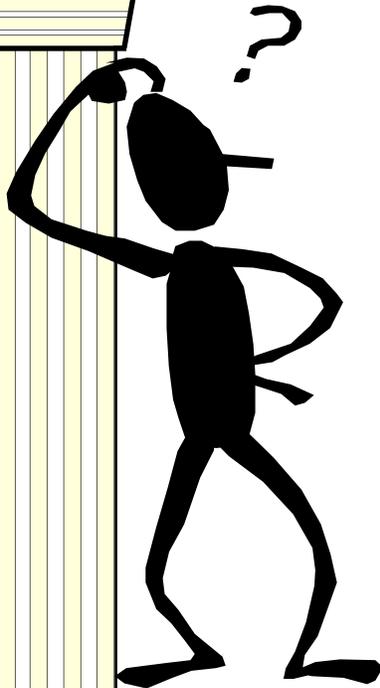


PROFESSIONAL LIABILITY UPDATE

A Loss Prevention Newsletter for the Design Profession

MSP PL 09/2008: 'Top 10 Risk Management Questions Facing Design Firms Today'

September, 2008



Top 10

Risk Management Questions Facing Design Firms Today

Article courtesy of Professional Liability Agents Network (PLAN)

With a nod to TV's late-night host David Letterman, here are the top ten professional liability concerns we have been hearing from our A/E clients and prospects. It's not a scientific poll, mind you, but a fair reflection of what's on the mind of many of today's design firms when considering their professional risks. In no particular order:

which your firm has limited experience – branching into designing complex medical facilities, for instance.

Realize that any increase in revenues may result in an increase in the size of your premiums, since annual fees are a key component in determining the cost of your PL insurance. This, however, does not necessarily reflect an increase in your risks.

Top 10 (continued on page 2)

Question 10



In order to increase our annual revenues, should I consider expanding the scope of services my firm offers, or is this risky business?

As a rule, expanding your scope of services on each project is an excellent way to increase revenues. What effect such a move will have on your risks depends largely on what types of new services your firm offers to your clients.

Some new services may actually lower your risk. For example, expanded jobsite observation services can help spot potential problems in the early stages and avoid project upsets. Where you might increase your risks is expanding into services in

In This Issue

Top 10 Risk Management Questions ...	1-4
2008 FOCUS Seminars	2
AIA Upcoming Events	3
Orchids & Onions	4
Community Bulletin Board	5

Published by

Cavignac & Associates

INSURANCE BROKERS

License No. OA99520

450 B Street, Suite 1800
San Diego, CA 92101-8005

Phone: 619-234-6848 ✦ Facsimile: 619-234-8601

Web Site: www.cavignac.com

Question 9



Is mold covered on my professional liability policy?

Generally, yes. While specific mold exclusions have shown up on homeowners' policies and other types of personal and commercial property insurance, they are not typically found on professional liability policies. This doesn't mean, however, that mold is not a significant risk factor for design professionals.

A mold exclusion could be added to a professional liability policy if an insurer feels your work presents a particularly high mold exposure due to factors such as geographic location or project type. And even without an exclusion, mold could present exposures outside of your professional liability policy. For example, you could be brought into a construction defect claim that triggers a class-action lawsuit alleging bodily injury due to long-term exposure to toxic mold.

Your best advice is to design with mold in mind. Be aware of mold risks in your locale and with your project types. Don't skimp on mold-control measures. Pay close attention to plumbing, HVAC equipment and humidity-control systems, ventilation and filtration, window and door installations, drainage and runoff controls, and roofing and envelope systems.

Question 8



Should I sign my client's take-it-or-leave-it contract?

This is a very difficult question to answer. First, the fact that a client would take such a stance should send up a red flag. Is this the type of entity or individual you want to do business with? But if it's a project or client that is attractive to you from a business standpoint, a client-drafted contract is not necessarily a bad thing. The key is to ensure the contract does not contain onerous language you simply can't accept.

First of all, READ the contract – or have legal counsel do so. Highlight any language that you feel presents risks to your firm. Look for language that asks you to indemnify the client from risks that might otherwise logically belong with the client. For example, does it ask you to take responsibility for the client's negligence or actions? Once you've reviewed it, send it to us with your comments. We can focus on your areas of concern and review it for insurability issues. Keep in mind, if you agree to accept liabilities that would not be yours absent the contractual

2008 FOCUS Seminars

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

- Sexual Harassment Prevention Training
Satisfies requirements under AB 1825
Friday, December 5, 2008 — 9:00 AM - 11:00 PM

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
- Contact Darcee Nichols at dnichols@cavignac.com or 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.

obligation, those liabilities will most likely NOT be insured!

In the end, it comes down to a risk-versus-reward business decision. We'll be happy to provide advice, but only you know whether you can live with the contract conditions.

Question 7



Whatever happened to project insurance?

Long ago and far, far away, most professional liability insurers offered a product called project-specific insurance. Generally, this type of insurance covered all of the design firms working on a single project up to the policy's dedicated limits. It was typically paid for by the project owner and the fees earned by the design firms did not count in the calculation of their practice policies.

Sounds great, right? Who could lose when project owners had guaranteed coverage up to their desired limits and the design firms avoided most if not all the cost? The insurance company, that's who! These policies, for a variety of reasons, resulted in monumental losses for insurers. As claims and loss ratios hit the stratosphere, insurance companies pulled their products off the market and project policies went the way of the dinosaur.

Actually, there are still a few insurers who may offer project policies under the right conditions, but prices are extremely high and policy conditions are not

as attractive as before. If you or a client think a project policy may make sense, we'll be happy to investigate options. However, don't expect us to be able to find the same type of attractive product offered back in 1990's.

Question 6



Are condos still no-no's?

Condos remain one of the riskiest types of projects in the eyes of insurance underwriters. They have a horrific claims history due to a number of factors: fly-by-night developers, low fees for design professionals, poor maintenance, and sue-happy lawyers who petition homeowners' associations.

That said, not all condo projects are bad. The name of the game is designer beware. Check the history of the developer and the litigious environment surrounding condos in your area. Do expect, however, that as your book of condo projects grow, you may find professional liability insurance more expensive and perhaps harder to get. Take these factors into consideration when deciding whether to design condos and what to charge for such services.

Question 5



Will my clients really accept a limitation of liability (LoL) contract provision?

You'll never know until you try! The fact is, many clients accept LoL contract provisions once the reasoning behind them is explained.

The primary line of reasoning goes something like this: The client has the most to gain from a successfully completed project. The designer's gain is limited to project fees minus expenses. So if the owner has the bulk of the reward, shouldn't it also we willing to accept its fair share of risk?

The best negotiating stance is to avoid a yes/no decision. Provide your client an option – you can either perform your services with unlimited liability for one fee, or you can lower that fee if the client is willing to accept the LoL. We'll be happy to help you in your negotiations of this important contract clause.

Question 4



What's up with BIM – will it lower or increase my risks?

Building Information Modeling (BIM) has great promise in reducing professional liability risks. By having all project information contained in a single, continuously updated database, it should be easier to manage the accuracy of data and integrate all aspects of the project during the design



Upcoming Events

October, 2008

Lunchtime Learning CES Program

✧ *Designing toward Zero-Energy Buildings*

An overview of the process for conceiving, analyzing, designing and operating a zero-energy building

WHERE Cavnac & Associates
450 B Street, Suite 1800

WHEN Wednesday, October 1, 2008
Noon to 1:30 p.m.

LUNCH Included

CONT EDU Earn 1.5 HSW LUs

COST *AIA Members—Free / *Non-Members—\$10
* \$5 charge for NOT registering online

Young Architects Commission (YAC) Meeting

YAC hosts a variety of educational and social events for students and emerging professionals, including Praxis, ARE Seminars, and Barstool. All are welcome.

WHERE Offices of Architects Delawie Wilkes
Rodrigues Barker
2265 India Street, San Diego, CA 92101

WHEN 1st Tuesday of each month — 6:00 pm to 7:00 pm

inteRRobang

San Diego's Interdisciplinary Lecture Series on Design

SPEAKER Alfred Homann, Danish Architect and Designer
WHERE Neurosciences Institute
10640 John Jay Hopkins Drive
San Diego, CA 92121

WHEN Tuesday, October 14, 2008 / 6 pm — 8 pm

COST Varies—see flyer

INCLUDED Light refreshments and adult beverages

FOR MORE INFORMATION AND A FULL CALENDAR OF UPCOMING EVENTS, VISIT:

<http://www.aiasandiego.org/>

stage. This leads to better specifications, estimations, budgets, schedules and compliance.

However, most in the insurance and design industry agree that BIM may actually *increase* a design firm's liabilities in the short term. New processes are rarely adopted without trial and error. Since the prime

The Fun Continues on November 13, 2008!

FOR MORE INFORMATION, VISIT <http://www.orchidsandonions.org/oo-08-awards-ceremony>

Top 10 (continued from page 3)

designer now compiles and manages virtually all project information, contractors and others who rely on the prime for complete and accurate project information will likely point fingers when any project error occurs. There are also liability issues regarding ownership of that information.

The insurance and legal fields will be challenged to adapt to BIM and establish new standards regarding the allocation of liabilities. So, short-term, be prepared for new liability challenges; long-term, you should reap benefits with time and experience.

Question 3



Should my firm be going “green,” and what are the liability issues?

Like BIM, “green” design represents a significant portion of future design work. Every design firm needs to investigate the skills needed to design green buildings and move forward boldly with education and training if it decides to go in that direction.

As with BIM, however, new processes invite errors. Liabilities may increase initially. Plus, green design has an added danger – unrealistic client expectations. Building owners will be expecting significant savings in operating costs as the result of increased energy efficiency. If these savings aren’t immediately achieved, they’ll likely consider it the designer’s fault. So, managing client expectations will be a significant risk management tool for those going green.

Question 2



How much will my professional liability insurance cost next year?

That’s going to depend on a whole slew of factors. Your premiums will be based on your annual fees, your claims history, the types of projects you’ve worked on and whether you take advantage of cost-saving opportunities offered by your

insurance company – such as completing loss prevention education programs or including prescribed risk management practices.

All things being even, insurance premiums are currently pretty stable. The market is fairly soft and rates may even decrease if it remains soft in the future. However, be sure you consider the entire cost of professional liability protection, not just your annual policy premium. You might find an insurance agent or broker offering significantly reduced premiums. But if you end up with inferior policy coverage or inadequate support and advice in the event of a project upset or claim, buying that cheap policy may turn out to be the most expensive decision you’ve ever made.

Question 1



What is the best thing I can do to reduce my professional liability risks?

That one is pretty easy – manage your client relations. Claims studies show that non-technical factors are the leading cause of claims, and topping the list are communication problems between designers and their clients.

Stress within your firm the need to have open, honest and clear communications with your clients. Good communications go a long way to uncovering misunderstandings, omissions and errors at the earliest stage possible, before they require an expensive fix.

Equally important, if you have a solid, open and trusting relationship with your clients, they are more willing to seek amicable solutions to any project upsets that arise, rather than immediately calling in their lawyers and threatening you with claims. When your client’s attitude is one of “*how can we fix it?*” rather than “*how are you gonna fix it?*” you’ve won half the battle. ✂

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.



Community Bulletin Board

"Neighbors helping neighbors in San Diego"



Senior
Community
Centers



ATTENTION!

A NEW Windmill Thrift Shop

Is Now Open in City Heights!

Tell your
Family,
Friends
and
Colleagues!

The East Village Store has moved to:

**4611 University Avenue
San Diego, CA 92105**

(Between 46th Street and Menlo Avenue)

**Hours 10 am—6 pm
Open 7 Days a Week**

Call
(619) 291-2415
to Schedule
a Pickup
(Large Items
Only)

- ❖ Don't know what to do with your old television?
- ❖ Are those unused cookbooks collecting dust?
- ❖ Need to get rid of your summer clothes to make room for your new fall wardrobe?
- ❖ Have your kids outgrown their toys?

If you answered yes to any of these questions, head over to the Windmill Thrift Shop in City Heights and donate your gently used items.

While you're there, check out their wide selection of merchandise, including:

- ❖ Home Furnishings
- ❖ Electronics
- ❖ Appliances
- ❖ Toys
- ❖ Clothes
- ❖ Books
- ❖ Jewelry

All Thrift Store proceeds benefit Senior Community Centers and Vista Hill

For more information about **Windmill Thrift Stores** or **San Diego Senior Community Centers**, visit:

<http://www.servingseiors.org>



BarktoberFest! Adoption Event

Saturday, October 11, 2008
9:30 a.m.-6 p.m.



Now is the perfect time to find the canine love of your life at the San Diego Humane Society and SPCA's Dog Adopt-A-Thon, "Barktoberfest!"

The San Diego Humane Society and SPCA's friendly Fidos will be looking for a home on Saturday, October 11th during extended adoption hours from 9:30 a.m. to 6 p.m.



Throughout the event the Humane Society's experienced and caring adoption counselors will be on hand to match up prospective pet parents with the best companion animal for their home.

There will also be a special "Canine Carnival" from 11 a.m. to 4 p.m. in the courtyard of the San Diego Campus for Animal Care.

The fair will feature fun, informative booths, pet-friendly vendors, free snacks and refreshments, and more.

For more information, call (619) 299-7012, or visit www.sdhumane.org.

