

# PROFESSIONAL LIABILITY UPDATE

A Loss Prevention Newsletter for the Design Profession

MSP PL 07/2007: "Construction Management—Roles, Responsibilities and Risks"

July, 2007

## Construction Management – Roles, Responsibilities & Risks



Article courtesy of  
Professional Liability Agents Network

basis, or by an architect or engineer who also provides design services on the project. Work scopes for the construction manager (CM) can be tailored to meet a variety of owner needs, project types and project delivery methods.

The scope of services provided, as well as the associated liabilities that result, depend greatly on the construction management role performed by the design

In search of additional revenue streams, design firms often consider offering construction management services. Providing such services can generate income and increase the value delivered to the project owner.

However, construction management can also bring additional liabilities, including those often associated with contractors. For this reason, any design firm considering construction management services must be prepared to identify and manage those risks.

The term "construction management" generally relates to services provided by a consultant acting as a representative of the project owner. These services typically involve administering the design and construction contracts and may include responsibility for managing or coordinating the planning, design and construction phases of the project. Construction management services can be performed by an independent party on a standalone

Construction Manager (continued on page 2)

### In This Issue

Construction Management — Roles, Responsibilities and Risks .....	1-4
FOCUS Seminars.....	2
Professional Liability Agents Network (PLAN).....	4
What's Going on at the San Diego Architectural Foundation .....	5
Summer Safety .....	6

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firm. The two primary roles are CM–Advisor and CM–Constructor.

### CM–Advisor



In the CM–Advisor role, the design professional serves as a consultant to the project owner. The primary responsibility is administering the construction contract during the design and construction phases of the project. Duties may also include pre-construction services such as cost-

estimating, scheduling and constructability reviews.

The CM–Advisor typically has a contractual agreement with the client only; not with the contractor or other parties to the construction. CM–Advisors do not award contracts, direct construction means and methods, or arrange for materials or labor.

The CM–Advisor may or may not also be a designer on the project. When the CM only provides advisory services and does not design the project, the role is sometimes called CM–Agent.

### CM–Constructor

The CM–Constructor role (also called “CM at Risk”) entails responsibilities typically associated with contractors. In addition to the advisory roles described above, the CM–Constructor typically:



- Holds all subcontracts for construction
- Is responsible for the tasks of contract management and construction
- Assumes the same warranties as the general contractor, taking responsibility for the entire construction project
- Assumes the same risks as a general contractor, including jobsite safety
- May promise the owner a guaranteed maximum price for the project.

### Licensing Issues

To our knowledge, no state or province licenses construction managers. However, the Construction Management Association of America (CMAA) does provide instruction and training and issues a “Certified Construction Manager” certificate.

You could likely provide most, if not all, of the services of a CM–Advisor under your architecture or engineering license or registration. If, however, you’re acting as a CM–Constructor, you may be required to obtain a contractor’s license, depending on your jurisdiction and duties. Regardless of your role, check with your local contractors’ licensing board, professional licensing board and/or professional association to see whether a license is required.

### Insurance Issues

Most professional liability (PL) policies will cover any claims arising from the *professional services* a design professional renders as a CM. However, most PL policies won’t cover construction risk — i.e., faulty workmanship. This would include problems with fabrication, erection, installation, assembly and the supplying of products and materials. In addition, there is no coverage available for the economic risk of providing a guaranteed maximum price.

## 2007 FOCUS Seminars

Cavignac & Associates’ FOCUS Room  
Bank of America Plaza  
450 B Street, 18th Floor, San Diego, CA

- The HR SWOT (Strengths, Weaknesses, Opportunities and Threats)  
Tuesday, July 24, 2007 — 9:00 AM - 1:00 PM
- Sexual Harassment Prevention Training  
Satisfies requirement for AB 1825 Training  
Friday, September 21, 2007 — 9:00 AM - 11:00 AM

All training sessions available to our clients  
Reserve early / seating is limited!

For more information about upcoming seminars:

- Visit our Web site at [www.cavignac.com](http://www.cavignac.com)
- Contact Bethany Mongold at [bethany@cavignac.com](mailto:bethany@cavignac.com) or 619-744-0540

PL policies may also specifically exclude claims relating to jobsite safety. Some may even contain a general exclusion for claims arising out of services not “usual and customary” to the practice of architecture or engineering — or they may cover only those professional disciplines specified in the policy. Unless these exclusions can be modified or construction management is specifically listed as a covered service, there may not be professional liability coverage in force for such services.

Design firms considering providing construction management services should get a complete insurance review. We’ll be happy to help you examine your needs for PL, general liability, workers compensation and other types of coverage.

### General Risks to Consider

There are several areas of liability to watch for when providing construction management services. The degree to which you assume any of these risks depends on your role as a CM and your responsibilities as stated in your contract and as demonstrated by your actions. Consider the following:

- **Design** – When CMs conduct design and constructability reviews, they, along with the architect or engineer of record, may be subject to claims involving design errors and omissions.
- **Selection of Materials** – CMs may have exposure arising from the selection and timely delivery of construction materials and subsystems.
- **Cost Estimates** – Project owners typically have high expectations that a CM’s construction cost estimates are accurate. If costs exceed a CM’s estimate, there is substantial risk of a claim.
- **Jobsite Safety** – CMs may assume responsibility for construction means and methods, as well as the contractor’s jobsite safety program and safety plans. OSHA rulings have generally concluded that a CM–



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**15 Years**  
*of Managing Risk and Negotiating Insurance  
for Our Clients*



Constructor’s responsibilities for jobsite safety are akin to those of a general contractor.

- **Scheduling and Coordination** – Work not performed on schedule or not well coordinated can lead to claims for project delays, increased overhead expenses and added overtime costs.
- **Hazardous Site Conditions** – If not careful, the CM–Constructor can assume liability for existing hazardous site conditions. In addition, if toxic materials on the site must be disposed of or transported, the CM can be deemed an “operator” of the site or an “arranger” of the disposal and thus subject to severe (and sometimes criminal) sanctions in the event of an illegal dumping or accident.

### Managing CM Risks

Once you understand the risks of construction management, you can make an informed decision as to whether or not to offer such services. If you decide to offer construction management services, keep the following in mind:

- **Select your projects and clients cautiously.** Because the CM will no doubt be brought into any significant claims, it is important to avoid clients with a litigious history or project types that are likely to have problems.
- **Choose your CM role with care.** Offer only those services you and your staff are qualified to provide.
- **Be aware of your jurisdiction’s licensing requirements.** Obtain all licenses required by your state or province to provide the services

Construction Manager (continued on page 4)

you intend to offer — and then operate within the scope of your licenses.

- **Negotiate solid contracts.** The AIA, AGC (Associated General Contractors), CCA (Canadian Construction Association) and CMAA have all published standard form agreements for CMs that can be tailored by you and your attorney to fit your specific project needs.
- **Develop a clearly-defined scope of services.** With the client, put together a detailed work scope that describes precisely the specific responsibilities of each party to the project, including the owner.
- **Charge adequate fees** in consideration of the level of risk you must assume.
- **Make sure that your words and actions,** particularly on the jobsite, are aligned with your role. If you are the CM-Advisor, for instance, your job is to recommend and advise, not to direct or supervise.
- **Check your insurance.** Talk with us to be sure you have appropriate coverage. We'll help you ascertain whether your professional liability policy covers the professional services you intend to provide. If you perform as a CM-Constructor, we will need to address bonding, workers compensation and general liability issues.
- **Limit your exposure** to claims involving jobsite safety. Include appropriate “means-and-methods” disclaimers in your contract. Allocate health and safety risks through indemnities and insurance. Train your field personnel so their actions don't undermine these protections. Ask to be named as an additional insured on the contractor's liability policies and request certificates as proof that appropriate workers compensation coverage is in place.
- **Consider, with advice from legal counsel,** establishing a **separate corporate entity** for your construction management services. This



can help limit your liabilities for these riskier services.

## Dealing with a Third-Party CM

If you are a designer on a project for which the owner has hired a third-party CM-Agent, your chances of facing a claim may increase. Not only do you have another pair of eyes critiquing your design services, there may be a greater chance of error or omission due to confusion regarding duties, responsibilities and authorities.

Talk with your attorney about including a contract clause that addresses this risk. We can provide sample language for you to consider. ✂

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***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

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## About PLAN

Cavnac & Associates has been a member of the Professional Liability Agents Network (PLAN) since its inception in 1992. PLAN is a nationwide group of select insurance agencies specializing in risk management and loss prevention programs for architects, engineers and environmental consultants.

PLAN is a nonprofit organization covering the United States, Canada and Puerto Rico with more than 50 member firms. Jeff Cavnac is a past President of PLAN, and currently serves on its Board of Directors.

## What Does Our PLAN Membership Do for Our Clients?

- We have direct access to risk management and insurance experts all across the country.
- We are kept up-to-date with what is going on in the insurance marketplace relative to the design profession.
- We can provide referrals to other professionals or local expertise wherever our clients work in North America. ✂

# What's Going On

at the



## San Diego Architectural Foundation

### Built Environment Education Program (BEEP)



**E**ducational programs funded by the San Diego Architectural Foundation (SDAF) include BEEP, the Built Environment Education Program. BEEP allows children to apply their textbook knowledge of math, geography, social studies and English to build sensory perceptions of their environment. The long-term result is adults who appreciate the value that good design brings to their communities.

A distinctive feature of the BEEP program in San Diego has been the participation by landscape architects and city planners, who have developed compatible teaching materials and team-teach the principles and application of landscape architecture, city planning and architecture. SDAF is in the process of resurrecting the BEEP program, and seeks volunteers in the form of design professionals, planners, teachers, and all other interested parties.

For more information, please contact [BEEP@sdarchitecture.org](mailto:BEEP@sdarchitecture.org).

### Tours Program

**NEW Schedule — "Saturdays in the Park" Are Back!**

**B**alboa Park is San Diego's most beloved open space and architectural showcase. Learn how a fledgling city transformed a barren mesa into the largest urban cultural park in America, complete with world-class regional architecture, horticulture, museums and theater!

Visit the site of the 1915 and 1935 International Expositions and discover the secrets of Balboa Park's architectural past on this two hour walking tour that offers full disabled access. Each event is limited to 20 people per tour (see dates at right). For more information, visit <http://www.sdarchitecture.org/tours/descriptions.htm> for more information.

**Special Tours Available!**

**T**he San Diego Architectural Foundation can create a custom specialty tour for your group focusing on the genre of your choice. Are you interested in modernist houses or Old Town adobes? Want to see and learn about cutting-edge medical facilities or the works of Irving Gill? Please contact us at [tours@sdarchitecture.org](mailto:tours@sdarchitecture.org), so that we can bring San Diego's architecture to life for your group!

**Show off San Diego — Volunteer!**

**L**ooking for something fun and different to do with your spare time? SDAF is looking for guides, coordinators, writers, artists, and administrative aides. No physical exertion or architectural background is required. All you need is an affection for architecture, a dose of energy, and a desire for some fun. Visit <http://www.sdarchitecture.org/tours/descriptions.htm> to find out more about SDAF's Tours Program.

*Cavignac & Associates is a Charter member of the San Diego Architectural Foundation. Jeff Cavignac has been a Board Member of SDAF for more than five years, and currently heads the SDAF Newsletter Committee.*

San Diego  
Architectural Tours

## Tour Schedule

Tours are held on the Saturdays listed below  
and begin promptly at 10:00am and conclude  
at Noon.

### TOUR DATES

**BALBOA PARK**  
Meet in front of the Museum of Man.  
July 28, 2007  
August 25, 2007  
September 22, 2007  
October 20, 2007  
November 17, 2007  
December 15, 2007

**GASLAMP QUARTER**  
Meet at the fountain north of Horton Plaza.  
Dates TBD

### TICKETS

**WHERE TO PURCHASE**  
Tickets may be purchased online by visiting  
[www.sdarchitecture.org](http://www.sdarchitecture.org) or at Le Travel Store,  
739 4th Avenue, San Diego (619) 544-0005.  
Same day tickets can be purchased via cash or  
check from the tour guide if space is available.

PRICES	
Adults	\$20
SDAF Members	\$15
Student/Military	\$10
Children Under 10	Free

Discounts for groups of 10 or more are  
available. Arrangements must be made in advance.

# Summer Safety for You and Your Family



*Courtesy of the Employee Benefits Department*

## Survive the Summer Heat!

### Tips for Staying Cool

**S**ummer heat can be more than uncomfortable — it can be a threat to your health in the form of heat exhaustion and heat stroke, especially for older adults and children.

Whatever your age, don't let the summer heat get the best of you. These tips can help you stay cool.

- **Drink plenty of water** — In hot weather, drink enough water to quench your thirst. Remember, the average adult needs eight 8-ounce glasses of water a day, and more during heat spells.
- **Dress for the weather** — When outside, wear light-weight clothing made of natural fabrics and a well-ventilated hat.
- **Stay inside if possible** — Do errands and outside chores early or late in the day.
- **Eat light** — Replace heavy or hot meals with lighter, refreshing foods.
- **Think cool** — Take a cool shower or apply a cold compress to your pulse points. Or, spend time indoors at an air-conditioned mall or movie theater.

## Barbecue Basics

### How to Prevent Food-Borne Illness

It's the season for picnics, cookouts, and other outdoor parties. But eating outdoors in warm weather presents a food safety challenge.

Bacteria in food multiply fastest at temperatures between 40°F and 140°F, so summer heat makes the basics of food safety especially important. Fortunately there are a lot of steps you can take to keep family and friends from becoming ill.

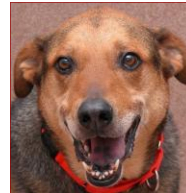
- **Wash hands** before and between handling or preparing food.
- **Keep raw food** separate from cooked food.
- **Marinate food** in the refrigerator, not out on the counter.
- **Cook food thoroughly** — cook hamburgers to 160° F, chicken to **at least** 165°F.
- **Keep hot food hot and cold food cold** — Hot food should be kept at or above 140°F, while cold food should be held at or below 40°F. ❀

# Summer Safety for Pets

*Article courtesy of the*



**W**arm summer months can be tough on pets. Keep these tips in mind when the heat is on!



- **Don't leave your pets alone in parked vehicles.** Even with the windows open, a parked car quickly becomes a furnace. While the temperature outside your car may be only 80°F, the temperature inside could reach 120°F, which can be fatal.
- **When traveling,** always carry a thermos filled with fresh, cool water for your pet.
- **Don't force your animal to exercise after a meal** in hot, humid weather. Exercise your pet in the cool of the early morning or evening.
- In extremely hot weather, **don't leave your dog standing on the street, and keep walks to a minimum.** Your canine companion is much closer to the hot asphalt and his body can heat up quickly. His paws can burn since shoes do not protect them.
- **If you take your dog to the beach** make sure you can provide a shaded spot and plenty of fresh water to drink. Be sure to rinse the salt water off your furry friend. Remember that dogs can get sunburned too, so don't forget to protect hairless and light-coated dogs with sunscreen.
- **Always provide plenty of shade for an animal staying outside the house.** Bring your pet inside during the heat of the day and let them rest in a cool part of your house. Always provide plenty of cool, clean water for your animal.
- **Be sensitive to old and overweight animals** in hot weather. Snub-nosed dogs should also be kept indoors as much as possible.
- **Be sure there are no open, unscreened windows or doors** through which your animal can fall or jump.
- **If you think your pet is suffering from overexposure to heat,** consult a veterinarian immediately!



For more information, visit the San Diego Humane Society's Web site at:

[www.sdhumane.org](http://www.sdhumane.org) ❀