



# PROFESSIONAL LIABILITY UPDATE

A LOSS PREVENTION NEWSLETTER FOR THE DESIGN PROFESSION

MSP PL -07/2010 "Managing Jobsite Risks"

July 2010

Professional Liability Update Newsletter

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## Managing Jobsite Risks

Article courtesy of Professional Liability Agents Network (PLAN)

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**W**hat you or other design professionals in your firm do – and don't do – on the jobsite as your firm's project representative is crucial to your risk management efforts. Your project representative must avoid taking on liabilities beyond those your firm already has under the prevailing standard of care for your profession.

Most design professionals are aware they should avoid taking responsibility, through their actions or contractually, for jobsite safety. Because the general contractor controls the construction process on the jobsite, it rightfully assumes full responsibility for safety. Design professionals must be careful that none of their words or actions on the jobsite transfer that responsibility to their companies.

While safety issues are certainly front and center when it comes to jobsite liabilities, they are not the



only area of liability for architects and engineers out in the field. Carefully managing your overall jobsite services is key to limiting your professional liability risks and avoiding disputes and claims.

### Your Primary Job on the Site

A project representative's primary role on the jobsite is to monitor, per the contract, the contractor's and subcontractors' general conformance with the design documents to achieve the client's objectives. Unfortunately, that is often easier said than done. Challenging field conditions, unanticipated problems with systems and materials, and human errors often lead to noncompliance with plans. The goal of field observation is to spot deviations at the earliest opportunity and increase the chances that the project delivers on expectations. That means keeping the project on schedule and within budget without sacrificing quality and function.

It is very important that design professionals assume the project representative role as a teammate – not an adversary – of the contractor. Your job is not to point fingers, assign blame and sound alarm bells each and every time a contractor deviates from your plans. Rather, your job is to bring the deviation to the

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contractor's attention, determine the reason for the deviation and work to find the best solution – whether that means approving a change order or helping the contractor execute according to the original plan. You should be cooperative and flexible – but when necessary, insistent. To implement their role effectively, project representatives must understand and adhere to the limits of their authority as established in the contract with the

client. Specific project representative responsibilities may include:

- The interpretation of plans and specifications
- Construction observation for compliance
- Record-keeping and reporting
- Coordination of tests and inspections
- Project sign-off

Make sure you, your client and the contractor are perfectly clear as to your company's role on the jobsite, your areas of authority and the contractor's areas of authority, including jobsite safety.

### Interpreting Plans and Specifications

Your plans and specifications are communication tools that convey your design intent to the contractor. Like all communication tools, they are imperfect. Errors, omissions and misinterpretations can lead to project flaws. That's why field observation services should be part of your scope of services on virtually every project. It allows your project representative to clarify your design intent and answer the contractor's questions at the earliest possible moment.



### 2010 Risk Management Series

- Navigating the Leaves of Absence Minefield (HR)  
Friday, August 20, 2010  
Registration: 7:30 am  
Program: 8:00 am - 10:00 am
- Sexual Harassment Prevention Training (HR)  
AB 1825 Compliant  
Friday, September 10, 2010  
Registration: 7:30 am  
Program: 8:00 am - 10:00 am
- Construction Site Theft Prevention  
Friday, September 17, 2010  
Registration: 7:30 am  
Program: 8:00 am - 10:00 am
- Critical Thinking for the Human Resources Professional (HR)  
Friday, October 15, 2010  
Registration: 7:30 am  
Program: 8:00 am - 10:00 am

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

Register for upcoming seminars

Contact Darcee Nichols at [dnichols@cavignac.com](mailto: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.

For most projects, you will be asked to interpret your designs and specifications throughout the course of construction. These inquiries typically come in the form of "Requests for Information," or "RFI's," from the contractor, subcontractors and material suppliers.

Be aware that a contractor who submits an inordinate amount of RFI's may have ulterior motives for doing so. Some low-bid contractors hope to pad their income by using RFI's to generate money-making change orders. If you feel this is happening, address

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the issue with the contractor and, if necessary, your client.

In most cases, however, RFI's are simply attempts by the contractor to ensure your designs are being interpreted correctly or to raise issues that perhaps your design does not significantly address. It is very important to give each and every RFI immediate attention – no matter how trivial – and provide a timely response – no matter how brief.

In rare cases, a contractor may ask for a revised drawing. If that is agreeable to you, provide an estimated time of completion. Work with the contractor to maintain schedule conformance.



### Observation for Compliance

Should you observe work that fails to comply with your design intent, address it with the contractor immediately. Specify as clearly as possible why you feel the work does not comply. Determine how the contractor intends to proceed. Hopefully, you can reach a solution that brings the work into

conformance without unnecessary delays or added costs.

Sometimes, a work-around can be found that brings the work into general conformance with contract documents and retains design integrity. Other times, rework is the only acceptable alternative. In such cases, agree with the contractor to a rework schedule and examine the revised work upon completion.

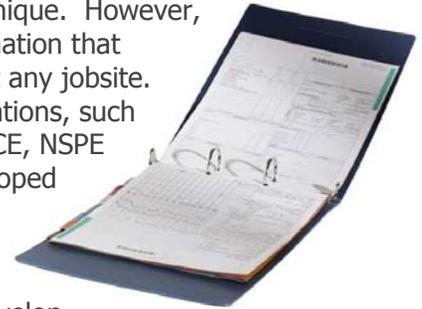
Should you reach an impasse with the contractor, bring in an owner's representative to address the situation. *In no instance should you demand that the contractor stop work.* A stop-work order opens your firm up to a variety of liability problems, including delays and jobsite safety. Unless it is an issue of imminent danger to the safety or lives of people on the site – a potential trench collapse, for example – design firms should never stop work or otherwise take control of construction means and methods.

### Record-Keeping and Reporting

Key to effective field observation is a formal system of record-keeping and reporting. Formal records provide the best defense in the event a claim

is filed against the design firm, either during construction or years later.

Every project is unique. However, there is certain information that should be gathered at any jobsite. Major industry associations, such as the AIA, ACEC, ASCE, NSPE and ASFE, have developed a variety of forms for collecting vital field information. In addition, firms can develop their own forms and reporting systems to capture important information.



Consider implementing a system of daily field reports (DFRs). Typically, these are daily reports that record information such as weather conditions, the particular trades currently working on the project, materials on site or delivered, observations of the work, comments about progress (or lack of it) in relation to the schedule, visitors to the site, conversations with contractors and owner representatives and any other information deemed pertinent to the project. Summarize significant events (such as the completion of a major project phase) as well as unresolved issues (such as delays and noncompliance) that could lead to later disputes.

Visual records of the worksite are great supplements to your DFRs and they are becoming increasingly easy to compile. Video cameras, digital cameras and even onsite web cams can be used to create project progress reports.

In addition to keeping DFRs, it is recommended that the project representative maintain access to the following while on the jobsite:

#### Original Contract Documents

- RFIs
- Testing and inspection reports
- Shop drawings
- Change orders
- Substitutions
- Payment requests
- Conference minutes
- Punch lists

When necessary, set up a field office on the site. Record-keeping procedures should mirror those at the home office.

#### Testing and Inspections

Most projects will involve independent testings and inspections required or performed by public agencies, manufacturer reps and other third parties. It is important to keep on top of the schedule of such tests

and inspections. If these site visits are not carefully coordinated, parties can miss one-time opportunities to perform functions that are vital to the project's progress.

Realize that testing and inspection schedules are never etched in stone. As construction progresses, work closely with the contractor and the testers and inspectors to track schedules against actual progress and revise dates as necessary.

Your project representative should attend all tests and inspections. Make sure you obtain copies of test results and include notes in your DFRs regarding testing procedures and inspections.



### Final Review and Sign-Off

Your final reviews at the jobsite are often the most frustrating and can easily lead to disputes and litigation.

The contractor, subcontractors and the owner are anxious to get the job completed and signed off. The owner wants to meet the original schedule and the contractor wants to get paid. So a project representative who continues to point out deficiencies and delays completion will not be making many friends. Still, you must stand firm if the work is lacking.

Once the contractor notifies you that work is complete, thoroughly inspect the project. Document any perceived deficiencies in writing and, if possible, with a camera.

Prepare a punch list of all work for which the contractor is still responsible. Arrange a punch-list review meeting with the contractor and all affected subcontractors. Be prepared to justify each punch list entry. Conduct a project walk-through to verify mutual understanding of what work still needs to be done.

As punch-list items are completed, inspect the work. Advise the contractor whether the work is acceptable or needs further modification. If the owner retains a commissioning firm to test mechanical systems, ask to attend those events.

When you are satisfied that the project is substantially complete, participate in a site tour with the contractor and owner's representative. This review is conducted to confirm that the work is complete, or substantially complete, and that the project is ready for full or partial occupancy. Assuming the building tour results in no major surprises, a certificate of substantial completion can be issued. Append to the certificate a list of any items requiring completion or

correction. Once these items are taken care of, a certificate of payment can be issued.

### Avoiding Disputes and Claims



How you and your staff handle jobsite responsibilities will go a long way toward avoiding disputes and claims. By being cooperative and flexible, yet diligent and steadfast, you can end your project with a happy client and a satisfied contractor.

Further information on this subject can be found in *Project Representative's Manual, A Guide to Preparing A Construction Administration Manual for Design Professionals*, published by the Professional Liability Agents Network (PLAN). This tool is a great aid in developing a customized manual for your field representatives, from preconstruction activities through project close-out. The cost is \$35 and can be ordered by phone (831-372-3706) or email (info@plan.org). ✂

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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Articles courtesy of Cavignac & Associates Employee Benefits Department

## LIVE WELL, WORK WELL



### Are We There Yet?

If you're planning a family vacation this summer, you're most likely focused on finding accommodations and someone to bring in your mail. But it is important to keep your children

in mind; some get anxious about leaving home, even if it's with family.

If your child is uneasy about leaving home, consider these tips:

- If your children are old enough, ask them to help you plan the vacation. They will be pleased they helped and feel excited when their portion of the trip arrives.
- Get your children books, pictures, or brochures about where you are headed if it is an unfamiliar

location. Explain why you chose this site and what types of things you plan to do upon arrival.

- Ensure everyone gets a good night's sleep the night before a trip. It will lessen the stress of the morning rush.
- If you are going on a long road trip, keep your children busy. Bring food, games, books, etc. to keep their minds off the length of the car ride.
- Let your children bring something familiar from home, such as a blanket, stuffed animal, or picture of their friends or pet.
- On the trip, don't force your children to endure adult-oriented activities such as formal dinners, long museum visits or plays in languages they don't understand. Stick with trips to the zoo, beach, park or souvenir shop.
- Pack extra food made especially for kids, such as juice boxes, fruit snacks and granola bars. Your children may be picky in certain restaurants.
- If you will be away from home for an extended period of time, allow your children to call their friends or the person who is pet-sitting so that they can hear a familiar voice and find out what is going on back in their world. ✂

### Mop Away Stress!

When you're feeling a little stressed and down in the dumps, just 20 minutes of brisk cleaning can help!

According to RealAge.com, cleaning can help reduce symptoms of depression and stress levels by up to 20%.

Whether it's vacuuming, dusting, ironing, organizing clutter, washing the floors or cleaning the kitchen, taking care of messes will help you feel more organized and less stressed in your home. When you

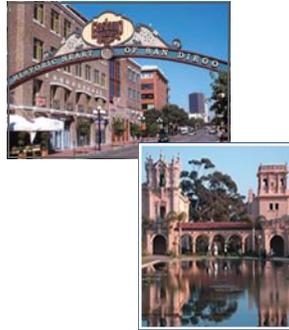
take control of messes and clutter in your home, you are, in a way, removing clutter from your life.

And if the thought of cleaning the house stresses you out as it is, RealAge reports that any physical activity of 20 minutes or more can have a similar positive effect. Why? When you increase your physical activity, your stress levels decreases – and this has a positive impact on your overall mood. ✂



# Community Bulletin Board

*"Neighbors helping neighbors in San Diego"*



- ✦ Design Tours
- ✦ Web Site
- ✦ Questions? E-mail [info@SDArchitecture.org](mailto:info@SDArchitecture.org)



- ✦ Fur Ball
- ✦ Web Site



- ✦ Web Site
- ✦ Summer Night on the Midway
- ✦ Questions? Contact **Alicia Gettys** by phone at **619-232-7451** or e-mail [agettys@ymca.org](mailto:agettys@ymca.org)



## Monarch Schools



- ✦ Teacher of the Year
- ✦ 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](mailto: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
- ✦ For more information, contact [info@sdpolicefoundation.org](mailto:info@sdpolicefoundation.org)



### Mission:

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



- ✦ Web Site