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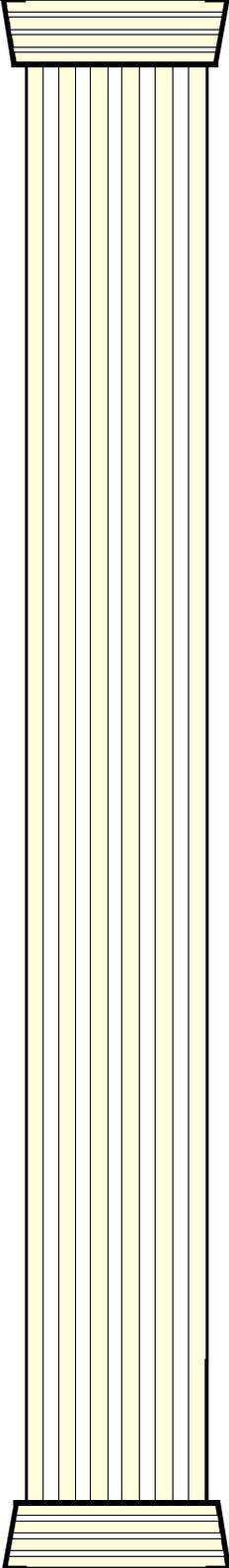
# PROFESSIONAL LIABILITY UPDATE

A Loss Prevention Newsletter for the Design Profession

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MSP PL 11/2005: "Business Boom Can Bust Staffing Plans"

November, 2005



## Business Boom Can Bust Staffing Plans

Article courtesy of Professional Liability Agents Network (PLAN)

Business is booming! This condition holds true for a great number of architects and engineers across North America. And while few firms are complaining about the number of projects they are involved with, many are finding their resources – particularly their human resources – being stretched to the breaking point.

A midyear 1999 study by the American Institute of Architects identified staffing as the principal concern of surveyed members. Not surprisingly, excessive workload was the second highest concern.

Overworked staff and backlogged workloads are key red flags when it comes to professional liability dangers. As multiple projects compete for time and attention, details often fall through the slats. Documentation may be missed, observation may be lessened and junior employees may be assigned to tasks better left to seasoned veterans. The demands of keeping up with the plethora of projects can lead to critical errors and



omissions – along with unwelcome disputes and professional liability claims.

Being willing to hire more employees is not always a solution. Beyond having financial constraints, design firms are finding it difficult to locate qualified staff in this overheated economy. According to a study by the Engineering Workforce Commission of the American Association of Engineering Societies, the

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## 2005/2006 Seminars

### Cavnac & Associates' Training Room

Bank of America Plaza  
450 B Street, 18th Floor, San Diego, CA

- **Fleet Safety**  
Friday, December 2nd, 2005 — 9:00—11:00 AM
- **OSHA Record Keeping /  
Inspections & Citations**  
Friday, January 6th, 2006 — 9:00—11:00 AM
- **Having the Right Safety Attitude /  
Changing Your Safety Culture**  
Friday, January 20th, 2006 — 9:00—11:00 AM
- **OSHA 10-Hour Course — Part 1**  
Friday, February 14th, 2006 — 8:00 AM — 12:00 Noon  
**(Attendees receive Certificates of Completion for each part  
OSHA will provide 10-Hour Card after ALL  
sessions have been completed)**
- **How to Run an Effective Safety Meeting and  
Make Your Toolbox Talks Fun**  
Friday, March 10th, 2006 — 9:00 — 11:00AM

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

#### For more information about upcoming seminars:

- Visit our Web site at [www.cavnac.com](http://www.cavnac.com)
- Contact **STUART NAKUTIN** by e-mail [snakutin@cavnac.com](mailto:snakutin@cavnac.com)  
or by phone at **619-744-0589**.

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number of engineering graduates earning bachelor degrees declined approximately 9% between 1989 and 1998.

So what's the answer to this dilemma? Obviously, turning down attractive projects is not the solution that design firms are looking for. Instead, firms should take a proactive approach to locating and hiring qualified professionals and implementing necessary steps to train and retain top performers. If the supply of qualified workers simply won't meet the demand, companies can investigate alternative employment options that can help them keep up with the workload while holding liability exposures in check.

### Perpetual Recruiting

In good times, design firms should be in an aggressive recruiting mode whether they are currently hiring or not. This does not simply mean running nonstop help-wanted ads in local newspapers and professional trade journals. Rather, it means keeping eyes and ears open to available talent that may add to the quality of staff.

For example, management should regularly network through professional associations. Word of mouth can often unveil talented architects or engineers looking for a new challenge or a change of scenery. Brazenly headhunting for your competitors' key employees may lead to retaliation, but a low profile and an open ear can bring opportunities to light.

Another low cost and effective recruiting tool is your company website. Many firms have created extensive "career opportunity" sections, with clear and prominent icons on the home page linking prospects to this section. They provide a brief description of the company and its culture as well as listing any positions currently available. A contact e-mail address for inquiries is a must, as is a mechanism for prospects to attach resumes and work samples. Also give company addresses, phone numbers and the names of contact persons so prospects can make a personal call.

Intern programs continue to be a popular way to bring junior talent into a design firm. But keep in mind that an AIA Work-On-The-Boards survey reported that 36% of firms feel interns are poorly prepared for practice, and therefore, are not always an easy fix.

### Alternatives to Traditional Staffing

A drawback to hiring during strong economies is the potential for downsizing once the market cools off. Firms that repeatedly grow and shrink along with the whims of the economy often suffer decreased morale and lowered performance as employees become distracted by the apparent instability. Design firms, therefore, may want to look to alternative staffing methods that are growing increasingly popular during times that demand more workers.

**Contract professionals** or contingent employees are becoming increasingly commonplace in the design industry. In fact, across all industries, professional and technical workers are the fastest growing segment of a flexible workforce once known as "temporary employees." No longer do clerical and administrative workers comprise the bulk of temps. Highly qualified architects, engineers and other professionals can be hired through

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national agencies and specialized staffing companies.

And it's not just those workers who can't find a steady job that fill the ranks of contract professionals. This employment option is proving attractive to skilled designers looking for professional challenge, diversity of assignments, travel and the ability to increase skills for heightened marketability. Plus, if they like your company, and decide it's time to set their roots for a while, they may accept your offer to stay as full-time employees.

The benefits these workers provide are obvious. They allow flexibility with staffing as job skill requirements and project load fluctuates. Contract workers are typically paid hourly and the employment agency handles administration, payroll taxes and benefits. Plus, you enjoy lower recruiting costs compared to hiring employees.

Disadvantages include potential higher turnover and reduced job loyalty – although this is not always the case. Plus, you usually have to pay overtime. Be sure to check state labor laws regarding what qualifies a worker as an “employee.” Sometimes, the number of hours worked, duration of hire or scope or work requirements may inadvertently cause a contract professional to be qualified as an employee.

**Independent contractors** are another alternative to permanent staff. These are essentially the same types of workers as contract professionals, but you deal direct with the worker rather than going through an agency.

The advantage is that the per-hour cost is generally lower since you don't pay a fee to an agency. The disadvantage is that you lose the administrative services often provided by agencies. (Some contractors work with a third-party administrator that helps them handle payroll and benefits administration.) Meeting the state law requirements to avoid employee status is even more important when dealing one-on-one with a contract worker.

**Loaned employees** are a less common but growing source of contract workers. With this approach, consulting firms “borrow” employees from another consulting firm to work on a short-term basis in exchange for a fee. This practice is proving effective between design firms with good working relationships. However, there are substantial gray areas here regarding professional liability. For example, if there is a claim arising from a loaned

temp employee's services on a project for the borrowing firm, the lending firm can easily be brought into the suit.

**Subconsultants** are certainly not new to design firms. Most architects, for example, have experience hiring subconsultants from a variety of engineering disciplines. However, in today's hot market, it is becoming more common to find architects subconsulting with other architects, civil engineers subconsulting with other civil engineers, etc., to help handle large workloads. Rather than hiring subs to perform functions where a firm lacks expertise, companies are subcontracting work they would typically perform themselves if they had adequate staff.

## Reducing Liability

What are some of the steps design firms can take to minimize liabilities while coping with an overheated market and a lack of qualified job candidates?

First, establish strict hiring criteria to meet your needs. Make sure recruits possess the skills, licenses and other requirements necessary to perform the functions they will be called upon to perform. Provide new hires with close supervision, mentoring by senior staff members, and ongoing training from effective instructors.

If you can't find qualified job candidates or are hesitant to commit to a long-term employment relationship, look to the alternative employment options previously discussed. Develop a short list of

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qualifications for these firms or individuals. Look for those with track records of delivering high standards of quality and who demonstrate client's service and work-ethic philosophies similar to yours. Look for those experienced in providing the specific type of services you need performed, preferably for the same type of project. Ask about their current workload – you don't want to hire a contractor or sub who is just as overbooked as you are.

## Work Agreements

No matter how competent the other party may seem – even if you have experience working with the individual or firm – put your work agreement in writing. When drafting your contract, you can start with one of the professional association forms (both EJCDC and the AIA have consultant agreements you and your attorney can likely adapt to your situation). Or, develop a form of your own. Your goal is to arrive at an agreement that both is reasonable and fair, and allows each of you to reach your objectives.

Here are the critical points you need to address in the work agreement:

- Draft a clear **scope of services** that spell out the functions to be performed and the working relationship to be established.
- Include a **fair and insurable indemnity**. We suggest a mutual indemnity that gives both parties equal protection. By providing for mutual indemnity based on comparative fault, the party found most responsible for the error or omission will bear the bulk of the liability. This comparative fault clause only comes into play legally if the claim ultimately is decided in court. However, it can also serve as a valuable guide should a dispute be resolved prior to a lawsuit through mediation or some other dispute resolution technique.
- Have each party maintain and furnish **proof of insurance**. Your agreement should require each of you to provide to the other certificates of insurance showing all coverages.

Other issues you will need to address include:

- **Who** will retain ownership of documents?
- **How** will you handle payment?
- **Will** the subconsultant/independent contractor perform construction observation?

If you are the prime consultant, we recommend that you pass through to your subcontractor or independent contractor any liability protections (such as indemnities and limitations of liability) that you are able to obtain from your client. If you loan your employees to (or borrow employees from) other consulting firms, you should have a contract that sets forth who will take responsibility for claims that arise from the employee's services. Probably the best solution is to have the "borrowing" firm assume the responsibility and indemnify the other firm.

A final consideration for lowering liability is to limit the amount of additional work your firm takes on. This doesn't necessarily mean having to say "no" to the next new project that arises. Rather, you can raise your standards for the types of work you will accept. That could include raising your fees, limiting the types of projects you will accept, or raising the standards you demand in a new client. That way, you can continue to accept the cream-of-the-crop new clients and possibly weed out some troublesome ones. Although your total revenues may remain constant or rise more slowly, your profit margins could increase substantially while your exposure to risk is reduced.

## Conclusion

A strong economy and high demand for your services should be a blessing, not a curse. By choosing your new hires and your new projects wisely, controlled sustainable growth becomes a more realistic goal. Now, more than ever, you should be paying close attention to client satisfaction and making decisions that will pay dividends when the market inevitably cools. Work force flexibility through the use of alternative staffing options can be an important solution to position your firm for success today and tomorrow. ✨

*The Professional Liability Agents Network (PLAN) is a select group of insurance agencies specializing in risk management and loss prevention programs for architects, engineers and environmental consultants in the United States and Canada.*

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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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# General Office Safety Practices

By Stuart Nakutin, PHR, AIC, WCCP, CDMC

It's amazing how many people who work in offices take safety for granted. Most people think of a construction site or factory when they think of safety. Well, that's not the way it should be. Granted, although construction sites and factories are potentially extremely dangerous, offices can be too, especially when no one considers safety.

Let's review some of the situations that increase exposure to injury and what we can do about them.

- **Avoid walking and reading at the same time.** If it is important enough to read, then stop and read it.
- **Never leave file cabinets open and unattended** – never – not even for a minute. How long does it really take to open a file cabinet?
- **Never run in the office.** Nothing is so important that you must risk running into a co-worker.
- **Leave your shoes on.** If your shoes are too uncomfortable to wear all day, then wear different shoes. Walking around the office barefoot is a sure way to stub a toe or pick up a staple.
- When you must carry files, **don't carry more files than you are capable of.** If you're grunting or your muscles get tired, you're carrying too much. Use a cart or make more trips.
- **Avoid placing extension cords on the floor.** These are tripping hazards and can also become fire hazards.
- **Never, ever put your fingers in an automatic stapler or stamper.** Always unplug electronic equipment before you try to unjam it.
- **Always keep aisle ways clear.** Never stack boxes or supplies in aisle ways or in front of egress paths. Never arrange offices with desks in front of exits.
- **Avoid bending at the waist when accessing low files.** If you must access low files, either stoop down or get on your knees.
- **Avoid twisting and reaching for files** or other materials in your work station. Move your whole body to prevent back strain. ✂

*Stuart Nakutin, PHR, AIC, WCCP, CDMC is Director of Loss Control, Claims and Human Resources for Cavnac & Associates.*

# Factors Leading to Increased Healthcare Costs

Article courtesy of Employee Benefits Department

Why are U.S. healthcare costs skyrocketing? Several market conditions working in tandem have led to the current onslaught of steep increases. Understanding why your annual health plan renewal rates may be significantly higher than the previous year is the key to formulating alternatives and solutions to your particular plan's challenges. It is also the key to educating your employees about the reasons behind any plan or contribution changes you may decide to introduce.

Below are some key factors leading to recent hikes in medical costs and health insurance premiums:

- Demographics: The Aging of America
- Dramatic Rise of Prescription Drug Costs
- Consolidation of Managed Care Companies
- Expansion of Providers
- Political Environment and Governmental Regulation

You and other employers are undoubtedly trying to determine how to keep accelerating health plan rates from having debilitating repercussions on your organization. Many firms have been trying to absorb most of the costs because of attraction and retention issues, but are now realizing that they will have to pass portions of the costs on to their employees in the form of increased contributions or out-of-pocket expenses. Small businesses in particular are facing the critical decision to raise employee contributions, or to discontinue offering the coverage altogether.

Which solution is right for you? Should you pass costs on to employees, at the risk of losing some of them? Or, should you try to manage costs in some of the other ways discussed above. Ultimately, it is a decision that you need to come to through thoughtful and detailed analysis of your plans, and with the advice of your broker-consultant. ✂