



Claims Retrospective: If You Are Asked To Sign A Tolling Agreement, You Are Aware Of A Circumstance That May Result In A Claim And Should Report The Circumstance To Your Insurer

A “tolling agreement” is “an agreement between a potential plaintiff and a potential defendant by which the defendant agrees to extend the statutory limitations period on the plaintiff’s claim, usually so that both parties will have more time to resolve their dispute without litigation.”¹ Thus, a tolling agreement, by definition, contemplates the possibility of litigating a current or future claim. Moreover, tolling agreements themselves typically reference the litigation of current or future claims. As such, if a person or entity asks you to sign a tolling agreement, you should notify your insurance carrier immediately, even if there had been no demand and there is no actual “claim” as defined by the policy.

“Failure to report the circumstance could jeopardize your coverage ...”

Failure to report the circumstance could jeopardize your coverage not only for a particular claim, but also for claims arising from all of your prior acts. Most professional liability policies, including those issued by Underwriters for the ASCE program, contain prior awareness clauses, which limit the coverage granted in the insuring agreement to claims arising out of acts, errors, or omissions that, prior to the effective date of the coverage period, the insured did not know or could not have reasonably foreseen might give rise to a claim. In other words, if you are aware that certain acts, errors, and omissions might give rise to a claim

before the effective date of the coverage period, there will be no coverage for any claim that subsequently arises from such acts, errors, or omissions.

If you are asked to sign a tolling agreement, you will be deemed to have been aware of acts, errors, and omissions that might give rise to a claim. Therefore, if you are asked to sign a tolling agreement prior to the coverage period in which the claim is first made and fail to report it to your insurance carrier, there will be no coverage for the claim.

“If you are asked to sign a tolling agreement, you are aware of a circumstance that may result in a claim.”

Additionally, most applications for professional liability policies, including those for policies issued by Underwriters for the ASCE program, ask if anyone at your firm is aware of any circumstance which may result in a claim against the firm or an individual affiliated with the firm. If you are asked to sign a tolling agreement, you are aware of a circumstance that may result in a claim. If you are asked to sign a tolling agreement and then subsequently answer in the negative on an application when asked if you are aware of a circumstance which may result in a claim, you will most likely be deemed to have made a misrepresentation on your application.

¹Black’s Law Dictionary 1525 (8th ed. 2004).

Such a misrepresentation could result in your policy being subject to rescission, or rendered void as though it was never issued. If your policy is rescinded, it is likely that you will lose all prior acts coverage, as you will no longer have continuous coverage and any future policy will be written with a retroactive date at inception. In other words, you will have no coverage for any claims arising from your acts, errors, or omissions prior to the inception date of your new policy.

Given the possible detrimental effects of not reporting requests to sign tolling agreements, it is imperative that you report the circumstance to your insurance carrier as soon as possible in order to protect your coverage. Moreover, if you report the circumstance, your insurance carrier may be able to help you navigate through the situation in a manner that allows you to avoid litigation or at least places you in the best position to defend yourself in any future litigation. Thus, there is often great benefit to reporting this circumstance to your insurance carrier.

When Drones Hit The Sky: Drone Sublimit Offered To ASCE Members Through Pearl

By Giovanni Avendaño, Esq.



The market for drones, or unmanned aircraft systems, has ballooned into a 2.5 billion dollar industry, and is growing 15% to 20% annually.² Engineers have found that drones can play a vital role in their work. Some of the world's biggest construction and engineering firms, including AECOM, Bechtel, and DPR have experimented with drones on the job site, using aerial imagery for surveying, logistical planning, and monitoring activity.³

However, before a drone is flown at your next construction project, there are several risks that must be noted. It remains to be seen what drone-related claims will permeate the construction industry. The following occurrences, however, illustrate the risks for which an engineer may need to obtain coverage:

Property Damage:

- On May 2014, a DJI Phantom 2 drone crashed into the balcony of the 30th floor of the Metropolitan Square Building in St. Louis, Missouri.⁴
- On January 2015, a drone crashed into the White House grounds when a tree or gust of wind caused the drunken operator to lose control.⁵

Bodily Injury

- On October 2013, a camera-equipped drone reportedly crashed into a New York City sidewalk, narrowly missing a businessman who was heading home from work.⁶

² Clay Dillow, Get Ready for 'Drone Nation', FORTUNE (October 8, 2014), <http://fortune.com/2014/10/08/drone-nation-air-droid/>.

³ Clay Dillow, Drones to Speed Up Construction, FORTUNE (December 29, 2014), <http://fortune.com/2014/12/29/drones-to-speed-up-construction/>.

⁴ Udi Tirosh, DJI Phantom Drone Crashes into the 30th Floor of the Metropolitan Square Building, DIYPHOTOGRAPHY.NET (May 9, 2014), <http://www.diyphotography.net/dji-phantom-drone-crashes-30th-floor-metropolitan-square-building/>.

⁵ Michael D. Shear & Michael S. Schmidt, White House Drone Crash Described as a U.S. Worker's Drunken Lark, THE NEW YORK TIMES (January 27, 2015), http://www.nytimes.com/2015/01/28/us/white-house-drone.html?_r=0.

⁶ Civilian Drone Crashes in Manhattan, MILITARY.COM (October 30, 2013), <http://www.military.com/video/aircraft/pilotless-aircraft/civilian-drone-crashes-in-manhattan/2785216759001/>.

Do you use drones or unmanned aircraft systems in your practice? Ensure your professional liability policy provides coverage before your drones hit the sky.

- On April 2014, a triathlete suffered minor head injuries when the drone filming the triathlon fell from the sky.⁷
- On December 2014, a reporter covering a drone story at a TGI Fridays in New York City was left bloody after a drone propeller got entangled in her hair and clipped her nose.⁸
- On May 2015, singer Enrique Iglesias sliced his fingers open when he reached up and grabbed the drone filming his concert.⁹

Trespass & Breach Of Privacy

- On April 2015, a Chicago couple called the local police department claiming their right to privacy was invaded when a drone went adrift and landed in their backyard.¹⁰
- On May 2015, the local police department of Murfreesboro, Tennessee investigated its first drone trespass case when a homeowner called regarding a drone hovering over his home while his children were in the pool.¹¹

Engineers should not assume their commercial liability policies offer coverage for the above type of occurrences or claims. In fact, most polices exclude coverage for bodily injury and property damage arising from the Insured's use of an aircraft. Underwriters are offering coverage for drone-related claims alleging property damage, bodily injury, trespass, and breach of privacy claims via an endorsement to the professional liability policies issued to the ASCE through Pearl Insurance. A prudent engineer would ensure coverage is obtained before their drones hit the sky.

Need professional advice?
Get the help you need today
from knowledgeable attorneys.
With the ASCE Member
Insurance Program, you're just a
quick email or phone call away
from avoiding claims or limiting
your exposure.

⁷ Rich Trenholm, Drone Falls Out of the Sky and Injures Athlete, CNET MAGAZINE (April 7, 2014), <http://www.cnet.com/news/drone-falls-out-of-the-sky-and-injures-athlete/>.

⁸ Caroline Moss, Woman Nearly has her Face Destroyed by a TGI Friday's Mistletoe Drone, BUSINESS INSIDER (December 8, 2014), <http://www.businessinsider.com/tgi-fridays-mistletoe-drone-accident-2014-12>.

⁹ Hannah Raissa Maril, Enrique Iglesias Recovering From Hand Surgery After Drone Accident, INTERNATIONAL BUSINESS TIMES (June 3, 2015), <http://www.ibtimes.com/enrique-iglesias-recovering-hand-surgery-after-drone-accident-1950073>.

¹⁰ Man Claims Downed Drone That Spooked Neighbors, NBC CHICAGO (April 14, 2015), <http://www.nbcchicago.com/news/local/Man-Claims-Downed-Drone-That-Spooked-Neighbors-299762941.html>.

¹¹ Mike Osborne, Murf Police Investigate First Case of Drone Criminal Trespass, WMOT.ORG (June 2, 2015), <http://wmot.org/post/murf-police-investigate-first-case-drone-criminal-trespass>.

⁷ Rich Trenholm, Drone Falls Out of the Sky and Injures Athlete, CNET MAGAZINE (April 7, 2014), <http://www.cnet.com/news/drone-falls-out-of-the-sky-and-injures-athlete/>.

⁸ Caroline Moss, Woman Nearly has her Face Destroyed by a TGI Friday's Mistletoe Drone, BUSINESS INSIDER (December 8, 2014), <http://www.businessinsider.com/tgi-fridays-mistletoe-drone-accident-2014-12>.

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