

## Measuring Your Risk Management IQ

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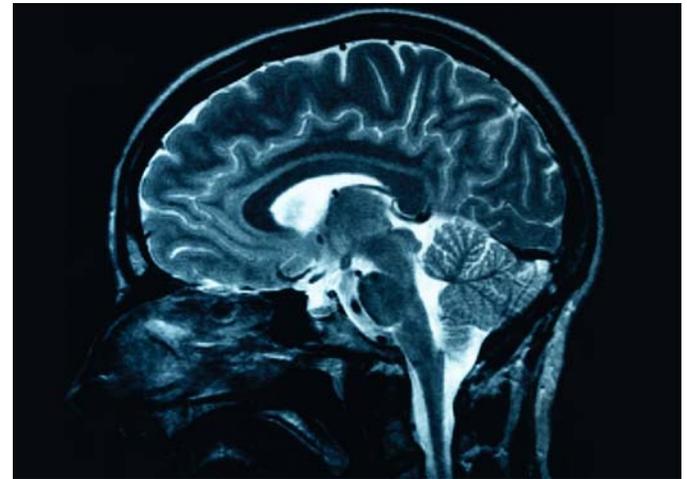
PROFESSIONAL LIABILITY AGENTS NETWORK (PLAN)

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Professional Liability Insurance is the most costly policy in the portfolio of coverages usually purchased by design professionals. Needless to say losses drive professional liability premiums. The more losses you have, the more you will pay; have too many and you may be uninsurable! The best firms understand that the only way to reduce the Cost of Risk in the long run is to lower the frequency and severity of their claims. They also understand that the best way to do this is by educating their staff. It is critical that your staff understands the risks arising out of the design profession and knows what to do when they come across a situation which may give rise to a claim. So how knowledgeable is your staff? The 25 True/False questions in this newsletter will answer that question.

### THE QUESTIONS

1. Recent court decisions have made Limitation of Liability clauses virtually unenforceable.  
T F
2. Contractor led design-build projects are not necessarily any riskier than a traditional design-bid-build project delivery method.  
T F
3. When you take on a project with a financially-questionable client, it is advisable to negotiate a clause that allows you to suspend or terminate



the contract for nonpayment.

T F

4. When negotiating a mediation clause in your contract, it is best for you and your client to agree to a specific mediator before the dispute takes place.  
T F
5. You should always have your client listed as a named insured on your professional liability policy.  
T F
6. A major advantage of having employees work at home is that an employer avoids having to comply with OSHA standards and workers compensation laws with at-home workers.  
T F
7. Third-party claims make up only a minority of claims filed against design professionals.  
T F

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**In This Issue...**

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8. The design firm member serving as project representative on a jobsite has the primary responsibility to ensure that the work is being carried out with correct means and methods and in a safe manner.  
T F
9. A prevailing party contract clause, which requires the loser of a lawsuit or claim to pay the winning party's legal fees, should generally be avoided.  
T F
10. Companies that work for U.S. clients and on U.S. projects only need not be concerned about decennial liability.  
T F
11. The quality of communication between you and your client is perhaps the single greatest determinant in whether your project will result in a claim.  
T F
12. If your employees drive their own automobiles for business purposes they are automatically covered by your standard business automobile insurance policy.  
T F
13. All contractual indemnities requested by your client should be refused outright.  
T F
14. To avoid possible insurance premium hikes, design firms should not report project problems to their insurer until a formal demand or claim has been made against the firm.  
T F
15. Design firms can be exposed to substantial liability even when they have not been negligent in their acts, errors or omissions.  
T F
16. Because of added income possibilities, fast-track projects are as beneficial to the design firm as they are to the client.  
T F
17. Clients who are sued for nonpayment of fees are very likely to countersue a design firm for negligence.  
T F

## RISK MANAGEMENT SEMINAR SERIES

### First Aid and Workers Compensation

Friday, August 12, 2011

Registration: 8:00 am

Program: 8:30 am - 10:30 am

### Sexual Harassment Prevention Training

Friday, September 2, 2011

Registration: 8:00 am

Program: 8:30 am - 10:30 am

### Employee Handbooks

Friday, October 14, 2011

Registration: 8:00 am

Program: 8:30 am - 10:30 am

All training sessions available to our clients

\* Reserve early / seating is limited!

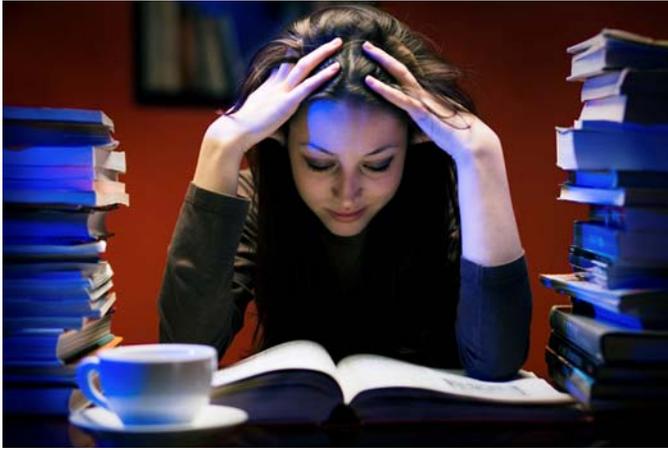
[Register for upcoming seminars](#)

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

18. Condominiums make low-risk projects because a relatively simple design can be repeated over multiple units.  
T F
19. Managing client expectations is critically important to avoiding unnecessary confrontations, demands and claims.  
T F
20. Today's computerized project delivery methods such as building information modeling (BIM) and integrated project delivery (IPD) have gone a long way to eliminate jobsite safety issues for design firms.  
T F
21. Most professional liability claims occur within six months of completion of design documents.  
T F
22. Developing detailed scopes of service can

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have a dramatic positive impact on your firm.

T F

23. Having a verbal agreement with a client is tantamount to not having an agreement at all.

T F

24. When specifying materials you cannot rely solely upon manufacturer claims of quality and effectiveness.

T F

25. A design firm's risk management activities are best left to experts, attorneys and outside consultants.

T F

**THE ANSWERS**

1. *False.* Limitation of Liability clauses continue to be enforced in state and federal courts as long as the agreements are deemed to be reasonable and fairly negotiated between the two parties.

2. *True.* When the contractor is in the lead role of a design-build project, the design firm does not necessarily take on increased risk. However, when the designer takes the lead role, it can assume responsibilities and risks normally taken on by the contractor.

3. *True.* Failure by a client to adhere to contractual terms, including payment terms, should be considered a cause for termination of your agreement. Both a temporary suspension of services and a permanent termination of the agreement should be options.

4. *False.* It is generally preferable that you agree to use mediation upfront, but choose the specific mediator after a dispute arises. That way, the parties can choose a mediator with

knowledge applicable to the specific dispute in question.

5. *False.* Having your client named as an additional insured on your professional liability policy can reduce your client's protection and increase its liability should a claim be filed on your PL policy.

6. *False.* Under OSHA standards, employers are responsible for providing a safe workplace for all employees and that can include those who work at home. Any accidents at the home office workplace are likely covered by workers compensation laws.

7. *True.* Third-party claims against design professionals by injured parties are rare. Clients file the vast majority of claims against design firms.

8. *False.* A project representative's primary role on the jobsite is to ensure that the contractor and subcontractors maintain general conformance with the design documents to achieve the client's objectives. Means and methods and jobsite safety remain the responsibility of the contractor.

9. *True.* A design firm that contractually accepts responsibility to pay the other party's legal fees if the design firm loses a claim may find that this contractual liability is not insured. This potentially large uninsured loss generally outweighs the possible benefit of the clause.

10. *True.* Decennial liability has its roots in French Civil Code. This form of strict liability is imposed only in certain European and Asian countries and in parts of the Middle East including Saudi Arabia, Egypt, Kuwait, Iraq, Jordan, Bahrain, Oman, Qatar and the United Arab Emirates.

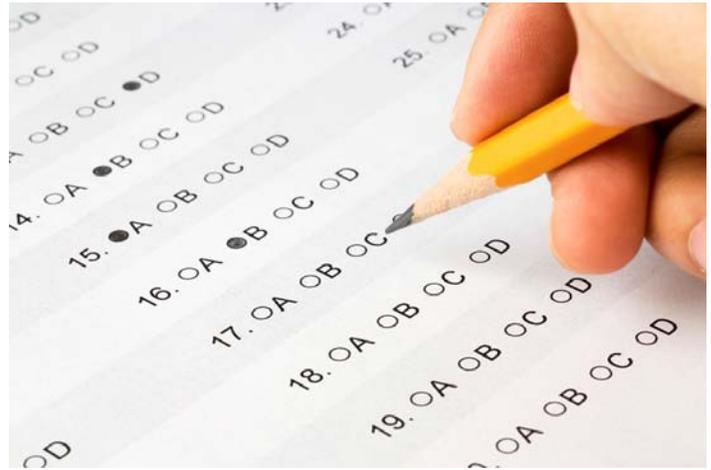
11. *True.* A study of more than 17,000 closed claims published by insurer XL Design Professional showed that communication failures were the most prevalent factor in claims, contributing to 27% of all claims.

12. *False.* You will need to purchase "non-owned and hired" auto coverage when employees use their personal vehicles for business. This type of insurance provides liability coverage for your firm above and beyond the employee's primary limits.

13. *False.* While onerous, one-sided indemnities imposed by a client should be rejected, there are acceptable options. For instance, a mutual

indemnity, where you agree to indemnify your client for your negligent acts and the client agrees to indemnify your firm for the client's negligent acts, is generally acceptable.

14. *False.* Professional liability insurance uses a "claims-made-and-reported" policy form. To help ensure that coverage will be in place when needed, design firms should promptly report all incidents that could potentially lead to a claim.
15. *True.* Professional liability holds design firms responsible for their negligent acts, errors and omissions. However, design firms have also been held liable for fiduciary liability, a stricter type of liability that can apply even in the absence of negligence.
16. *False.* Fast-track projects typically benefit the client only. They represent substantial added risks for the design firm and require protective contract language to offset these liabilities.
17. *True.* In many cases, unfortunately, the cost of defending a claim for negligence will be greater than the amount of the late fees you are trying to collect. Fortunately, there are contractual measures you can take to increase the chances of being paid on time.
18. *False.* Condominiums are among the riskiest types of projects imaginable. Highly leveraged developers, skimpy budgets, low fees, poor maintenance and litigious homeowner groups all contribute to the condominium's dismal claims record.
19. *True.* When clients are educated as to what to expect during the design and construction of their project and what standards a design firm must meet, then energy can be directed toward resolving routine problems amicably and effectively.
20. *False.* BIM and IPD demand increased collaboration, which can blur lines of responsibility and actually increase a design firm's liability on the jobsite. It becomes more critical than ever that your contract documents and actions squarely place jobsite safety responsibility with the contractor.
21. *False.* Although the root negligence that leads to a claim often occurs during the design process, most claims are filed a year or more after project completion. That's when design errors often come to light.



22. *True.* Developing a clear and comprehensive scope of services not only reduces your professional liability risks, it can increase profitability. By itemizing all or your services you help ensure you get adequate compensation.
23. *False.* Whenever a firm undertakes work for a client it has a contract, whether the agreement is written or verbal. Verbal agreements, however, are much more difficult to substantiate and enforce – detailed written contracts are far superior.
24. *True.* The prevailing standard of care calls for designers to have personal experience or knowledge that a recommended material will perform its intended function successfully under prevailing conditions.
25. *False.* Risk management is everyone's responsibility. Educating your entire staff on the basic principles of how to avoid professional liability claims and prevent losses pays huge dividends.

So how did you do? If your staff averaged 80% or higher, then you did well. Regardless, these types of questions should be discussed amongst your team. To the extent everyone has a basic understanding of risk management and is on the same page, you will have fewer and less severe claims. You will pay less for your professional liability coverage and your company will be more profitable. If you would be interested in having someone from our office come to your office and conduct an educational session, don't hesitate to call us.

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

### Are You at Risk for Measles?

Though the disease has been largely eradicated worldwide, 2011 has seen a global outbreak of measles. In Europe, over 10,000 cases in 33 countries have been confirmed. Over 100 cases in 23 states have been reported in the United States.

#### About this outbreak

The best protection against measles is vaccination, so people who are unvaccinated are at risk – 90 percent of people who are not vaccinated and exposed to measles get sick. In addition, measles is quite contagious and easily spread through the air.

There has been a recent resurgence of this disease as more people choose not to vaccinate their children. Most of the recent cases in the United States have been due to people traveling to countries with outbreaks and bringing the virus home. Measles can be serious, as up to 20 percent of infected people develop complications, which may be severe or even life-threatening.

#### What can you do?

If you or your children have not been vaccinated, get the vaccine now. Kids can get the first dose as early as one year old (two total doses are needed). If you are planning to travel to another country and are not vaccinated, talk to your doctor about timing your vaccination with your trip.

If you think you or a family member has been exposed to measles, call your doctor. Symptoms often start with a fever, persistent cough, runny nose, inflamed eyes and sore throat. As the illness gets worse, a rash develops first on the face and then all over the body, accompanied by a very high fever.✂

### MyPlate Replaces Traditional Food Pyramid

The U.S. Department of Agriculture (USDA) recently released MyPlate, a new icon representing healthy eating – found at [www.choosemyplate.gov](http://www.choosemyplate.gov). It replaces the food pyramid.

This new plate does not prescribe a number of servings for each food group, but instead depicts recommendations of a healthy food balance. Fruits and vegetables take up half the plate; grains and proteins share the other half (grains occupy a larger space than proteins). A small circle of dairy is next to the plate.

In conjunction with MyPlate, the USDA announced general healthy eating guidelines:

**Balance your calories.** Enjoy your food, but eat less. Avoid oversized portions.

**Increase healthy foods.** Make half your plate fruits and vegetables. Make at least half of your grains whole grains. Switch to fat-free or low-fat (1 percent) milk.

**Reduce less healthy options.** Compare sodium in foods like soup, bread and frozen meals – and choose the foods with lower numbers. Drink water instead of sugary drinks.✂



# Community Bulletin Board

*"Neighbors helping neighbors in San Diego"*



## Monarch Schools

✦ Web Site



## Senior Community Centers

### Mission:

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

✦ Web Site



✦ Web Site



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)



✦ Web Site

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



✦ Web Site

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



## Society for Design Administration

An Affiliate of the American Institute of Architects

### Mission:

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

✦ Web Site

✦ For more information, e-mail [info@sdasandiego.org](mailto:info@sdasandiego.org)