



AIAChicago

AIA Toolkit Series

Critical Issues to
Consider

Willis



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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.”
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 - -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:

- Dan Buelow, Managing Director
 - Willis A&E
 - (312) 288-7189
 - Daniel.buelow@willis.com
- Tom Harkins, V.P.
 - Willis A&E
 - (312) 288-7342
 - Tom.harkins@willis.com
-
- Bob Stanton, CPCU, ARM, RPLU
 - Willis A&E
 - (312) 288-7190
 - Robert.stanton@willis.com
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