

# A Guide to the Schinnerer and CNA Risk Mitigation Credit

Reducing Your Deductible Expense  
Through Prudent Practice Management



# Introduction

Schinnerer and CNA's new Risk Mitigation Credit (RMC) is a unique feature of the program of professional liability insurance commended since 1957 by the AIA and NSPE/PEPP.



# Introduction

It offers eligible policyholders the option of receiving a deductible credit of up to \$25,000 if they implement certain “best practices” in the engagement and performance of professional services.



# Introduction

The RMC is designed to reduce the frequency and severity of claims, make claims more defensible, and provide a mechanism to reward policyholders for their risk mitigation efforts.



# Introduction

## Risk Mitigation Credit

- New Risk Mitigation Credit replaces the Mediation Credit
- Drafted in conjunction with and input from the AIA and NSPE/PEPP Professional Liability Committees

# Introduction

## Risk Mitigation Credit

- Available to all firms with annual gross billings up to \$5 million
- Firms with billings between \$5 million and \$25 million subject to underwriting review
- Available to all types of firms

# Risk Mitigation Credit

## Eligibility

- Written contract in place prior to professional services giving rise to claim
- Meet 3 out of 6 practice criteria
- Documentation demonstrating compliance submitted within 60 days of claim being reported

## Baseline Criterion

# Professional Services Agreement

"...provide us with a copy of the written agreement that was executed by you and your client prior to your performance of the agreed-to professional services giving rise to the claim..."



# Baseline Criterion

## Professional Services Agreement

### Rationale

- A written agreement between client and service provider is a fundamental professional liability risk management tool.

# Baseline Criterion

## Professional Services Agreement

### Compliance Documentation

- An agreement that was dated and executed prior to the performance of the agreed-to services giving rise to the claim.

## Practice Criterion 1

# Payment Terms/Invoicing

“Your written agreement with your client specified payment terms, including a schedule of when payments are to be paid to you, which you consistently followed, enforced and/or documented your attempt to do so.”

## Practice Criterion 1

# Payment Terms/Invoicing

### Rationale

- Unclear or unspecific payment terms and untimely billing and collection of accounts commonly precipitate claims and counterclaims among contracting parties.

# Practice Criterion 1

## Payment Terms/Invoicing

### Compliance Documentation

- A dated, executed agreement containing payment terms and a payment schedule.
- Dated invoices.
- Dated unpaid balance reminders or other documents reflecting the insured's attempt(s) to resolve payment problems, if any.

## Practice Criterion 2

# Interprofessional Agreements

"You executed a separate **written agreement and exchanged certificates of insurance** evidencing both Professional Liability and General Liability with each architect, engineer, landscape architect, land surveyor, contractor or construction manager you engaged or who engaged you **prior to the performance of the agreed-to professional services.**"

## Practice Criterion 2

# Interprofessional Agreements

### Rationale

- Inter-professional agreements are often oral, not written. Putting pen to paper encourages the parties to be more conscientious about addressing and memorializing the complete terms of their agreement. Insurance certificates demonstrate financial responsibility and compliance with applicable contract terms.

## Practice Criterion 2

# Interprofessional Agreements

### Compliance Documentation

- Interprofessional agreement(s) dated and executed prior to the performance of the agreed-to services.
- Dated certificate(s) of insurance evidencing PL and GL coverages and exchanged by the parties prior to the performance of the agreed-to services.



## Practice Criterion 3

# Pre-Project Planning

"You engaged with your client in a structured, contemporaneously documented, pre-project planning process that produced a project definition document or package that substantially addressed the following project parameters (only "a" through "c" are required to satisfy this condition for study-and-report-only contracts):

- a. Project objectives...
- b. Project constraints...
- c. Bases for the design/investigation...
- d. Project execution approach...
- e. Project monitoring and control procedures "

## Practice Criterion 3

# Pre-Project Planning

### Rationale

- Research by the Construction Industry Institute and others has clearly demonstrated the following **benefits of pre-project planning**: better definition of risks; increased predictability of cost and schedule; better achievement of business goals; improved operational performance; and fewer changes and disputes.

## Practice Criterion 3

# Pre-Project Planning

### Compliance Documentation

- Project definition document(s) addressing the applicable parameters ("a" through "c" or "a" through "e"); or
- Agreements annotated to address the applicable project definition parameters; or
- Reports prepared as deliverables addressing the applicable project definition parameters.

## Practice Criterion 4

# Internal/External Peer Review

"A contemporaneous, documented peer review of your professional services and deliverables was conducted, internally or externally, by a qualified professional to assess the likelihood that your professional services would satisfy your client's objectives and to confirm that the key elements of your professional services were in conformance with good professional practice."

## Practice Criterion 4

# Internal/External Peer Review

### Rationale

- One of the best ways to **minimize client dissatisfaction**, anticipate problems, and control the quality of design documentation is by investing in a documented peer review. By definition, the review **cannot be conducted by the person technically responsible for the services or documents being reviewed.**

## Practice Criterion 4

# Internal/External Peer Review

### Compliance Documentation

- Documents reflecting peer review activities such as meeting minutes, memoranda, reports, completed checklists, notations on design documents, etc.
- For external peer reviews, a peer review agreement or engagement letter.

## Practice Criterion 5

# Constructability Review

“You engaged with representatives of the project owner, entity(ies) responsible for construction and any other project stakeholders you deemed appropriate in a structured, documented constructability review process that provided for the timely integration of construction input into project planning, design, and field operations.”

# Practice Criterion 5

## Constructability Review

### Rationale

- Research by the Construction Industry Institute and others demonstrates that the inclusion of construction knowledge and experience into the planning and design of a project can reduce costs and schedule time and improve the safety of field operations.



## Practice Criterion 5

# Constructability Review

### Compliance Documentation

- Documents reflecting constructability review activities such as meeting minutes, memoranda, reports, notations on design documents, etc., during the pre-construction phase of the project or applicable portion of the project.

## Practice Criterion 6

# Submittal Management

"You maintained a contemporaneous, written construction phase submittal log indicating the as-planned and actual dates you received and responded to every submittal and the action taken."

## Practice Criterion 6

# Submittal Management

### Rationale

- A submittal log that tracks as-planned and actual submittal dates is a powerful project management tool that can be used to **mitigate the insured's exposure to contractor delay damage claims**. It also reflects the AIA/EJCDC contractual mandate that the contractor submits a submittal schedule, coordinated with the contractor's construction schedule, for the A/E's approval.

# Practice Criterion 6

## Submittal Management

### Compliance Documentation

- Submittal logs reflecting as-planned and actual receipt and response dates and actions taken.

# Conclusion

Firms that meet...

- the baseline criterion,
- 3 of 6 practice criterion and,
- satisfactorily supply supporting documentation within the applicable time frame

will be eligible for 50% deductible credit up to \$25,000 per claim

# Resources

[www.PlanetAEC.com](http://www.PlanetAEC.com)

[www.PlanetRiskManagement.com](http://www.PlanetRiskManagement.com)

- Revised insuring agreement
- Compliance document checklist
- *Guide to Schinnerer and CNA Risk Mitigation Credit*

