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Avoid a liability crisis with E&O insurance

EVEN WHEN A LANDSCAPE CONTRACTOR HAS THE BEST INTENTIONS, MISTAKES SOMETIMES HAPPEN. ERRORS & OMISSIONS INSURANCE CAN HELP.

A LANDSCAPE CONTRACTOR DESIGNS a patio across the whole back wall of a house, but the pitch is not correct. During the first spring rains, water flows up against the house and into the basement — a space the homeowner had just spent \$500,000 renovating. All of the new drywall, insulation and flooring needs to be replaced, along with damages to custom cabinets, furnishings and electrical equipment, as well as relocating the family during demolition, and of course re-pitching the patio. The cost comes in at more than \$250,000. It's enough to really damage a business. Fortunately for the landscaper, he had Errors & Omissions insurance (E&O).

That's just one real-life example of a recent E&O insurance claim, says John Hodapp, CPCU, Hortica Insurance & Employee Benefits. E&O insurance is business liability insurance coverage for those who provide professional services. An error or omission, or a "mistake," which causes financial harm to another can occur on almost any transaction in any profession. This type of insurance helps protect a professional, an individual or a company from bearing the full cost of defense for lawsuits relating to such an error or omission, should a client hold them responsible for the errors or the failure of their design to comply with applicable building or zoning regulations. It's something Hodapp says landscape business owners should strongly consider.

"Landscapers typically buy general liability insurance, and that's certainly critical, but often they don't even know about E&O insurance," says Hodapp. "Professional liabil-

ity errors, such as design errors, are not covered under general liability insurance. But if a landscape designer or architect designs a deck or retaining wall and that design is faulty and fails, the claim would be covered under E&O. Another example might be selecting plants that are inappropriate. In a recent E&O claim, a landscape designer created a plan for a site that contained a septic system. The plans specified plants with particularly invasive roots that infiltrated the septic system and required the laterals to be replaced at a cost of \$5,000, which was covered by the insurance."

Tim Garland, president of Garland Alliance, Inc., in Milwaukee Wis., says his business used to be primarily residential, but today it's about 40% commercial/60% residential, and that's changed his priorities a bit. When he started doing more public projects through municipalities or commercial space, he decided it was time to get E&O insurance. "It's an investment to protect myself against any errors in the plans I draw up," he says. "For example, right now I'm doing a boardwalk project at a beach in Milwaukee, and it's open to anybody who wants to use that facility. Anytime you're working on a space that's open to the general public you're really putting yourself at risk and want to make sure you're completely covered."

Looking back, Garland says E&O would have been appropriate for many of his residential jobs as well. And since he serves as a general contractor and oversees projects he doesn't always complete himself, he says E&O is even more crucial. "Sometimes clients just pay me for the design work and then handle the rest," he says. "In that situation, it's especially critical that you have proper coverage because you have no control over the installation."

The exposure is almost always much bigger than the size of the job, Hodapp says. "It's not the cost of the job; it's the damage the job could potentially do," he says. "You may have a \$2,000 job that could result in a \$100,000 claim. No matter the job size, the bottom line is that you have to make sure you're fully covered."

Payton is a freelance writer with six years of experience covering landscape-related topics.



Is your business fully covered?

5 IMPORTANT E&O FACTS

1. Statistically, the greatest frequency of E&O claims result from water-related issues.
2. The second highest frequency of design claims involve subsidence issues, such as patios moving, retaining walls failing, and deck posts sinking.
3. More and more large commercial accounts and general contractors are requiring that their landscape companies carry an E&O policy to get the job.
4. Firms that employ certified Association of Professional Landscape Designers (APLD) are eligible for a 15% discount on E&O insurance.
5. E&O insurance is not that expensive. Simpler, more affordable policies are available today.

E&O SHOPPING TIPS

If you're shopping around for E&O insurance, keep in mind these key options, Hortica Insurance recommends:

- » The availability of \$1 million or \$2 million limits of liability
- » No self-insured retention (deductible) for most firms
- » Short-form industry specific applications
- » The ability to provide "prior acts" coverage for firms with prior E&O coverage
- » Premiums that are fully-inclusive of all taxes and fees

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THE HALLMARK

RON HALL EDITOR-AT-LARGE

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To the ends of the earth

"I believe a leaf of grass is no less than the journey-work of the stars." — WALT WHITMAN

It had to have been a strange sight for herdsmen in Inner Mongolia to see this imposingly large foreigner, with a round, sun-reddened face, climb from a Jeep, get down on his knees on the grassy meadow and probe the soil with his pocketknife.

"What on earth is he up to?" they surely puzzled as the big man extracted a clump of grass — in this case a hunk of bluegrass — from the earth. Holding it in his hands, he scrutinized it and passed it to his companions to examine.

The man, Dr. William "Bill" Meyer, is one of the world's leading turfgrass breeders. Since taking the post of director of turfgrass breeding for Cook College, Rutgers University in 1996, he's become somewhat of a world traveler. He and other turfgrass experts at Rutgers have launched a global search for new turfgrass germplasm. Well, actually it's new only in the sense that this "foreign" germplasm has yet to be incorporated into the turfgrasses we in North America are familiar with and appreciate. In reality, these specimens represent ancient germplasm; they've survived for millennia in their respective environments.

On this particular dusty, bone-jarring jaunt across the stark, wind-swept Asian steppes, which writer Allan Hoffman chronicled in the article "Sod Sleuths" in the Spring 2010 *Rutgers* magazine, Meyer, Dr. James White and a Chinese assistant seek survivors. They're searching for grasses with traits that have allowed them to remain vigorous under Mongolia's harsh conditions. They're

seeking turf that, since time forgotten, has battled droughts, periods of intense heat or cold, diseases, insects and grazers such as sheep, goats and the stout, pony-sized Mongolian horses that, like the grasses themselves, have remained unchanged since the rampages of Genghis Khan.

The specimens they dig from the rolling grazing lands and put in their cooler — the grasses that their experienced eyes tell them hold potential for making our lawn grasses more environment-friendly — will become candidates for further study, but merely candidates. Eventually, they — or some of the unique genetics of these same selections — may end up as a new cultivar, on a lawn that requires less water, fewer chemical inputs or can tolerate more traffic and still maintain its attractiveness.

Developing new improved cultivars is a lengthy and, to the layman, tedious process that takes a minimum of five years, with many dead ends and frustrations. Even so, Meyer and his Rutgers team of experts, working cooperatively with more than 20 private seed companies, continue to make incremental improvements to the cool-season grasses — the bluegrasses, ryegrasses and fescues — that the first European settlers brought with them and that we now use on our lawns, parks, sports fields and commercial properties.

Meyer and his colleagues are expanding upon the groundbreaking research initiated by Dr. C. Reed Funk almost a half-century ago. Funk's findings resulted in a series of remarkable achievements in turfgrass development, from the release of perennial ryegrass Manhattan in 1967 and the continuing improvement of the species, to the development of techniques for hybridizing bluegrass, to pioneering the development of turf-type tall fescue.

From the 1960s until today, the Rutgers program has led the world in developing cool-season grasses on lawns, parks, sports fields and golf courses. Now, its research team is traveling to the far ends of the world to keep the innovations coming.

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*“To sit by a clear river on a warm day in early July
with the smell of cut grass in the air.”*

OSCAR-WINNING ACTRESS Helen Mirren describes her idea of perfect happiness in a *Vanity Fair* article last September.

The smell of freshly cut grass also made Neil Pasricha's bestselling *Book of Awesome*, listing the top 1,000 awesome things. Pasricha depicts this scent as “heavenly” and “one of the quintessential summertime memories” that reminds one of “twilight in the countryside, a football game about to start or a sunny Saturday morning.”

And this is just its smell. Don't get people started on describing walking barefoot in its cool stand as each blade tickles the toes.

Turf. Lawn. Grass. Green space. It's called

many things, but it usually brings about the same hopeful, nostalgic feelings. “In the gallery of national icons, lawn care is as all-American as baseball,” says Evan Ratliff in a *ReadyMade* article.

That could be the reason 71% of all U.S. households participate in some form of lawn care or gardening, the most popular being lawn care (48% of households), per the National Gardening Association. And 30% of all U.S. households hire at least one type of lawn and landscape service, spending \$53 billion annually. A Gallup Survey says 62% of all U.S. homeowners feel this investment in lawns and landscaping is as good as or better than other home improve-

Is turf MISUNDERST

The industry struggles to prove
turf's true potential in the landscape.

BY **NICOLE WISNIEWSKI** EDITOR-IN-CHIEF

ments with a recovery rate of 100% to 200%.

There are 80 million home lawns in the U.S., according to Scotts. And total U.S. turf is estimated at 46.5 million acres, The Lawn Institute reveals.

Turf is adored; cared for; played, walked and jumped on; and is used to stabilize and green landscapes. “Many people’s favorite childhood memories happened on turfgrass,” points out T. Kirk Hunter, executive director of Turfgrass Producers International, East Dundee, IL, “whether it was a family picnic, playing ball with friends at the park or scoring the winning point in a competitive sport.”

All these statistics leave many landscape

professionals wondering when turf started to become such a bull’s eye for hate. When did people start to view lawns as something to be removed in favor of “environmentally friendly landscaping,” as an article in the *Long Beach Gazette* described it? When did green space become environmentally *unfriendly*? When did 73% of Americans want to begin exploring reduced lawn environments, per the 2011 American Society of Landscape Architects Residential Trends Survey? When did sports fields become battlefields over green space that is synthetic vs. natural? Nearly every week, a new headline touts a “lawn-less landscape” or programs that reward homeowners for removing grass.

The problem, landscape professionals say, is “turfgrass is definitely misunderstood, unappreciated and under-valued,” Hunter says. “It’s the Rodney Dangerfield of landscape plants — it gets ‘no respect.’”

“In my mind, turf has never been understood,” adds Andy Smith, national accounts manager with Reinke Manufacturing Co., Deshler, NE, and former external affairs director for the Irrigation Association.

Why? “Because there is so much misinformation regarding natural turfgrass and because of the sometimes misleading media coverage on turfgrass-related issues,” Hunter says.

Therefore, turf’s benefits get forgotten. As Smith says, “we are lacking some serious metrics that show the true potential of turf as a useful tool in the environmental toolbox.” And, as Vic Gibeault, horticulturist and delegate to the University of California Riverside Turfgrass Research Advisory Committee, points out, “turf has a multifaceted story that we need to tell.”

Where it all began

Turf has a long history as a “natural surface that covered the plains long before people populated the Earth,” Hunter says.

Andrew Jackson Downing published one of the first U.S. landscaping books in 1841. As *The New Yorker* pointed out in “Turf War,” Downing’s *Treatise on the Theory and Practice of Landscape Gardening* urged readers to improve themselves by improving their front yards.

To achieve this feat, Downing told readers to group trees in clusters, mix forms and colors with enough variety to “keep alive the interest of the spectator and awaken further curiosity,” and essential to any perfect garden, he said, was an expanse of “grass mown into a softness like velvet. No expenditure in ornamental gardening is productive of so much beauty as that incurred in producing a well-kept lawn.”

Downing’s suggestions inspired others, who continued spreading his message. Calvert Vaux, Downing’s protégé,





“There’s a realization that incorporating nature into the places where we live, work and play has a profound impact on our well-being”

— WILLIAM SULLIVAN, PH.D., who studies how regular exposure to green spaces helps people function better.

and Frederick Law Olmsted designed New York’s Central Park with broad lawns, and this continued to influence countless suburbs, *The New Yorker* explained. According to Ted Steinberg, author of the book *American Green: The Obsessive Quest for the Perfect Lawn*, “with the start of suburban development in the late 1800s, the idea of surrounding a house with turf began to make real headway,” he said in a 2005 *New York Times* article. “But it was not until after World War II that the suburban lawn rose to dominance.”

It was Abraham Levitt, whose family pioneered the idea of the affordable, cookie-cutter housing found in today’s suburbs, who had “the foresight to realize that by intelligent landscaping the normal depreciation of our houses could be offset,” as said in a 1952 *Fortune* magazine article.

As lawns spread, well-manicured ones were seen as reflections of their owners. “A fine carpet of green grass stamps the inhabitants as good neighbors, as desirable citizens,” Levitt wrote in the late 1800s — even then Levittowners agreed to mow their lawns once a week between April 15th and November 15th. And still today, people tend to equate unkempt lawns with what Ratliff described as “laziness, indolence or domestic discord.” He quoted Lee Coltman, an anthropologist at the University of California at Los Angeles who studies suburban lawn attitudes, as saying, “There is a sense that not only should neighbors care for their lawns, but if a neighbor isn’t

caring for his lawn, there’s something wrong with him.”

So a lush lawn became an American ideal.

Back in its earlier days in 17th century Europe, turf was also recognized as a sign of wealth, but today it is a low cost, low maintenance option. “Turf isn’t a luxury item,” Smith says. “It’s just a basic element of any functional landscape.”

The inputs

Some say the American lawn started making enemies when some people became obsessed with its care. In a May 2010 *Men’s Health* article “Could Your Lawn Be Lethal?” Steinberg says, “there’s nothing wrong with a lawn. I have a lawn. But there is something wrong with the ‘perfect’ lawn.”

This obsession is described in the form of inputs. Like any plant or living thing, turf requires water and care. But industry professionals say the level of care required does not need to reach obsessive levels and is not environmentally threatening, especially considering turf’s many benefits.

The problem then centers on misinformation and assumption, industry veterans say.

“The visible drawbacks associated with lawns, such as images of over-watering lawns on hot summer days in arid climates or obvious exces-

continued on page 22

Is turf the
**“Right plant,
wrong place?”**
Find out on
page 20.



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In a desert climate, like parts of Arizona, 100% turf doesn't make sense.

Northeast U.S. states are well-suited for lawns.

RIGHT PLANT, WRONG PLACE?

Location is one of the most important factors concerning proper turf use and care.

"The Northeast is one of the ... regions in the country that is actually well-suited to lawns," The New Yorker reports in "Turf War."

But "if you live in a desert climate, like parts of Arizona, for example, 100% turf doesn't make sense," explains Gina Zirkle, a scientist and environmental stewardship expert with The Scotts Miracle-Gro Co., based in Marysville, OH. "When looking at precipitation and temperature maps of the U.S., most areas of the country can support turfgrass growth with minimal inputs. In other areas of the country with high temperatures and little precipitation, other green plants and groundcovers adaptable to those conditions may be a better choice."

As a result, when it comes to legislators attempting to limit inputs, such as water, location also needs to factor into the equation. "You can't nationalize regional viewpoints," points out Andy Smith, national accounts manager with Reinke Manufacturing Co., Deshler, NE, and former external affairs director for the Irrigation Association.

"Natural turfgrass is a plant and therefore any 'one size fits all' approach by regulators is not feasible," adds T. Kirk Hunter, executive director of Turfgrass Producers International, East Dundee, IL. "With many spe-

cies of turfgrass and varying climates around the country, programs like the EPA's 'Water Sense,' which mandates a limit of 40% turfgrass in a home lawn, don't make any sense. This is supposed to work for a lawn in Phoenix and Seattle, where the annual precipitation between the two locations varies from a mere 8 in. in Phoenix to 36 in. in Seattle."

Instead, they should be "providing a reasonable allocation for landscape water use and creating a pricing structure around it to make it fair for everybody," Smith suggests.

"There are times, places and situations where particular types of turfgrass and turf management practices may not be appropriate," explains Ranajit Sahu, a Southern California-based university professor, in his report *Think Before You Remove Your Lawn — The Benefits of Turfgrass*. "But getting rid of all turfgrasses everywhere is not the answer.

"Optimization starts with proper selection of turfgrasses suitable for specific climate regions and includes proper and appropriate cultural practices for turf maintenance, including optimized watering and cuttings management, sparing pesticide use and judicious use of technology," he continues. "This requires careful consideration and weighing of the site and case-specific values of turfgrass, both positive and negative." — NW