



BACKGROUND

By definition, the words *warrant*, *guarantee* and *certify* are intended to assure the total accuracy of something or to confirm absolute compliance with a standard. Therefore, to *certify* or *warrant* something (e.g., error free services) is to guarantee that something is unequivocally true or correct or perfect. Professional liability insurance is intended to protect you from liability for damages arising from your own negligence, which is established by your breach of the professional standard of care, which is not a standard of perfection. However, professional liability insurance is not intended to insure someone for liability that is voluntarily assumed by contract unless it exists absent the contractual obligation. Thus, if one assumes additional liability by giving certifications, guarantees and warranties, there may not be coverage for the liability that was voluntarily assumed because these guarantees would not be required but-for the contractual agreement.

We recommend that our clients avoid words like *all*, *every*, *insure*, *ensure* or *assure*, *state*, *strict*, or *declare*, and to read all such words in the context of the overall contract language. One should ask himself, what is this statement asking me to do? Effective contract drafting uses phrases such as:

- ▶ *In my professional opinion;*
- ▶ *To the best of my knowledge, information and belief, or;*
- ▶ *Endeavor to provide applicable.*

Helpful Tip: always word search the contract document: for *warrant*, *guarantee* or *certify*.

SAMPLE CONTRACT CLAUSE

[Often Included within the Standard of Care Clause] *Consultant makes no warranties or guarantees, express or implied, under this Agreement or otherwise in connection with Consultant's services under this Agreement.*

At your request and as a courtesy to you, Dealey, Renton & Associates (DRA) provides the above to assist you in reviewing and negotiating proposed contractual provisions specific to the insurance issues in design contracts. It is not to be regarded as opinion or advice for any specific contracts. If legal advice or expert assistance is required, the services of a competent professional should be sought. You should develop your own language based on your firm's procedures and experience in reviewing and approving contracts written by other parties