ACEC PA Infrastructure Conference

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FRP Professional Risk Practice

A Risk Management Roadmap for Engineers

Claim Trends | Insurance | Solutions

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PROFESSIONAL RISK PRACTICE

What's Creating the Push for More Insurance?

Project complexity is certainly driving requests for higher insurance limits. However, claims arising from confusion, not founded in professional service errors or a fair allocation of risk, are also driving the demands.

The challenge

Design professionals are increasingly implicated in lawsuits, even when other parties control important factors like site safety and construction means and methods.

The goal of this session: Reduce confusion to minimize risk.

- ✓ Clear contracts
- ✓ Fair allocation of risk
- ✓ Field behavior consistent with scope
- ✓ Accurate and timely documentation

Changes in Claim Drivers Over Time

Litigation Funding

Venture capital firms and hedge funds finance lawsuits in exchange for a share of the settlement or judgment.

Social Media and Media Attention

Media attention “normalizes” $10M+ verdicts

Personal Injury “Mills”

$2.5 billion+ in lawyer advertising
Medical professionals aiding the process

Far More Settlements than Litigated Claims

The fear of losing in court drives settlements and encourages plaintiffs to take a chance

Step 1: Start with clear contracts

Risk management begins long before a potential claim.

Make sure your contract clearly defines your responsibilities.

Typically...

- The Contractor is responsible for jobsite safety
- The Contractor controls means, methods, techniques, sequences, and procedures
- Site visits by a design professional are for general observation, not supervision or safety oversight

A well-drafted contract will not stop someone from naming you in a lawsuit, but it can improve the path to an early dismissal when that's appropriate.

Step 2: Allocate risk fairly

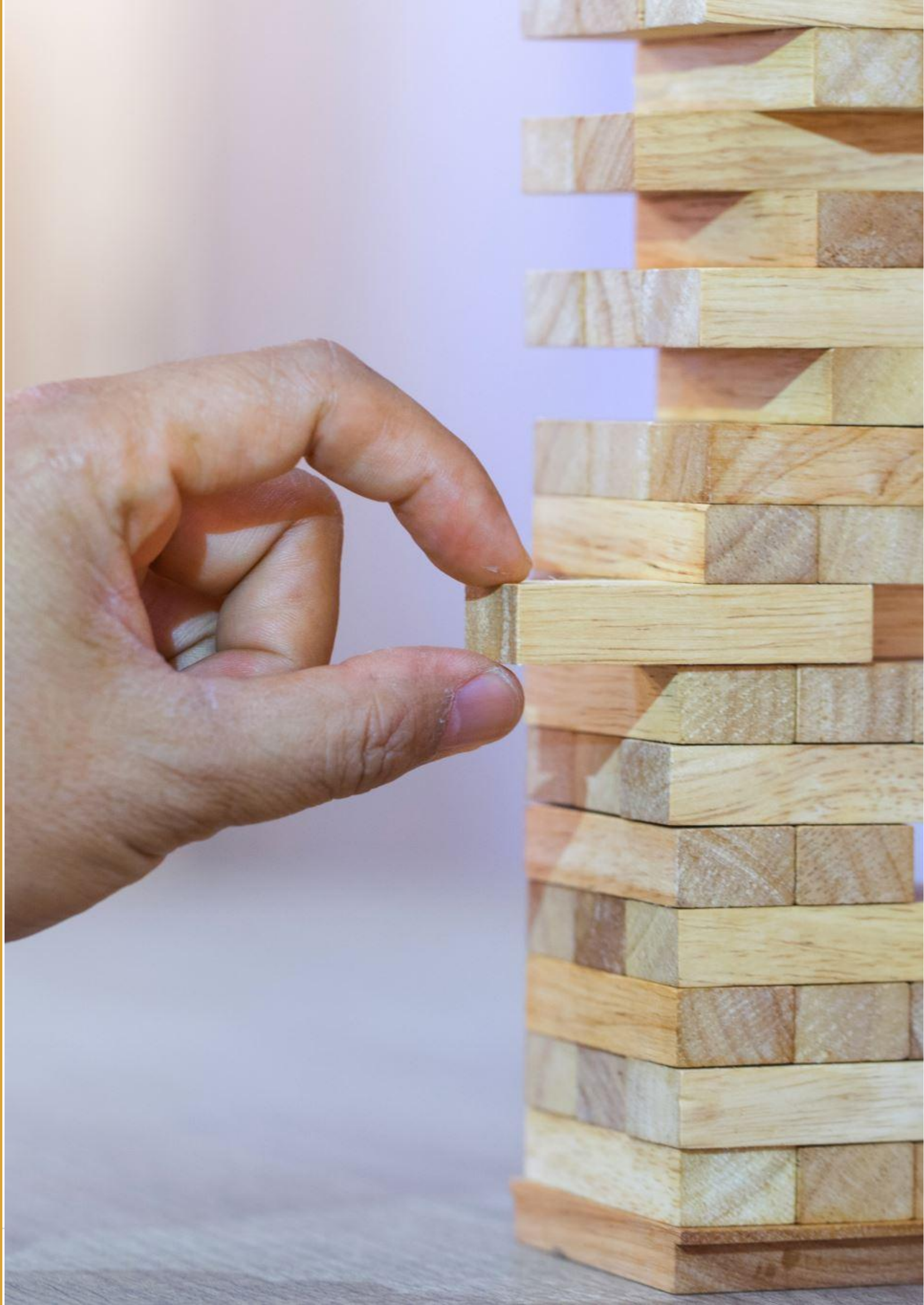
Understand the fundamentals of insurance and indemnification

Your insurance, your indemnification obligations, and your risk should align with your scope and fee.

Know…

- How much insurance do firms like mine typically maintain?
- What are the fundamentals of indemnity?
- What *isn't* covered by insurance?
- What are the options for increasing my insurance when that's appropriate?

There are many ways to increase the level of your insurance, but determining appropriate levels is the first step.



Step 3: Stay within your jobsite role

Helping can become risky when it looks like safety supervision.

If you observe a dangerous condition:

- ✓ Notify the party responsible for site safety
- ✓ Document your observations and actions
- ✓ Follow your firm's established procedures
- ✓ Avoid directing workers or acting as the safety manager unless that responsibility is assigned to you

Observe. Communicate. Document.
Stay within your role.

Step 4: Documentation is a defense tool

After an incident, memories fade.
Well-preserved documents do not.

Objective records can become one of your strongest defenses.

- ✓ Write objective reports and stick to observed facts
- ✓ Document promptly while details are fresh
- ✓ Confirm important conversations in writing
- ✓ Avoid speculation and opinions

Good documentation helps projects run smoothly and strengthens the record if a claim arises.

Step 5: Train people to apply the procedures

Even the best contract and procedures won't help if employees aren't trained to apply them consistently.

Every person conducting site visits or interacting with contractors needs to know:

- The limits of their role and authority
- The firm's established reporting procedures
- How to escalate concerns to appropriate project leaders
- Why statements or actions can be interpreted as accepting or increasing responsibility for site safety

Most third-party claims don't arise because someone intentionally took on additional responsibility.
They arise because someone was trying to be helpful.

Step 6: Consistency is the best defense

A strong defense is built before the incident occurs.

When a claim occurs, attorneys often look for consistency between what the firm said and what the firm did.

- Contract language
- Employee training
- Site visit reports
- Internal procedures
- Project communications

If your agreement says the contractor owns site safety, your field actions, reports, and communications should reinforce that boundary.

**Clear contracts. Appropriate actions.
Good documentation. Effective training.**

Practical checklist for site observation

Use this as the basis for a training handout or discussion slide.

Know your role

Be clear when you are observing progress and quality, not supervising safety.

Report appropriately

Notify the party responsible for safety and follow your firm's procedures.

Document objectively

Record facts, timing, parties involved and agreed next steps.

Avoid expanding duties

Do not direct workers or make statements beyond your responsibility for safety.

The final takeaway

Risk management is

> **a series of well-considered and consistent decisions made over the life of a project.**

- ✓ Negotiate the right contract language
- ✓ Allocate risk fairly
- ✓ Act within your defined project role
- ✓ Document consistently and objectively
- ✓ Train employees before the difficult moments
- ✓ Align communications with responsibilities

When these pieces align, design professionals are in a stronger position to protect the public, the project, and their firms.

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Thank you for your time!

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