AIA Toolkit Series

Critical Issues to Consider
Willis A&E

- Exclusively dedicated to A&E
- Over 1000 Design Firm Clients
- Full-Service P&C and EB Independent Agency
- In-House Claims Expertise and Advocates to our clients
- Contract Review and Negotiation support
- AIA Certified Education Provider
- Risk Management Education
- Providing insurance and risk management to the design community for over 30 years.

- The architect and engineer insurance and risk management experts!
Willis is a Certified AIA Education Provider

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The program will start promptly at 11:30am (CDT)

- To listen to the audio portion of the program, you will need to dial into the telephone number provided on your invitation and reminder emails.
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Participate in today’s Online Seminar!
- At any point during today’s webinar you may pose a question by “Raising Your Hand”

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AIA Toolkit Series

- Critical Issues to Consider
Point to Ponder

“Anyone who has never made a mistake has never tried anything new.”

- Albert Einstein

It's the little details that are vital. Little things make big things happen.

- John Wooden
  
  Legendary UCLA Basketball Coach
The Cost of a Claim

- Loss of billable/marketing time
- Deductible out of pocket expense
- Potential loss in excess of available limits
- Insurance costs for firms with poor loss history
- The emotional stress and hassles of a claim
- Loss of client relationships
- The significant distraction to your firm’s practice
- Your firm’s reputation
Risk Management Overview

Types of Risks

- Business Risk: Loss, No Loss, Gain

- Hazard Risk: Loss, No Loss
What Successful Firms Do

- Create/update Risk Management Policy
- Risk Analysis
- Contract Review
- Retain expert assistance
- Staff Training
- Client Education
- Stress proper communication and documentation
Risk Management 101

- You Can:
  - Transfer your risk by insurance
  - Transfer your risk via non-insurance
    - Contract (ex: hold harmless)
    - Careful contract administration
  - Assume and control your risks
  - Be better at all three
Managing Your Risk
Non-Insurance Techniques

- Client Selection
- Project Selection
- Contract Selection
- Contract Review
- Project Team Selection
- Communication/Documentation
Risk Management Process

- Discovery/Identify
- Analyze scope
- Examine feasible risk management techniques
- Select appropriate technique
- Implement selected technique
- Monitor and adjust or change as needed
Pre-Loss Goals

- Economy of Operations: Procedures, QA/QC
- Tolerable Uncertainty: What can you absorb
- Legality: Are you and your firm registered with Dept of Professional Regulation?
- Social Responsibility: Keeping public safety in mind when doing your designs.
Post-Loss Goals

- **Survival**: Probably the least expensive
- **Continuity of Operations**: Making sure vital operations can function adequately
- **Profitability**: Operations almost at pre-loss levels
- **Earnings Stability**: Stop gaps, such as business interruption insurance
- **Social Responsibility**: The same obligations may exist as did in pre-loss stage.
- **Growth**: Allows you to continue to operate as if loss never happened.
Where Do We Start?

- At the beginning, Standard of Care

- **Standard of Care** is the *minimum* a typical designer would do on a like project in the same geographical area given the same resources.
More on Standard of Care

- Not clearly defined
- Usually a battle of experts
- Can be raised by your words and actions
- The higher you represent your qualifications, the higher the Standard
- Can be very expensive to defend
- Should be considered when addressing client expectations.
Standard of Care
Green/Sustainable Design

- Reliance on third-party to determine if desired certification levels reached
- The use of innovation as element of design
- No clear-cut precedent for legal issues that arise.
- Perhaps a new definition of “Standard of Care” may be needed.
Green Standard of Care

The LEED Green Building Rating System and other similar environmental guidelines (collectively “LEED”) utilize certain design and usability recommendations on a project in order to promote an environmental friendly and energy efficient facility. *In addressing these guidelines, the Designer shall perform its services in accordance with that degree of skill and care ordinarily exercised by similarly situated members of the Designer’s profession* involved in the design of similar projects in the same
Green Standard of Care, Part 2

- Designer shall use reasonable care consistent with the foregoing standard in interpreting and designing in accordance with LEED. Designer shall not be responsible for Contractor’s failure to adhere to the Contract Documents and any applicable laws, codes and regulations incorporated therein, nor for any changes to the design made by the Owner without the direct participation and written approval of the Designer. Likewise, the Designer shall not be responsible for any environmental or energy issues arising out of changes in the Owner’s expected use and operation of the completed project.

- Exclude failure of specified products to perform as expected.
Scope of Services

- Make sure it is clearly defined
- Don’t assume inappropriate scope
  - Not responsible for means, methods, etc.
  - Not responsible for jobsite safety
  - Contractor’s sole responsibility
- Your words, actions can expand scope
- Coordinate to make sure sub consultants’ scopes also clearly defined
Let’s Get Down To Basics

- Client Expectations
- Communication/Documentation
- Submittal Review
- Construction Phase Duties
- Green/Sustainable Design
- Renovation/Remodel/Rehabilitation
Client Expectations

- Clients historically the most frequent source of claims
- Must be educated
  - Your role on the project
  - Potential for changes during project
  - Your work an expression of professional opinion
  - The need for rejection of non-conforming work
  - No authority to stop work
Green Expectations

- Client must understand/accept risk reward aspect of innovation
- Drill down beyond the surface
- What is emphasis of client?
  - Green leafy plaque
    - Savings on operating costs
    - Tax incentives
    - Preservation of non-renewable resources
- Higher up front costs mean more discussion
Point to Ponder

“We can’t solve problems by using the same kind of thinking we used when we created them.”

-Albert Einstein
Communication/Documentation

- Brief/factual/objectively presented
- Timely
- No editorial commentary
- Properly identified
  - Properly labeled
  - More important with electronic documents
- Producible when required
- Three kinds of documentation
Quick Note About E-Mail

- Should be written like formal report
- Avoid acronyms
- One topic per email
- Naming discipline
- No personal information included
- Proper header and footer
- Confidentiality
- Avoid email strings as much as possible
Submittal Review

- Keep logs for all submittals
- Have comment section if needed
- Don’t review submittals outside scope
  - Stamp saying not reviewed as outside scope
  - Return to submitter within contract time limits
- All submittals should be through general contractor
- Approval is ok if within scope of services.
- Link deadline to Contractor’s submittal schedule.
Construction Phase Services

- Keep duties if possible
- Good risk management practice
- Only you know the intent of the design
- General conformance with plans/specification
- Review permanent features only
- Not responsible for means, methods, or jobsite safety
- Have agenda before attending site
- Careful with the camera or microphone
- Timely prepare Site Reports
Quick Note on Means & Methods

- General label for all actual construction services including sequencing, scheduling, procedures
- If contractor asks how to install something, don’t provide installation detail above or beyond manufacturer supplied installation detail.
Green/Sustainable Design

- Establish certification level desired by client
- Determine points needed to reach level
- Plan alternatives to reach that level
- Present alternatives to client and make them an active participant in the decisions
- Document the process of establishing the level and your efforts to reach that level
Renovation/Remodel/Rehabilitation
Possible Emerging Market

- Reliance on owner-provided information
- Verify ownership of designs presented
- Determine extent of code upgrades required
- Owner’s cognizance of potential project changes due to site conditions
“Adversity is the state in which man most easily becomes acquainted with himself, being especially free of admirers then.”

- John Wooden

- Legendary UCLA Basketball Coach
Thank you!

If you have questions:

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