



PROFESSIONAL LIABILITY UPDATE

A LOSS PREVENTION NEWSLETTER FOR THE DESIGN PROFESSION

MSP PL -11/2009 "Managing Risk in a Design Firm"

November 2009

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Managing Risk in a Design Firm

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There is no line item on a design firm's income statement titled "Cost of Risk," but this is typically one of the industry's largest and most volatile expense items. Some design professionals pay 5% or more of their gross income for risk related costs.

In an industry with tight profit margins, effectively managing risk can sometimes mean the difference between making a profit or not, and in some cases the survival of the business.

What Is Cost of Risk?

Cost of Risk is typically defined to include:

- **Insurance Premiums** – These include but are not limited to general liability, auto, property, excess, workers compensation, professional liability, pollution liability, employment practices liability, inland marine, surety, and employee benefits.



- **Time Spent Analyzing and Managing Risk** – This includes the time invested to identify potential losses, their causes, and deciding on a strategy to manage those losses. It also includes time spent managing your safety program, human resources and claims.
- **Time Spent Dealing with Losses** – This could involve efforts to work with employees and designated clinics for a workers compensation claim, dealing with an insurance adjuster on a property claim, or participating in your defense of a lawsuit against your company.
- **Retained Losses** – Losses are either retained on purpose (deductibles, self insured retentions or self insurance) or by accident. Effective risk management should help avoid retaining a loss accidentally.

What Is Risk Management?

Traditional Risk Management focuses on what is called **Hazard Risk**. Hazard Risk, as opposed to Business Risk, deals with accidental or fortuitous losses. These risks involve the potential for loss without any corresponding possibility of gain.

Business Risk, on the other hand, deals with the risk of conducting business. It includes the possibility of loss, no loss or gain. Investment in a new software

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program or acquiring another entity are examples of business risk. Collectively, Hazard Risk and Business Risk make up what is known as **Enterprise Risk Management**.

Most design professional firms focus on Hazard Risk or Traditional Risk Management, which is the subject of this article.

In its simplest form, Risk Management involves the identification, evaluation, and management of a company's exposures to loss. A **Loss Exposure** is defined as any condition that could result in financial loss to an organization. In other words, Risk Management attempts to mitigate the occurrence of losses while initiating advance planning to assure that adequate funds will be available to cover those losses that occur. The primary function of Risk Management is to protect the assets and financial viability of the company, and secondarily to lower the total cost of risk.

Whether or not someone has the official title of "Risk Manager" in your company doesn't matter – someone is managing your risk. Of course, if you don't know who that is, your risk may not be being managed very well. The first step in an effective Risk Management program is to designate the individual or individuals that will be responsible for this function.

The Risk Management Process

To effectively manage risk, it helps to develop a systematic approach. There are a number of ways to do this, but all approaches basically involve the following steps:

- Risk Analysis
- Risk Control
- Risk Transfer
- Risk Review and Refinement



2009 Risk Management Series

- **Sexual Harassment Prevention Training**
 - * Satisfies AB1825 requirementsFriday, December 4, 2009
Registration: 8:00 am
Program: 8:30 am - 10:30 am
- * **NOTE:** This will be our **final Sexual Harassment Prevention Training seminar in 2009**. If you have staff members that must complete this course in 2009, be sure to reserve seats early!

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

Register for upcoming seminars

Contact **Darcee Nichols** at dnichols@cavignac.com or call **619-744-0596**

* **NOTE:** Due to the popularity of our seminars and limited space available, we regret we cannot provide refunds or credits with less than **72 hours advance notice of cancellation**.

Collectively, these four steps are known as the Risk Management Process:

Risk Analysis

Risk Analysis is the first and perhaps the most important step in the Risk Management Process. The purpose is to identify loss exposures: things that, if they go wrong, could cost the company money. There are only four types of loss exposures:

- Property
- Loss of Income
- Personnel
- Third Party Liability

The correct way to identify and analyze exposures is to do so systematically using an exposure analysis program or checklist. In addition to the checklist, things such as financial statements, flow charts, contracts, marketing materials etc. can be helpful. Once exposures are identified, they need to be analyzed. Some exposures are minimal and can be retained. Others lend themselves to being controlled, and still others will need to be transferred, avoided, or financed. The key is being proactive in this process. It is better to understand your

risks and make conscious decisions about how to handle them than to find out at the time of a loss that you are uncovered and unprepared.

Risk Control

Risk Control involves any strategies or techniques you can implement to lower the frequency of severity of a loss exposure. Risk Control includes Loss Control, Claims Management and Human Resources.

Loss Control is critically important to a design professional. Put bluntly, unsafe companies won't survive long. A poor safety record and loss history can drive a company's insurance costs so high that they simply can't compete. Every design firm should have someone responsible for loss control and safety. Like a lot of things, most loss control issues are fundamental and straightforward.

- Do the key individuals in your firm understand what gives rise to claims against design professionals? Have they been educated on how to avoid such situations?
- In the event of a claim or a circumstance which may give rise to a claim, do your employees know how to react appropriately?
- Have you developed Client Intake procedures?
- Do you utilize Post Project Evaluation forms?
- Are your contract review policies, procedures and guidelines effective?

You and your loss control or safety officer should do a self analysis of your company's culture and determine where you need to improve. Working with your broker and insurance company, you should develop a Schedule of Loss Control Services and Educational Programs that will help you accomplish your objectives.

Claim Management is equally as important. Even the best run firms will have accidents or claims. How you manage an accident or claim however can have a material effect on the ultimate cost.

- Have you appointed a Risk Manager or Claims Supervisor in your company who is responsible for coordinating all claims and accidents?
- Have the appropriate individuals in your company (principals, project engineers, etc.) been educated in both early recognition of claims, claim circumstances, and Post-Accident Response Training?

Risk Definitions

Loss Exposure — Any condition that presents a possibility of loss, whether or not an actual loss occurs.

Risk Analysis — The process of identifying and analyzing exposures to loss.

Risk Control — Strategies and techniques designed to reduce the frequency and severity of a loss exposure.

Risk Management — The practice of identifying and analyzing loss exposures and taking steps to minimize the financial impact of the risks they impose.

- Have you established a relationship with your broker's Claim Manager as well as your insurance companies claim adjusters?

Human Resources are also a major area of concern for most design firms. The challenge of making certain your HR practices comply with the myriad of laws and regulations imposed by the numerous organizations that deal with these issues is mind numbingly difficult.

- Do you have a full time HR staffer or have you appointed someone in your company to handle this function?
- Has your Employee Handbook been reviewed for compliance?
- Are your supervisors required to take Sexual Harassment Prevention Training?
- Are you confident that your hiring, firing, and discipline policies and procedures are legal and effective?

Once again, the key is to identify where you need to get better and then develop a Schedule of Services to accomplish your objectives. There are numerous tools available to help a company improve its HR practices (HR That Works, a Web-based resource, is one of the best). The key is identifying where you need to improve.

Risk Transfer

Once you have identified and analyzed your risk and developed Risk Control techniques to lower the frequency and severity of your loss exposures, it is time to consider **Risk Transfer**. Risk Transfer includes retention, contractual risk transfer and insurance risk transfer.

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Risk Matrix

		Loss Frequency	
		Low	High
Loss Severity	Low	Retain	Retain and Implement Loss Prevention Measures
	High	Insure and Implement Loss Reduction Measures	Avoidance

Managing Risk (continued from page 3)

Retention can be purposeful or accidental. Ideally, it is purposeful. Some exposures are low severity and should be retained and managed. Other exposures are low frequency and high severity and should be transferred (usually insured). Finally, some are high frequency and high severity, and these should be avoided.

Regardless, you should decide how much risk you want to retain and tailor your insurance program accordingly, using appropriate deductibles and self insured retentions.

Contractual Risk Transfer is a significant issue for design firms. Whether you act as a Prime or a subconsultant, risk is transferred every time you sign a contract. Generally, risk is transferred through an indemnity agreement; however, other aspects of the contract are important as well.

- Do you understand the risk you are being asked to assume?
- Do you know if it is insurable?
- Do you know if your insurance program meets the insurance requirements of the agreement?
- Are your subcontract insurance requirements adequate and reasonable?
- Do you have an attorney and insurance broker you can utilize when you have questions or issues?

Insurance Risk Transfer is the most common form of Risk Transfer. Basically, you are agreeing to transfer the potential consequences of certain specified loss exposures to an insurance company for an agreed-upon cost or premium. Insurance is often the most expensive component of the Cost of Risk, but there is a reason it is the third step in the Risk Management Process. It is only

after you have identified and analyzed your exposures and implemented effective Risk Control techniques that you can determine what you want to insure.

If you have done the first two steps correctly, you should be in a position to approach the insurance marketplace with a well thought out submission that highlights the attributes of your company's risk management efforts, why you are a better than average risk from an underwriter's standpoint, and why you deserve a favorable rate.

- Have you aligned yourself with the right insurance broker – one who understands construction and has the staff and relationships to effectively market your program? (Self serving, I know, but this is probably the most important element of insurance risk transfer).
- Are you with the right insurance company?
- Have you given thought as to whether or not it makes sense to market your program? (We don't recommend that you market your program every year.)

Risk Review and Refinement

Risk management is a process that does not end with risk transfer. Exposures change and need to be effectively managed. Service issues for design firms are significant. Coordinating Certificates of Insurance and tracking Certificates of Insurance alone are a huge task.

Your designated Risk Manager needs to be kept in the loop on any changes that might affect the company's Risk Management program, and he or she needs to communicate this information in a timely manner to your insurance broker.

Summary

Cost of Risk is a concept many design firms have never thought about despite the fact that it is one of their largest expense items. An effective Risk Management Process will provide a logical approach to managing the risks that a design professional faces.

The process doesn't have to be complex; as a matter of fact, it should be simple and straightforward. The key is to have the support of the company principals and a qualified insurance professional who can quarterback the process. ✨

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.



Articles courtesy of Cavignac & Associates Employee Benefits Department

LIVE WELL, WORK WELL

Be Thankful for Family

Thanksgiving Day is **National Family History Day!** What does this mean? It's a reminder to ensure you have a complete family medical history to provide in the unfortunate case of a family emergency. For example, if your child shows signs of a disorder, family medical history can help the doctor confirm a diagnosis.



Your Child's Family History

- Record the names of your child's close relatives from both sides of the family.
- Include conditions each relative has/had and at what age the conditions were first diagnosed. If the relative is deceased, include cause of death and age of death.
- Use the U.S. Surgeon General's online tool for collecting family histories, called "My Family Health Portrait."
- Discuss family history concerns with your child's doctor.
- Update your child's family history information regularly, and share new information with your child's doctor. ✨

Traveling with Fido



It's the start of the holiday season, which often means traveling to places far away to see loved ones. If you plan on bringing your pet(s) along, ensure you have all your bases covered to make the trip as pleasant as possible:

- Before the trip, make a checklist of all the things your pet typically needs (such as a water bowl, medication or a favorite toy). Then use the checklist as you are packing for the getaway.
- Also before you leave, look up the nearest emergency centers along the route you are traveling, as well as at your final destination.
- Purchase a pet carrier that is large enough for your pet to stretch out and sleep. Label it with your name and contact information in several areas using permanent marker and waterproof labels.
- If traveling a long distance via car, bring cleaning materials and plastic bags in case he/she gets sick. It might be wise to avoid feeding your pet a full meal until you arrive at your destination (if it is a one-day trip.)
- Make sure your pet gets plenty of exercise before boarding a plane or getting in the car for a long trip.
- Make sure to stop the car frequently to allow for bathroom breaks. ✨

ALERT! Employers with 15 or More Employees

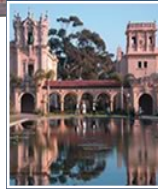
By November 21st you must supplement your current **EEOC** poster by *also* posting a supplemental poster that provides information about the **Genetic Information Nondiscrimination Act of 2008 (GINA)**.

Title II of GINA prohibits use of genetic information in making decisions related to any terms, conditions, or privileges of employment, prohibits covered entities from intentionally acquiring genetic information, requires confidentiality with respect to genetic information (with limited exceptions), and prohibits retaliation.

- Upload the supplemental poster: http://www.eeoc.gov/employers/upload/eeoc_gina_supplement.pdf
- To learn more about GINA, go to: http://www.eeoc.gov/policy/docs/qanda_geneticinfo.html

Community Bulletin Board

"Neighbors helping neighbors in San Diego"



- ✦ Orchids & Onions 2009
- ✦ Web Site
- ✦ Questions? E-mail info@SDArchitecture.org



- ✦ Events Calendar
- ✦ Web Site

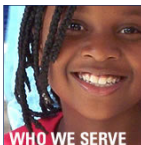


- ✦ Web Site
- ✦ 2009 Resolution Run
- ✦ Questions? Contact **Alicia Gettys** by phone at **619-232-7451** or e-mail agettys@ymca.org



Monarch Schools

- ✦ Mission Federal School Benefit Campaign
- ✦ Monarch Shop
- ✦ Web Site



Mission:

The Society for Design Administration advances management and administrative professionals in the A/E/C industry through education, networking and resources.

- ✦ Become an SDA Member
- ✦ Web Site
- ✦ For more information, e-mail vicepresident@sdasandiego.org



The San Diego Police Foundation supports the men and women who "protect and serve" by raising community awareness of important

unbudgeted or "discretionary" needs that will improve crime-prevention and law enforcement efficiency. The Foundation puts your tax-deductible contributions to measureable work in local communities.



- ✦ Web site
- ✦ SafetyNet (smartCYBERchoices)
- ✦ For more information, contact info@sdpolicefoundation.org



Mission:

To provide quality and compassionate services for the survival, health and independence of seniors living in poverty

- ✦ Web Site

