



Evaluating Lessons Learned After Losses

RLI[®]
DIFFERENT WORKS

RLI Design Professionals
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DIFFERENT WORKS

Objectives

“

Never let a good crisis
go to waste

”

A claim is more than a request for coverage or compensation as a result of a named peril. It can also be an emotional event for you and your firm, but one that is often avoidable or easily mitigated. That is why it is important to evaluate the outcome of a claim once the claim is settled – not only to identify areas of improvement for future claims, but to determine effective risk management strategies for future projects.

Learning Objectives

Participants in this session will:

- 1** Study the benefits of evaluating lessons learned after a claim is settled;
- 2** Review real life case scenarios to understand how claims might arise;
- 3** Consider how a Go/No-Go Matrix and similar tools can be effectively used to help identify risks on future projects; and
- 4** Look at how sample contract language provided by industry standard forms such as those provided by the AIA, can mitigate identified risks on future projects.

Evaluation Process

- 1** What happened?
What were the issues and the resulting claims?
- 2** Why did it happen?
Was it due to the Project, Place, People, or Process? Consider using RLI's risk management matrix for guidance.
- 3** How can it be mitigated in the future?
Identify what can be done to mitigate similar incidents in the future.
For assistance brainstorming different preventative measures to consider, our risk management team is here to help!

What We Often Hear

“

I'm never working with
_____ again!!!

”

Example

“I’m never working with _____ again!”

People Risks

What

Your firm was dragged into a claim as the only “deep pockets” on the project.

Why

The other parties to the were inadequately insured.

How

Require the client ensures the other parties to the project are adequately insured on future projects.

Insurance Requirements

Client's obligations

AIA A101-2017 § 5.8

...The [Client] shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

Case Study #1

Scenario



Project Owner, Contractor, and Architect file suit to recover over \$9.3 million in remediation costs and other damages caused by errors in Manufacturer's representations.

Lessons Learned Analysis

“I’m never working with _____ again!”

People Risks

What

The specifications were defective.

Why

It relied on faulty representations by the manufacturer.

How

Clarify you have a right to rely in future contracts.

Right to Rely

Manufacturers and suppliers

AIA E204-2017 § 2.5.2

The [Design Professional] may be unable to determine whether the material or equipment will perform as represented by the manufacturer or supplier...In the event the Owner elects to proceed with the use of such materials or equipment, the [Design Professional] shall be permitted to rely on the manufacturer's or supplier's representations and shall not be responsible for any damages arising from failure of the material or equipment to perform in accordance with the manufacturer's or supplier's representations.

Case Study #2

Scenario

Q15: This requires an independent investigation after award. Should we infer from this that any unforeseen soil conditions or variances from the Government's soil report will be dealt with by change order?

Answer: Yes, if there's a major disparity from the Government's soil reconnaissance report.

Design Builder won a contract to design and build housing units for a Marine Corp Base in Hawaii. Differing soil conditions caused the firm to incur more than \$4.8 million in additional work.

Lessons Learned Analysis

“I’m never working with _____ again!”

People Risks

What

Increased costs and services.

Why

Caused by errors in the soils report provided by the Client.

How

Clarify you have a right to rely in future contracts.

Right to Rely

Client and Client's consultants and agents

AIA B101-2017 § 3.6.1.2

...The [Design Professional] shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Owner and Owner's consultants...

Case Study #3

Scenario



Contractor's employee is injured in a trench collapse and subsequently succumbs to his injuries. A claim is filed against the Design Professional (DP) alleging the DP owed a duty of reasonable care for the safety of the worker and that the DP breached this duty.

Case Study

Responsibility for site safety can be assumed expressly or impliedly by conduct.

“

The courts of this Commonwealth have consistently refused to impose a duty on design professionals to protect workers from hazards on a construction site unless there was an undertaking, either by contract or course of conduct to supervise and control the construction and/or to maintain safe conditions on the site.

”



Case Study

“ The factors which would appear to be relevant in any case where an attempt is made to expand the [Design Professional]’s responsibility beyond the specific provisions of the employment contract are set forth:

- (1) Actual supervision and control of the work;
- (2) Retention of the right to supervise and control;
- (3) Constant participation in ongoing activities at the construction site;
- (4) Supervision and coordination of subcontractors;
- (5) Assumption of responsibility for safety practices;
- (6) Authority to issue change orders; and
- (7) The right to stop the work.

”



Lessons Learned Analysis

“I’m never working with _____ again!”

People Risks

What

Contractor’s employee is injured on the Project site.

Why

Caused by an unshored trench that collapses on the Contractor’s employee.

How

Disclaim responsibility for site safety and avoid assuming it by conduct.

AIA B101-2017 § 3.6.1.2

...The [Design Professional] shall not have control over, charge of, or responsibility for the construction means methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the [Design Professional] be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents...

Site Safety

Disclaim responsibility for site safety & specify who is responsible for site safety

AIA A201-2017 § 4.2.2

...The [Design Professional] shall not have control over, charge of, or responsibility for the construction means methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

Site Safety

Specify who is responsible for site safety

AIA A201-2017 § 10.1

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

Modified AIA A201-2017 § 10.1

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract, including, and without limitation, those related to or required under laws, rules, or regulations pertaining to COVID 19 or any other form of viral, respiratory or health-related pandemic or epidemic.

Site Safety

Avoid assuming responsibility by conduct

Dos and Don'ts...

- ✓ **Give immediate notification**
Immediately alert the party with overall safety responsibility, if appropriate.
- ✓ **Address only specific safety hazards**
Address only the specific safety hazard posing an imminent risk of serious harm.
- ⊘ **Do not provide recommendations**
Do not give a recommended solution. That is for the party with responsibility for safety to determine.
- ✓ **Give written notification to your Client**
Follow up your notification by writing to the Client of what you observed, who you notified, and other relevant conditions. Be sure to include the appropriate caveats.

Vetting the Parties

Consider the following:

- ✓ Previous working relationship
- ✓ Referrals
- ✓ Litigation and financial background
- ✓ Professional organization database

State Board of Registration



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Welcome to the Pennsylvania Licensing System Verification service. By using this service you are able to search for license information on individuals and businesses regulated by the Bureau of Professional and Occupational Affairs. This site is considered a primary source for verification of license credentials provided by the Pennsylvania Department of State.

Search - Enter one or more fields below.

Person Facility Disciplinary Provider

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- Residential: Multi-family (apartments)

Architect //3877 Washington

Architect AHMANN LLC University Park

Architect Alter Urban Architecture Washington



Establishment Search

Reflects inspection data through 10/01/2020

This page enables the user to search for OSHA enforcement inspections by the name of the establishment. Information may also be obtained for a [specified inspection](#) or inspections within a [specified SIC](#).

Note: Please read important information below regarding interpreting search results before using.

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State

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Accessing the Matrix

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Business Insurance Personal Insurance Surety For Our Producers

Click here to access RLI's

Go No-Go Matrix



- DESIGN PROFESSIONALS RESOURCES
- RISK MANAGEMENT
- ENROLLMENT FORM
- DESIGN PROFESSIONALS LEARNING EVENTS (DPLE)
- DPLE COURSES
- CONTACT DESIGN PROFESSIONALS

Design Professionals Risk Management

Every A&E business faces risks, and they can never be entirely prevented. They can, however, be minimized through risk management programs. Our goal is to help you reduce the likelihood of losses resulting from most risks design professionals face.

Risk Management Programs

DPLE SERIES

Our continuing education program provides the education resources design firms need. The DPLE series offers more than 125 courses that have been approved by the AIA for continuing education learning units. Learn more about our [DPLE Series](#).

PROJECT MANAGEMENT

This program includes a dynamic [project risk management matrix](#) and to help A&E firms effectively identify, assess, manage and control the risks associated with the projects they engage in. Guidelines for using the matrix and additional risk management best practices are provided in the [project risk management matrix instruction guide](#).

Our experts are here to answer your

Visit <https://www.rlicorp.com/dp-risk-management>

RLI's Project Risk Management Matrix

- 1 **PROJECT NAME:**
- 2 **PROJECT START DATE:**
- 3 **PROPOSAL DUE DATE:**

	Issue	Risk Score: 1 (low) 3 (medium) 5 (high)	Explanation	Your Firm's Mitigation Strategy to Address Higher Risks
6	PROJECT			
7	General Risk Assessment of Project Type		High risk project types include multi-family residential, bridges, large public use projects, educational, and high-security facilities.	
8	Knowledge of/Comfort Level with this Specific Project		Evaluate your capabilities and experience relative to the project and the services you're being asked to provide. Relevant experience should yield a lower risk score.	
9	Knowledge of/Comfort Level with this Project Delivery Method		Lack of familiarity with the project delivery mode (e.g., design/build, multi-prime, or IPD) can pose higher risks.	
10	Knowledge of/Management of Pre-Existing Conditions		Renovation or addition projects may pose higher risk. Some of this risk can be mitigated for the design team if the Owner permits the design team to rely upon prior information such as record drawings.	
11	Overall Risk Assessment of the Specific Project/Services		Evaluate your "gut feeling" about this specific project and the associated professional services. When you look back on this project ten years from now, what will you think? Does this project help meet strategic goals?	
12	Category Sum	0		
14	PLACE			
15	General Risk Assessment of Project Location		Projects in litigious states like CA, CO, FL, IL, LA, MO, NJ, NY, PA, and TX pose higher risk. Assess the risk of both the state and the specific region for the project.	
16	Concerns About this Specific Project Location		Higher risks exist in areas with dense populations, hazardous soil conditions, extreme weather conditions, sensitive neighbors, etc.	
17	Knowledge of/Comfort Level with this Specific Project Location		Has your firm worked on previous projects in this location? Do you understand the politics and the community? Relevant experience lowers risk.	
			Evaluate your "gut feeling" about the project location in the foreseeable future. Consider population, resource	

RLI's Project Risk Management Matrix

	A	B	C	D
18	Overall Risk Assessment of the Project Location Based on External Factors		Evaluate your "gut feeling" about the project location in the foreseeable future. Consider population, resource availability, and similar location-related concerns. When you look back on this location ten years from now, what do you anticipate you'll think?	
19	Category Sum	0		
21	PEOPLE			
22	General Risk Assessment of Client/Owner Type		Clients who are inadequately financed, unethical, highly risk averse, in transition, or noncollaborative are all difficult to impossible to satisfy and thus higher risk.	
23	Knowledge of/Comfort Level with this Specific Client/Owner		Working with repeat clients typically lessens the risk. If this is a new client, research important criteria like financial strength and litigation history.	
24	Availability of a Dedicated, Decisive Client Decision Maker		Clients may be impossible to satisfy and therefore higher risk if the decision maker is inexperienced, unavailable, indecisive, or changes during the project.	
25	General Risk Assessment of Design/Construction Team Members		Do you have an adequate number of qualified staff to manage the risk? Are other team members equally adept as your firm at communication, project management, analysis, and technical performance?	
26	Financial Evaluation of Other Team Members		Failure to work with financially strong and adequately-insured project team members puts your firm at greater risk of being the "deep pocket" in the event of a claim.	<p>⊕ Consider that one of the biggest frustrations for our insureds is discovering that they're expected to pay "more than their fair share" in a claim because someone else on the team didn't maintain adequate insurance. You can inquire about how much insurance each party is expected to purchase and even request certificates of insurance to show that it's being maintained for a sufficient duration. It's good risk management to do so!</p>
27	Overall Risk Assessment of the Project Team Members		Will the project team members be good business partners for the duration of this project and beyond?	
28	Category Sum	0		
30	PROCESS			
31	General Risk Assessment of the Procurement Process		A client who procures professional services without giving significant consideration to quality (as opposed to purely price-based selection) indicates higher risk.	
32	General Risk Assessment of the Contracting Process		Projects with no written contracts, clients with onerous or one-sided contracts, or clients who approach contracting on a "take it or leave it" basis are often foreshadowing a lack of risk management.	
33	General Assessment of the Risk Allocation Process		Is due consideration being given to which party is in the best position to assume particular responsibilities (e.g., surveys and soils) and risk being allocated accordingly?	
			Is your firm being adequately compensated for the services you are being asked to provide and the risks you	

RLI Procedure for Premium Credit

You can reduce your risk AND save money!

Conduct a project risk analysis before you submit a proposal, give it to your broker as part of our renewal package, and earn premium credit. It's as easy as 1-2-3!

- 1** Access online
- 2** Submit as part of renewal
- 3** Receive credit at renewal

Loss Prevention Assistance

RDP Policy Language:

If the **Insured** reports a **Circumstance** during the **Policy Period**,...until such time a **Claim(s)** is made, any costs or expenses that Insurer incurs as a result of investigating or monitoring such **Circumstance** will be paid for by the **Insurer**.

The decision to incur any costs or expenses to monitor or investigate a Circumstance shall be at the sole discretion of the Insurer.

When in doubt, report it!

- 1** Reporting circumstances or pre-claims carries no negative ramifications to premiums.
- 2** We can provide you assistance to try to prevent a claim from ever arising

How to Report a Claim or Circumstance

Email: New.Claim@rlicorp.com

Fax: 866-692-6796

Phone: 800-444-0406

Street Address: 9025 N. Lindbergh Dr.,
Peoria, IL 61615

Mailing Address: P.O. box 3961
Peoria, IL 61612-3961



Thank you for your time!

QUESTIONS?

**This concludes The American Institute of Architects
Continuing Education Systems Program**

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