or annually, but in each instance in advance; made payable to T. S. A. Insurance Account, and addressed to the Account.

Certificates:

GROUP MASTER POLICIES (renewable annually) —

Held in the name of the Texas Society of Architects — Group Insurance Participants.

INDIVIDUAL CERTIFICATES (individually non-cancellable) —

Issued in the name of each Insured Participant (Member, Staff Member) detailing the benefits.

Claim Procedure:

FILING of CLAIMS —

The T. S. A. Insurance Account on application, will provide to Insureds the applicable and acceptable claim forms, will transmit claims to the Insurer, and will transmit benefit remittances to Insureds. *Conduct all negotiations with the Insurer through T. S. A. Insurance Account.* Any deviation in procedure will confuse and delay settlement of claims.

(This is an explanation of the insurance. Actual provisions, benefits, and conditions are set out in the governing certificates.)

T.S.A. INSURANCE ACCOUNT

POST OFFICE BOX NO. 22311,

HOUSTON 27, TEXAS.

October 15, 1960.

MY PROFESSIONAL INSURANCE PORTFOLIO

presented by the

Insurance Committee

of the TEXAS SOCIETY *of* ARCHITECTS

1961 Edition *for* 22nd Annual Fort Worth CONVENTION

PROFESSIONAL INSURANCE

FILE No. AIA 40-E (TSA)

MY PROFESSIONAL INSURANCE PORTFOLIO

1961 Edition for the 22nd Annual) Convention Texas Society of Architects
Fort Worth)

prepared and presented by the INSURANCE COMMITTEE

* CONTENTS *

***** ******* *****

1961 INSURANCE COMMITTEE - TEXAS SOCIETY OF ARCHITECTS

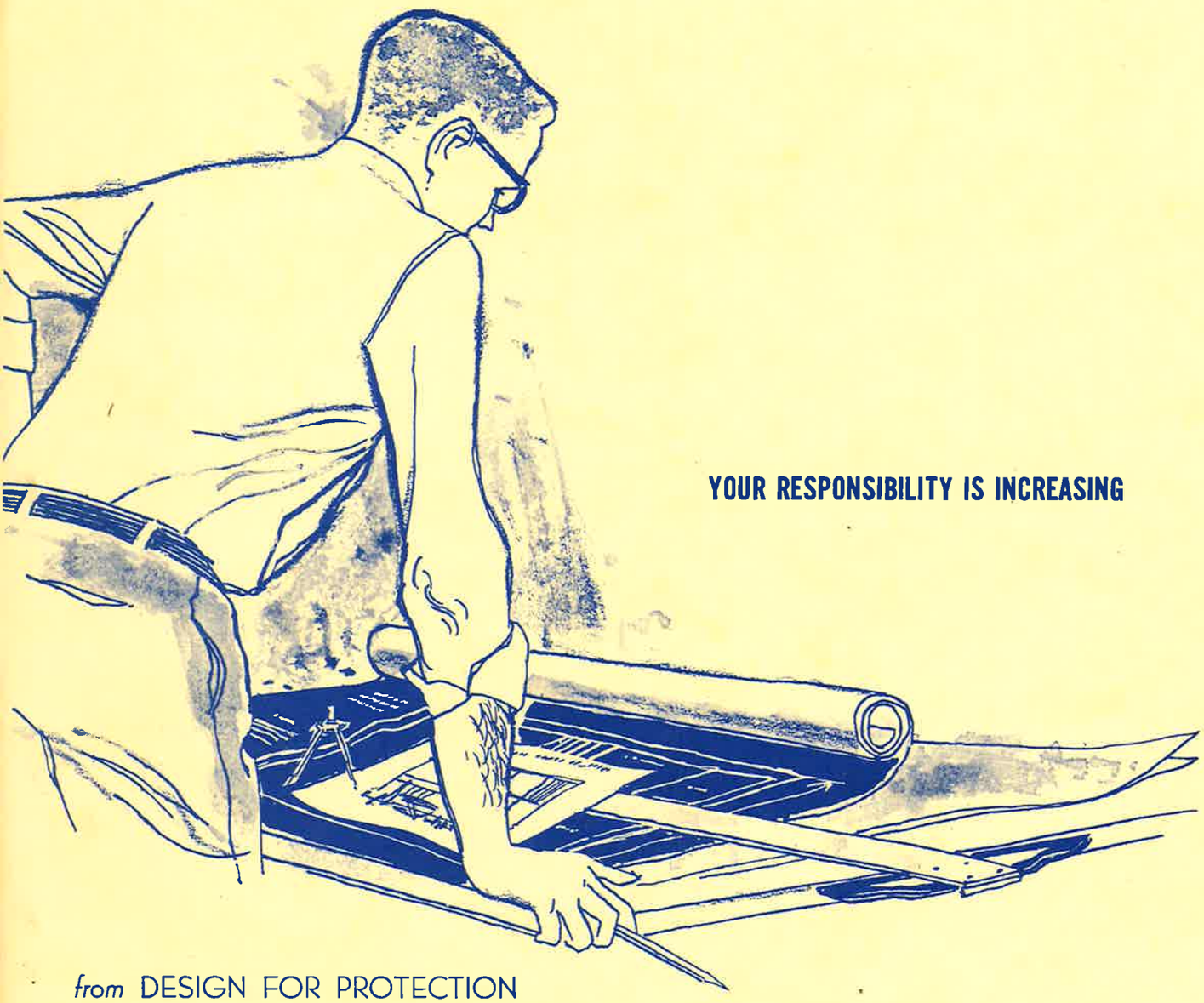
Harry D. Payne, Chairman* Douglas E. Steinman, Jr., Secretary

Chapter	The Committee
Abilene	Daniel Boone
Brazos	William E. Nash
Central	Philip D. Creer
Coastal Bend	Delbert Jones
Dallas	G. Douglas Gill
El Paso	Louis Daeuble, Jr.
Fort Worth	Herman G. Cox
Houston	Hamilton Brown*
	C. Herbert Cowell*
	Seth I. Morris, Jr.*
	Baldwin N. Young*
Lower Rio Grande	Walter C. Bowman
Lubbock	R. Turner Kimmel
North	Robert Wingler
Northeast	B. W. Crain, Jr.
Panhandle	John S. Ward, Jr.
San Antonio	W. R. Pounders, Jr.
Southeast	Douglas E. Steinman, Jr.
West	John W. Gary

*Executive Committee for Group Insurance Plans

Ex Officio - L. W. Pitts (TSA President), Seth I Morris, Jr. (Houston Chapter President), Harold E. Calhoun (TSA President-Elect), Theo. F. Keller (Houston Chapter President-Elect)

Members-at-Large - J. J. Luther (Abilene), Latham White (Dallas), M. O. Bynum (El Paso), Earl E. Koeppe (Fort Worth), James D. Witt (Fort Worth), Gene P. Hobart (Lower Rio Grande Valley), Arthur E. Vaughan (Panhandle), Lee R. Buttrill (San Antonio), James D. Hillhouse (West)



YOUR RESPONSIBILITY IS INCREASING

from DESIGN FOR PROTECTION

MY PROFESSIONAL INSURANCE PORTFOLIO

1961 Edition for the 22nd Annual Convention Texas Society of Architects
Fort Worth)

prepared and presented by the INSURANCE COMMITTEE

* CONTENTS *

***** ******* *****

1961 INSURANCE COMMITTEE - TEXAS SOCIETY OF ARCHITECTS

Harry D. Payne, Chairman* Douglas E. Steinman, Jr., Secretary

Chapter	The Committee
Abilene	Daniel Boone
Brazos	William E. Nash
Central	Philip D. Creer
Coastal Bend	Delbert Jones
Dallas	G. Douglas Gill
El Paso	Louis Daeuble, Jr.
Fort Worth	Herman G. Cox
Houston	Hamilton Brown*
	C. Herbert Cowell*
	Seth I. Morris, Jr.*
	Baldwin N. Young*
Lower Rio Grande	Walter C. Bowman
Lubbock	R. Turner Kimmel
North	Robert Wingler
Northeast	B. W. Crain, Jr.
Panhandle	John S. Ward, Jr.
San Antonio	W. R. Pounders, Jr.
Southeast	Douglas E. Steinman, Jr.
West	John W. Gary

*Executive Committee for Group Insurance Plans

Ex Officio - L. W. Pitts (TSA President), Seth I Morris, Jr. (Houston Chapter President), Harold E. Calhoun (TSA President-Elect), Theo. F. Keller (Houston Chapter President-Elect)

Members-at-Large - J. J. Luther (Abilene), Latham White (Dallas), M. O. Bynum (El Paso), Earl E. Koeppe (Fort Worth), James D. Witt (Fort Worth), Gene P. Hobart (Lower Rio Grande Valley), Arthur E. Vaughan (Panhandle), Lee R. Buttrill (San Antonio), James D. Hillhouse (West)

ARE YOU PROTECTED?

This handy check list of the more common risks against which Architects and their clients need protection, is presented as a guide by the T. S. A. INSURANCE PROGRAM COMMITTEE. Prepared by Walter C. Bowman and Douglas E. Steinman, Jr. (Reviewed November 1, 1961, for Fort Worth Convention Edition - My Professional Insurance Portfolio)

I. Architect's Protection

A. Professional Protection
1. Professional liability.....?
2. Business interruption.....?
3. Provision for continuity of practice and completion of work in hand.....?

B. Personnel Protection
1. Workmen's compensation.....?
2. Accident - Surgical.....?
3. Hospitalization.....?
4. Loss of time.....?
5. Pension.....?

C. Liability Insurance
1. Public liability.....?
2. Property damage.....?
3. Contingent liability.....?
4. Automobile (owned and non-ownership).....?
5. Aircraft (owned, chartered and scheduled).....?

D. Office Protection
1. Fire and windstorm.....?
2. Explosion.....?
3. Water damage (including sprinkler system).....?
4. Vandalism - Malicious mischief.....?
5. Valuable documents damage and replacement.....?
6. Public liability.....?
7. Premise-occupancy liability.....?
8. Collision and comprehensive insurance.....?

The foregoing is not represented as being all-embracing, but the practitioner who can check "yes" to each suggested provision, may well judge that he has acted with more than normal prudence.

Obviously the checking of the interests of clients and members of the Construction Industry pertains to each project as an individual operation.

II. Client's Protection

A. Contract Period
1. Performance, completion and payment bonds
2. Builder's risk (fire and windstorm)
3. Public liability and property damage
4. Workmen's compensation
5. Owner's contingent liability

B. Post-completion Insurance
1. Owner's fire, windstorm and comprehensive coverages
2. Owner's public liability
3. Contractor's post-completion

Respecting any and all matters of insurance, the Committee deems the application of specific coverages to be the function of insurance counselors, and urges reference be had to such specialized services.

BOND AND LIEN LAWS IN TEXAS

By R. Graham Jackson, A. I. A. (Houston Chapter)

Prepared for 1961 Edition "My Professional Insurance Portfolio"

Many elements of the construction industry have long been of the opinion that Texas Bond and Lien Laws are difficulty to comprehend, unworkable and contain harsh, built-in moral injustices. The Texas State-Wide Credit Group, the Texas Associated General Contractors, Executive Council, the Surety Underwriters Association, the Texas Society of Architects Insurance Committee and other groups began joint efforts in 1957 to bring about the best possible remedy for this situation. The McGregor Act was prepared and enacted in 1959; the Hardeman Act was passed by the Legislature in 1961. The Miller Act governs liens on Federal work.

The McGregor Act is the Texas Public Works Bond Law, Articles 5160 and 5472. Vernon's Texas Statutes as amended by the Act of the 56th Legislature, 1959.

Article 5160 provides for two separate 100% bonds to be furnished by any contractor entering into a contract in excess of $2,000.00 with the State of Texas, any County, municipality or school district of the State, or any agency or subdivision or board authorized under any law of the State. Both bonds are payable to the owner as obligee. One guarantees performance only and only the owner has right of action. The other guarantees payment of all bills for labor and materials and each creditor has the right of action. Any creditor may secure a certified copy of the Payment Bond from the owner upon making Affidavit that he is a creditor and has not been paid.

The Payment Bond covers all labor and materials used in direct prosecution of the work by any sub-contractor or the Prime Contractor. This includes materials, rental of construction equipment, repairs of construction equipment, power, water, fuel and lubricants used or ordered and delivered for use in prosecution of the work.

Any laborer employed by the Prime Contractor or any sub-contractor, or any material vendor to the prime contractor or any sub-contractor or any sub-contractor to either the prime contractor or another sub-contractor may be claimant.

The Act sets out specifically the time within which various types of claims shall be filed and the method of filing the claims. For example: Notice and claim for retained percentage must be filed within 90 days after final completion of the prime contract. It must be given to both the Prime Contractor and surety by registered or certified mail. The Notice must state the amount of the Agreement, the amount paid and the balance due.

The method of filing of claims for other than retained percentages, claims not based on written agreements, claims for multiple items of material and labor and claims based on a written unit price agreement are specifically set out in the Act.

Procedures for claimants not having direct contractural relationship with the prime contractor, but whose relationship is with a sub-contractor are also set out, together with specific limits of time upon the various notices to be filed.

The Act further provides that a claimant may assign his claim; provides a penalty for fraudulent claims; and provides for termination of the contract through default of Prime Contractor or termination by the Owner.

Suits must be filed in court in County where project is located. Limit on Performance Bond is one year after final completion of Prime Contract. Suits may not be filed under Payment Bond until expiration of 60 days after filing of claim. Limit on Payment Bond is one year from expiration of the 60 day period.

Under Article 5472a, the right of lien against funds is limited to projects where the amount of the prime contract is less than $2,000.00. This Article also sets out specifically who may have a lien and the methods of filing and times within which liens must be filed.

This Act seems to have a great deal of merit in that it clarifies the status of all claimants under the Payment Bond. It follows the pattern set by the A. I. A. in requiring two separate 100% bonds (one for Payment and the other for Performance).

This is essentially a good law. It represents the joint efforts of the Texas Associated General Contractors' Executive Council; T. S. A. Insurance Committee; the Surety Underwriters Association and the Texas Statewide Credit Group. It spells out specifically and definitely the responsibilities and rights of all claimants, contractors, owners and bonding companies so that there can be no misinterpretations of these rights and responsibilities. The Act has several shortcomings that should be pointed out:

(1) The Attorney General has rules that the standard A. I. A. Bond Form is not acceptable. His ruling requires the Bond to state that "This Bond is executed pursuant to the provisions of Article 5160 of the revised Civil Statutes of Texas as Amended by the 56th Legislature, Regular Session, 1959, and all liabilities on this bond shall be determined in accordance with the Provisions of said Article to the same extent as if it were copied at length herein".

(2) The law stipulates that in the case of contracts with the State or any agency, department or board thereof, bonds shall be made payable to the State of Texas. When a State agency is permitted to negotiate a loan or issue bonds for buildings,

the Bonding Company or Financial Agent handling the financing wants the Performance and Payment bonds made payable directly to the State agency or department contracting for the construction in order to insure completion of and payment for the specific structure for which the loan was negotiated. If funds are paid to the State, they go into the State Treasury and it could take a special appropriation act of the legislature to complete the structure originally contracted for. In view of this clause in the law, financial institutions and Architects should refuse to permit cash settlements by bonding companies on State work, and require that the bondsman instead cause to be completed all contractural obligation of the contractor.

The Hardeman Act, Articles 5452 and 5471 and Articles 5472c and d, Vernon's Texas Statutes as Amended by the Acts of the 1961 Legislature, cover Bonds and Liens on private work.

The Hardeman Act is patterned after the McGregor Act. It sets out specifically the parties who may have a lien or the right to a lien on private work. The parties covered are the same as in the McGregor Act. The protection granted under this act is either a lien on the owner's property or the right to sue on the bond. The act provides that the owner must pay in proportion to the work done. If he gets notice of claim, he must withhold money to cover the claim. If the claim is undisputed, it must be paid by the owner after thirty days.

A bond is optional under the Hardeman Act. If an owner follows the law, he will never be liable for more than the contract sum. Persons having claims may fix their rights in the same manner as is provided in the McGregor Act.

It is important to know that the owner can wash his property free from all liens by the requirements of a Performance and Payment Bond. The bond must be filed, together with a copy of the contract between the owner and the contractor with the County Clerk in the County in which the work is being performed. The law requires the County Clerk to index these documents in three ways: (1) in the name of the Owner, (2) in the name of the Contractor, and (3) in the name of the Claimant.

It is important to note the fact that the standard A. I. A. Bond Form is no longer suitable for use under the Hardeman Act. The Surety Contractors' Association has developed a bond form based on the A. I. A. form and on other forms, but incorporating all of the requirements of the Hardeman Act. The bond must be in 100% of the value of the contract and it will cover 15% of extras. The 15% of extras applies to the amount of work completed at any given time.

Architects should be aware of several provisions of the Hardeman Act.

(1) If a bond is furnished on the contract, then the bond and the contract between the Owner and Contractor must be filed in the office of the County Clerk. The law

does not stipulate the party responsible for this filing, but since it is for the interest of the owner that the filing be done, the Architect should call the matter to the attention of the owner or, better still, be certain that the documents have been filed.

2. It is important that the Architect be certain that the proper bond form is used. The law provides for two separate bonds - one for payment and one for performance. The bond forms being used should comply in all respects with the requirements of the law.

3. The law provides that the owner must retain in his hands 10% of the contract sum for 30 days following completion of the job. This retained fund is for artisans and mechanics first and for all other claimants after the claims of artisans and mechanics have been satisfied. This is a new provision of the law in that other claimants are entitled to rights to claim against the 10% retainage after artisans and mechanics claims have been satisfied. The expansion of the group that may benefit from this 10% retained fund increases the danger that such claims may be asserted against the owner. It is therefore necessary that architects and their clients be aware of the requirements for 10% retainage for a period of 30 days after final completion of the work.

The Miller Act is the third law concerning liens. This act is concerned with bonds on Federal work.

The Miller Act is a Federal Act providing that the General Contractor shall furnish a bond on any contract exceeding $2,000.00 in amount. It specifically set out the rights of persons supplying labor and materials on Federal contracts. Under this Act a person supplying material or labor to a material man, who then supplies the material to a General Contractor or Sub-Contractor on Federal work has no claim against the project. The Act provides the method for protecting claims on Federal Work in less specific manner than do the two Acts on State and private work.

It should be noted that bond in the amount of 100% of the contract sum is required under both the Miller Act and the McGregor Act. The bond is optional with the owner on private work. In view of the provisions of the law, however, it is apparent that the owner of private work would be wise to require a bond in every instance.

INSURANCE PROGRAM COMMITTEE
TEXAS SOCIETY OF ARCHITECTS

October 1, 1960

BRIEF EXPLANATION OF WORKMEN'S COMPENSATION INSURANCE AND EMPLOYER'S LIABILITY AS IT APPLIES TO ARCHITECTS PRACTICING IN THE STATE OF TEXAS

Prepared by Hamilton Brown, F. A. I. A. - Member T. S. A. Insurance Program Committee
Reviewed and reissued for 1961 Edition - Fort Worth Convention

1. The main objective of workmen's compensation legislation is the payment of benefits to injured employees or to the dependents of employees killed in industry, regardless of who is at fault in the accident. The law provides that the injured employee shall recover a stipulated amount from the employer or his insurer, regardless of negligence, and in return for this shall not have the right to sue his employer at common law for injuries within the act.

2. The condition in Texas is such that all employees of Architects, including technical personnel, come under the law, and the rate charged by the insurer varies in proportion to the hazard the employee is faced with in his employment. The rate charged to the Architect is based also on the experience record of the individual firm as to its incidence of claims.

3. Architects need to maintain adequate payroll records, properly classifying the duties of each employee, so that insurance auditors may apply the correct rate. There have been instances where this has not been done and annual premium charges have been unnecessarily excessive.

4. Architects in Texas with three or more employees can elect to accept the provisions of the law and participate in the benefits specified. However, in case the Architect rejects the insurance he loses the three common law defenses: (1) Assumption of Risk; (2) Negligence of Fellow Employees; and (3) Contributory Negligence. As an example, the employer could lose his defense in the case of a job inspector who failed to provide himself with the proper safety apparel in a hazardous situation (steel hat, hard toe shoes, etc.). Furthermore, if an employer of three or more persons rejects the insurance the complainant in a suit is not limited in the amount of the damages he may claim. There are, nevertheless, some large corporations in Texas who do not carry workmen's compensation insurance. The reasoning behind this, no doubt, results from economic studies of the risks one might say that, in effect, they carry their own insurance.

5. Architects with fewer than three employees may elect to carry workmen's compensation insurance and be included within the terms of the law. They can secure compensation insurance by grouping it with other casualty lines. They do not lose their statutory rights of defense, however, if they do not elect to carry the insurance.

6. Employees of Architects in Texas who carry on an out-of-state practice are covered by the terms of the Texas law when working out of the state only in the case of employees hired in Texas. The law of the jurisdiction governing the locale of the work applies in the case of employees hired out-of-the-state.

7. More detailed information on workmen's compensation insurance may be had from your local insurer. Some attorneys specialize in this type of action.

8. In conclusion, it may be stated that the effect of the law results in the following benefits to the employee, employer and society:
   a. Provides certain prompt, and reasonable compensation to victims of work accidents and their dependents.
   b. Frees the law courts from delay, cost, and the tremendous work load of this mass of personal injury litigation.
   c. Relieves public and private charities of the financial drain caused by uncompensated industrial accidents.
   d. Eliminates economic waste in legal expense and payments to witnesses.
   e. Saves the time consumed by trials and appeals.
   f. Supplants concealment of fault in accidents by a spirit of frank study of causes, thereby helping to eliminate accidents that are preventable, and reducing costs and suffering.

9. Furthermore, it is not unreasonable to conclude that these benefits of workmen's compensation insurance result in providing a measure of protection to the Architect's client, assisting in eliminating a source of concern deflecting him from his basic objectives, and providing better morale among employees.

(Revised and Reissued Nov. 1, 1961
for Fort Worth Convention)

PRINCIPAL ADVANTAGES OF PROFIT SHARING RETIREMENT PLANS WHICH QUALIFY UNDER SECTION 401 (a) OF THE INTERNAL REVENUE CODE OF 1945

Prepared Especially for T.S.A. El Paso Convention Professional Insurance Seminar, November 2, 1960, by S. I. Morris, Jr. and B. W. Crain, Jr., Members T.S.A. Insurance Program Committee.

To an employee, a qualified profit sharing retirement plan has two principal advantages. First, the employee can be granted a share in the profits of his employer without having to pay an income tax on his share until his retirement. Second, he is able to accumulate a fund for his use at retirement or for the use of his beneficiaries at his death.

Because of our present Federal tax structure, a yearly cash bonus loses much of its appeal to an employee. However, if this bonus is paid in the form of a contribution to the employee's account in a qualified plan, it does not shrink initially because of an income tax and, in fact, increases in value because its earnings are not subject to tax. When the employee receives his share at retirment or other termination of employment, he does, of course, pay a tax. However, if he received his entire share in one year, he pays only a capital gains tax, and if he receives his share in the form of periodic payments, his ordinary income tax on the payments as received is usually lower than it would have been had he received the payments as additional compensation during his higher income years. If the employee dies before receiving his account in the plan, certain tax benefits accrue to his named beneficiaries. Among these benefits are (1) that the value of the employee's account is not subject to the Federal estate tax and (2) that up to $5,000.00 of a lump-sum distribution of the account is not subject to income tax.

For an employer, there are many benefits to be derived from a qualified profit sharing retirment plan. Since plan contributions are geared to profits, employees are encouraged to see that profits increase. Further, if an employee quits the employment before he is entitled to all of his account (usually on a years-of-service basis), the amount he leaves behind is added to the accounts of those who stay, thereby furnishing an incentive for continued employment.

Another benefit from a qualified profit sharing plan is that any obligation an employer might feel it has to provide for the retirment of its employees can be met through tax deductible contributions. Generally, a given year's contribution is deductible to the extent that it does not exceed 15% of the compensation paid plan members during the year. At the same time, since contributions are dependent on current or accumulated profits, the employer avoids the danger of incurring a fixed liability that is difficult to discharge.

Retirement funds may be deposited and administered as trusteed bank accounts, as investor's fund accounts or as insured annuities. Regardless of the method or form of the deposit, the proceeds serve as assurance of retirement income. This is insurance.

One final observation is that a qualified profit sharing plan is one method of building up substantial retirement funds for those who cannot save enough after-tax dollars to build up their own. Generally, if the Internal Revenue Service rules with respect to discrimination of benefits are satisfied, plan contributions can be allocated to members' accounts on the basis of compensation to corporate officers. For this reason, many proprietors and partners, who cannot participate as such in profit sharing plans since they are not "employees", are seriously considering incorporation or, if they are prohibited by ethics or law from incorporating, the formation of an association taxable as a corporation under the tax laws. This latter method of operation relates itself to the Kintner case and is the subject of a proposed Internal Revenue Service regulation (Federal Register, page 10450, December 23, 1959).

The CASE of the MISSING SOLE PROPRIETOR

by - Loane J. Randall, Vice President Advanced Underwriting,
Western Life Insurance Company, St. Paul, Minnesota.
from - Western Life News, Thursday, September 28, 1961.

Mr. Randall's article so convincingly illustrates the necessity of one of the Insurance Committee's long-time criteria; i. e.: "provision for continuity of practice and completion of work in hand", that his permission was sought and has been secured for the inclusion of this material in the - 1961 (22nd) Fort Worth Convention Edition, MY PROFESSIONAL INSURANCE PORTFOLIO.

- -

What happens when an architect operating as an individual practitioner (sole proprietor) dies?

Unless the architect has specifically provided otherwise by will or through a contractual agreement for sale of his practice, his executor or administrator is obligated in most instances to liquidate the practice as promptly as is reasonably possible.

Suggested approaches to develop the problems of an individual practitioner are as follows:

"Does your will authorize your executor to continue your practice until it can be disposed of to the best interests of your family?"

"Do you have an agreement with a key employee (or employees) providing for the purchase of your practice for a fair price in the event of your death, or total incapacitation?"

An honest answer to either question will give a valuable insight into the individual practitioner's affairs, and will suggest avenues for necessary further exploration.

Many, if not most individual practices are operated with little thought toward continuity of the practice, should the architect die or become totally incapacitated. Sometimes, this may be understood in the hopeful belief that the widow might be able to carry-on with some dependable and competent employees, or until a son becomes old enough, experienced enough and interested enough to take over.

In actuality, this is a rare case as the success of most individual practices is solely dependent on the capabilities and influence of the practitioner. Neither his widow, his children nor his employees are likely to be able to carry on very long at the same profit level.

Should an individual practitioner really deem the foregoing to be realistic procedures, then life insurance in sufficient amounts to do the following is a "must":

1. To insulate his general estate, including his home, from the debts of the practice. In other words, a so-called "business clean-up fund".
2. To provide new funds not dependent on current income and profits to keep up his professional office, maintain client relationships, compensate additional staff (or a staff with enlarged responsibilities), and maintain an adequate credit rating. All of these things create the impression of "practice as usual" which is vital to the successful continuation of the practice.

A far more practical solution is the provision for the sale of the practice upon his death to one or more of the key employees. Such an agreement can guarantee the sale of this part of his estate at a fair and proper price. Furthermore, the heirs are, thus, relieved of the inevitable losses resulting from a forced liquidation by the executor or perhaps the even more costly experience of an unsuccessful attempt to operate the practice "as usual" but without the benefit of the practitioner's capabilities and influence.

Inasmuch as this is seldom a temporary problem, permanent life insurance is usually the best solution. In the event the practitioner lives to retirement age, the cash value of the life insurance can be used for his retirement or as a fund for the employees to use in buying him outl "Split dollar" is a popular technique to assist employees in meeting their share of the life insurance premium.

- - - - - - - - - - - - - -

AN INSURANCE PROGRAM FOR PROFESSIONAL PARTNERSHIPS
TEXAS SOCIETY OF ARCHITECTS INSURANCE COMMITTEE

Prepared by C. Herbert Cowell, Member T. S. A. Insurance Program Committee

(Reviewed and reissued for 1961 edition - "My Professional Insurance Portfolio." Refer to attached supplement.)

NOTE: This report was formally presented to the T. S. A. Board at the January 24, 1959 Meeting and heartily endorsed, for circulation throughout the entire T. S. A. membership.

The law grants partners unusual personal freedom in the conduct of their business. But in the event of the death of a partner, it rigidly prescribes the course to be followed. There is no escaping two alternatives. The firm must either liquidate or reorganize. With foresight, business liquidation can be avoided; reorganization can be accomplished; and the interests of all can be equally and surely safeguarded.

A partnership is usually a small group in which the individual experience, skill, judgment and driving force of each results in a combination that works together harmoniously and effectively. As long as partners can go along together, the business can look forward to continued successful operation. But when the break comes because of the death of one of the partners, unless this situation has been anticipated and properly provided for, the business must come to a halt. The interests of all are affected; and serious problems face all concerned: the business itself, the surviving partners, the heirs of the deceased partner, the employees of the firm. This loss, always unpredictable and usually unexpected, presents immediate problems of major consequence.

An essential difference between the business partnership and the professional partnership lies in the value of the firm's assets. The assets of a business partnership ... real estate, land, tools, machinery, equipment, inventory, accounts receivable, good will, etc. ... may be of tremendous value, requiring a very large outlay of money to buy the interest of any partner.

On the contrary, the assets of a partnership of professional men are usually of only nominal worth. The real value of the firm lies in the training, skill, experience and character of the individual partners. If we assume that such a professional man leaves nothing in his partnership except his share of the firm's assets we would find a value that is negligible in amount. Good will, in the usual technical sense, seldom adheres to a professional partnership. Such a viewpoint, of course, presents only a limited and false picture. To deny that a professional partner contributes to the firm something else of value which survives his death ... something in the way of the firm's reputation and standing in the community that helps to assure the continued patronage of the clientele ... is to deny an apparent and generally recognized fact. Most professional partners acknowledge this fact and are willing to pay the retired partner, or deceased partner's estate, for this intangible contribution.

This is one reason for a mutual agreement between professional men to share the profits of their firm with the wife or estate of a deceased partner for a limited time after the partner's death. Another compelling reason is the desire, which professional men share with all others, to protect their dependents after death puts an end to their earning power.

The Treasury Department and the Courts, depending mainly upon how the partnership agreement is worded, may take either of two different attitudes toward after-death payments:

1. They may look upon them as the price paid for the purchase of a capital asset ... the deceased partner's interest ... and apply the so-called "purchase" rule; or
2. They may look upon them as income to the deceased partner's beneficiary ... applying the so-called "income continuation" rule.

THE PURCHASE RULE

Since the survivors are considered to have received all future income earned by the firm, and that they use a portion of it to purchase a capital asset, they are required to pay income tax on all of the future earnings of the firm. And, they will not be allowed a deduction for the share of those profits which go to the widow. The present value of the right to the payments under the agreement is included in the gross estate of the deceased partner for estate tax purposes. The widow is not required to pay income tax on the share of the profits she receives. (It should be noted, however, that if payments actually received by the widow are in excess of their estimated value as included in the gross estate of the deceased, then the widow will have to pay a capital gains tax on the excess.)

THE INCOME CONTINUATION RULE

Here it is considered that the surviving partners never receive the share of profits paid by agreement to the widow, but rather that it goes directly to her as income, therefore the surviving partners do not pay income tax on the share of earnings going to the widow. And, they may deduct this amount from total firm earnings as a distribution of profits or a business expense. The present value of the right to the payments under the agreement is included in the decedent's gross estate for estate tax purposes. The widow must pay income tax on the annual payments made to her. (However, the widow may deduct from the income tax due the increase in estate tax caused by inclusion of the value of such income.)

The Internal Revenue Code of 1954 says, in effect, that a partnership can obligate itself to make payments to retired partners or heirs of partners, and that these payments need not be in the nature of a distribution of partnership profits. Thus, all of the "good business" reasons for a Buy and Sell Agreement can now be realized without penalty. The tax and estate benefits of deferred compensation can be simultaneously brought to fruition.

THE PLAN IN GENERAL

1. A Buy and Sell Agreement is executed covering only the book value of capital assets of the professional partnership. Accounts receivable, work in process, and good will are not included.

2. Either in a separate agreement or in a separate section of the same agreement, a provision is made obligating the partnership to make certain payments to the heirs of the deceased partner as additional compensation for services rendered before death by the deceased partner.

3. The agreement provides for payments to a partner in the event of Retirement or Disability.

4. A method of funding is provided.

FUNDING WITH LIFE INSURANCE

Life insurance bought by the professional partnership makes an ideal funding device for the agreement because: (1) It provides the cash funds at the very time they are required. (2) That cash is bought at a discount. (3) Proceeds taken lump sum are received by the partnership income tax free. (4) The reorganized partnership is assured of funds to meet the obligation to the heirs of the deceased. (5) The cash and loan values in the policies are a source of funds to be used in event of retirement or disability. (6) The disability provisions in the policies assist in carrying the disability load. (Premiums are waived yet values increase just as though premiums were being paid.) (7) The accumulation in the fund is built regularly, systematically, with no current tax on its growth.

****** ******* ******

SUPPLEMENT TO AN INSURANCE PROGRAM FOR PROFESSIONAL PARTNERSHIPS

TEXAS SOCIETY OF ARCHITECTS INSURANCE PROGRAM COMMITTEE

Tax Considerations

It is strongly recommended that legal councel should be retained in the writing of a partnership agreement. Periodic review of the Agreement should be made, taking into consideration the current business condition of the partnership as well as the tax position of the partners.

Whether a buy and sell or continuation plan is used as the basic agreement may depend upon whether the payment to the estate of the decedent is to constitute income to the estate (therefore not income of the surviving partners) or is to be in exchange for an interest in partnership property and so not constitute income to the estate. To the extent that the payment represents decedent's interest in unrealized receivables (accounts receivable and work in process) and Good Will ("prospective fees") -- except to the extent that the agreement provides for a payment with respect to Good Will -- there will be income to the estate. To the extent that the payment represents the interest of the decedent in partnership property and Good Will specifically provided for in the agreement there will be no income to the estate.

Amounts received or receivable by the estate may be subject to estate tax. The portion which constitutes taxable income to the estate is treated as income in respect of a decedent and, therefore, there is an offset against this income when it is realized, measured by the estate tax attributable to the inclusion in the estate of the right to such income.

The tax structure with regard to Good Will gives the partners of a personal service partnership a great deal of leeway in planning the solution to the tax problems arising upon the death of a partner. If it is not desired to add to the taxable income of the surviving partners any amount attributable to the decedent's share of "prospective fees", the agreement should avoid any mention of Good Will, or should specifically exclude it as a factor. In such case, whether the sums to be paid are fixed without relation to future income or are based on a share of future income, they would constitute taxable income to the estate and not to the survivors. If, on the other hand, the partners feel that it is more important for a deceased partner's estate to be freed from the income tax burden, the agreement should provide for the interest of the decedent to be purchased and to include Good Will to the extent possible under the circumstances. Specific payments for Good Will are limited, for tax purposes, to the reasonable value of the decedent's share of the partnership Good Will. Of course the partners may wish to provide that part of the payment will be for Good Will and part will be a continuation of a portion of the deceased partner's income.

Use of Life Insurance

Whether a buy and sell or a continuation agreement is used in a professional partnership, life insurance can offset the payments involved. Often, a combination of both plans is most practical.

BUSH & WITT - INSURANCE AND SURETY PROVISIONS
OF THE GENERAL CONDITIONS

MY PROFESSIONAL INSURANCE PORTFOLIO

1961 Edition (22nd Annual Convention) November 8, 9, & 10, 1961

James E. Witt, a member of the Texas Society of Architects Insurance Committee, has devoted considerable effort and has secured competent legal counsel in fitting the insurance and surety provisions of the contract documents utilized in the rendering of their services to the best interests of their clients, and the firm of Bush & Witt. He is sharing their statement of these provisions for consideration and discussion.

NOTE: The Texas Society of Architects Insurance Committee in the instance of the attached offering re-emphasizes four matters which have continuously governed the Committee's studies; i. e.,

1. as a Committee it will not invade the functions of other Society Committees,

2. whatever it may have to offer concerning such working documents as general conditions will be restricted to the areas of insurances and sureties, and matters affected thereby,

3. that none of our working documents can be assumed to be static, and

4. that the individual personal professional approach is one of the priceless ingredients of professional service.

BUSH & WITT - INSURANCE AND SURETY PROVISIONS OF THE GENERAL CONDITIONS

GS- Insuranceand Bonds

a. Bid Guarantee: As a Bid Guarantee that contractor will enter into a contract in accordance with the plans and specification, the contractor will furnish a Bid Bond in the amount of 5% of the greatest amount bid under any combination of Base Bid and alternates. The Bid Bond will be in a company listed as acceptable on the latest issue of the list of companies published by the Secretary of Treasury as holding certificates of authority as acceptable sureties on Federal Bonds.

In lieu of Bid Bond, contractor may furnish a negotiable cashier's check for the same amount.

b. Job Guarantee: If contractor is the successful bidder, and awarded the contract, the contractor will furnish a 100% performance and payment bond, on a form acceptable to the Owner and Architects-Engineers at the time the contract is presented for signing and acceptance.

c. Builders Risk: The contractor will maintain during construction and "All Risk" Builders Risk covering 100% of the cost of the job at all times. Coverage and company are subject to approval of Architects-Engineers.

d. Insurance: The contractor shall obtain and maintain in full force and effect until the completion of the work and operations covered by this contract, such insurance as will cover the obligations and liabilities of himself, his employees, subcontractors and their employees which may arise from the operations under this contract. Insurance with limits lower than that set forth hereinafter will not be considered adequate protection.

The above provisions of this paragraph shall also apply to all subcontractors and the Contractor shall be responsible for their compliance therewith.

1. Workmen's Compensation Insurance in compliance with the laws of the state in which the work is to be performed and employers liability insurance with minimum limits of $100,000.00.

2. Comprehensive general liability insurance covering the contractor with limits of not less than $100,000.00 each person and $300,000.00 for each occurence for bodily injury and death; and property damage limits of not less than $100,000.00 each occurence and $300,000.00 aggregate.

3. Automobile liability insurance with minimum limits of $100,000.00 each person, and $300,000.00 each accident for bodily injury or death, and $100,000.00 each accident for property damage.

* Coverage for the standard exclusions of X, C, U will be furnished on request at the Owner's expense.

*X - explosion; C - Collapse of buildings; U -excavation by mechanical means.

4. The Contractor shall also obtain at his expense an Owner's Protective Liability Insurance policy naming the Owner as insured with the same insurance company with which the Contractor carries his Comprehensive General Liability and Automobile Liability Insurance, with limits of not less than $100,000.00 each person and $300,000.00 for each occurence for bodily injury and death; and property damage limits of not less than $100,000.00 each occurrence and $300,000.00 aggregate, covering the operations under this contract.

e. The Contractor will furnish to the Owner, prior to beginning the work, a certificate by each insurance carrier wherein the insurance carrier certifies that such policy is in full force and effect and will not be canceled nor materially changed without at least ten (10) days prior written notice to the Owner by registered mail, and will immediately notify the Owner of any reduction or possible reduction of the aggregate limits of any such policy due to loss or damage. Such policies shall be approved by the Owner before the Contractor commences work.

BATTER BOARDS and BARRIERS

CASE HISTORIES OF
PROFESSIONAL LIABILITY CLAIMS

AIA FILE NO. 40E

This information on professional liabilities is offered with the suggestion that architects review their practices and procedures.

Victor O. Schinnerer
Counselor on Professional Insurance
Investment Building
Washington 5, D. C.

SCOPE OF THE ARCHITECT'S RESPONSIBILITIES

An architect designed a new building which included a poured concrete canopy over an entranceway. The plans for this canopy were prepared by a consulting engineering firm engaged by the architect. After the concrete had been poured and the forms were removed, the canopy collapsed. An investigation into the cause raised questions regarding the correctness of the engineer's plans and the contractor's faithfulness in adhering to the plans and specifications. However, in spite of this, damages of $10,000.00 were assessed against the architect on the grounds that in his contract with the owner he had shouldered the responsibility of supervision of the work and his field inspector should have detected any inadequacy in the construction while the canopy was being erected.

MORAL—

A: Define clearly and carefully in your contract with the owner the extent of your responsibilities.

B: Be sure your project representatives possess sufficient experience and competence.

C: Define clearly and carefully in your contract with your consulting engineers the area in which the engineer is responsible.

AIA FILE NO. 40E

VICTOR O. SCHINNERER
& COMPANY, INC.

Professional Liability Specialists for Architects
Investment Building, Washington 5, D. C.
Phone REpublic 7-1929

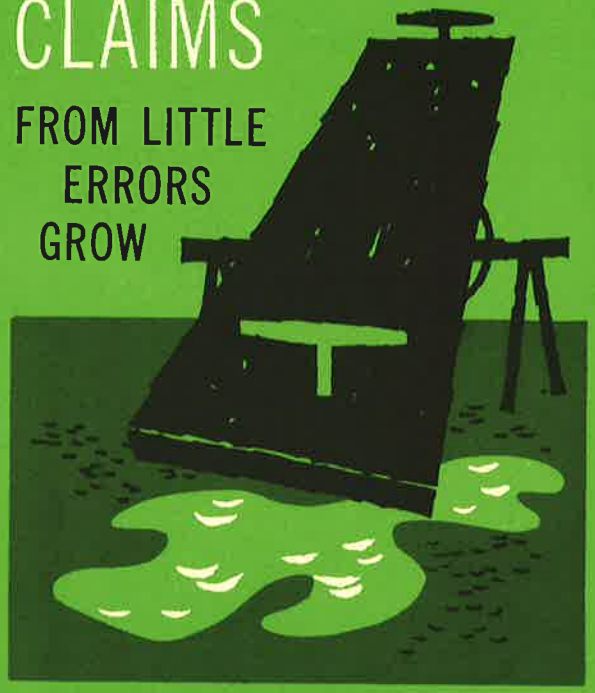
BATTER BOARDS and BARRIERS

CASE HISTORIES OF
PROFESSIONAL LIABILITY CLAIMS

AIA FILE NO. 40E

This information on professional liabilities is offered with the suggestion that architects review their practices and procedures.

GREAT CLAIMS FROM LITTLE ERRORS GROW



In designing a new school, the architect was also required to provide a site plan for a paved playground area. His draftsman, in preparing the working drawings, made an error of a few inches on the grading plans, resulting in such poor drainage that the playground had to be repaved at a cost of $7,000.00. The contractor showed that he had faithfully followed the plans and that the error in the working drawings was responsible for the poor drainage. Consequently, the cost of repaving was charged to the architect.

MORAL—Since the architect is responsible for the work of his employees, he should exercise extreme care in selecting them and in checking the work which they do for him.

AIA FILE NO. 40E

VICTOR O. SCHINNERER
& COMPANY, INC.

Professional Liability Specialists for Architects
Investment Building, Washington 5, D. C.
Phone REpublic 7-1929

LIABILITY INSURANCE

"My Professional Insurance Portofolio" 1961 Edition

WHEN IS AN ARCHITECT LIABLE?

This is a review of an article of the same title by Gibson B. Witherspoon from Meridian, Mississippi.

Reviewed by R. Turner Kimmel, A.I.A., Lubbock, Texas

The historical background of an architect's liability goes back to the Babylonians. It was known as the "Code of Hammuribi." Under this code, death was required of a builder's son for a house being carelessly built as to cause the death of the owner's son. The Romans continued this law. As time passed the law became less severe, up to the English, where an architect had no liability. In Britain they developed the rule that the architect was an arbitrator between the parties, so that he could not be held liable for the results of his decisions, so long as it was free of fraud or collusion.

The early decisions in America followed the English rule. Modern times however, we find that we are moving from the English rule and that the architect's decision is binding on all parties but liability is governed by our common law rules of negligence.

In at least three general classes of cases, an architect has been held liable for his negligence.

The Responsibility of the Architect for Defects attributed to Plans and Specifications. There are two distinct rules depending on the defect rather than different jurisdiction.

Efficiency of any architect in the preparation of plans and specifications is tested by the rule of ordinary and reasonable skill, usually exercised by one in the profession. These principles attributed to errors in the plans or specifications usually occur when: 1. The fixtures are not adequate for their intended use; 2. The roof, floors or walls become cracked, buckle or collapse; 3. The foundation does not provide adequate support; 4. The waterproofing is not adequate to prevent leaks or seepage. The claim of the owner in these cases, is usually based on the claim that improper or unsuitable materials were prescribed in the specifications or in the cases where there is error or oversight in the preparation of plans, necessitating repairs at unnecessary expense or an extravagant expense where the owner recovers from the architect the amount of this disbursement.

Liability for Personal Injury or Death Caused by Improper Plans or Designs or Specifications. This falls into two basic classes, the erection of an unsafe structure, where by anyone lawfully on the premises is injured or these cases where injury or death results to persons working on a structure

when it collapses as a result of architect's defective plans or designs. The first arises after the building is completed the latter during construction of the structure.

Liability of Architect for Improper Insurance of Certificate. The courts have held that an architect is liable in issuing certificates for payment to a contractor for a greater amount than was actually due. The architect was liable to the owner for the excess payment made in reliance on the certificate; however, not for the total cost of the building. The architect has also been held liable in issuing certificates for completion, when he had failed to require the contractor to furnish sufficient evidence that all bills for labor and material had been paid before releasing the retainage. The architect was held negligent. The surety also had the right of subrogation, since it was entitled to protection. The duty to ascertain that the contractor had paid the bills was owed both to the building owner and the surety.

Thus we see that an architect may be liable in three general classes of cases. Liability coverage for the architect is a necessity just as it is for other professional people.

A claim could be quietly settled by a claims adjuster, but a law suit against an architect, in addition to the financial loss, might ruin his future business reputation with his public.