



XL Insurance

Warning Signs of a Claim

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Program Objectives

(1.0 AIA LU/CEU)

1. This program will present design professionals with an overview of common design and construction challenges that can lead to liability claims.
2. At the end of this session, attendees will understand how differences in insurance coverage between contractors and design professionals can increase liability exposures for architects and engineers.
3. Participants will learn valuable risk management tools to help build situational awareness to identify myriad liability risks that can arise during design and construction.
4. This program will provide program participants with the skills to recognize and evaluate potential liability risks at an early stage. Participants will understand how to engage a variety of resources, including loss prevention assistance, to better manage professional liability risks.

Agenda

- 1 Insurance Basics
- 2 Warning Signs
- 3 Making a Claim Worse
- 4 Developing Situational Awareness



1 Insurance Basics

What does your professional liability insurance respond to?

The Company agrees to pay on behalf of the INSURED all sums in excess of the Deductible, subject to the Policy Limits of Liability, that the INSURED becomes legally obligated to pay as DAMAGES and/or CLAIM EXPENSES as a result of any CLAIM(S) first made against the INSURED during a POLICY YEAR and first reported to the Company, in writing, during that POLICY YEAR or within sixty (60) days after the end of that POLICY YEAR, provided that:

The CLAIM(S) arises out of a WRONGFUL ACT

- A **claim** is a demand for money or services that arises from a wrongful act in the performance of professional services
- A **wrongful act** means an actual or alleged *negligent act, error or omission* in the performance of professional services

Loss Prevention Assistance

II. SUPPLEMENTARY PAYMENTS

All payments made under this section are not subject to the Deductible and are in addition to the Policy Limits of Liability.

A. No Cost Loss Prevention Assistance

If the INSURED reports a CIRCUMSTANCE during a POLICY YEAR in accordance with Section X. Notice, Paragraph C., any costs or expenses the Company incurs as a result of investigating or monitoring such CIRCUMSTANCE will be paid for by the Company until such time a CLAIM(S) arising out of the reported CIRCUMSTANCE is made against the INSURED. The decision to incur any costs or expenses to monitor or investigate a CIRCUMSTANCE shall be at the sole discretion of the Company.

B. CIRCUMSTANCE means an event or occurrence from which the INSURED reasonably expects that a CLAIMS(S) could be made.

The Importance of Loss Prevention Assistance

- A team of dedicated professionals to help you navigate a potential claim behind the scenes
- No cost to you, even if it becomes a claim
- Triggers policy coverage if a claim is ever made
- Lawyer-client and work product protections





2 Warning Signs

Budget Bust

ISSUE

- Contractor cost overruns

WARNING SIGNS

- Initial budget was unrealistic
- Owner has insufficient design and construction contingency
- Contractor underbids project
- Contractor fails to account for material cost increase in bid
- Contractor critical of design
- Flurry of RFIs

ADDED RISK

- Additional financing difficult; i.e., federal grants or local bond measures
- Low bid contractor (no QBS)
- Value engineering during construction
- You agreed to redesign the project for free
- Contractor has no insurance for pure cost overruns

Schedule Bust

ISSUE

- The project is delivered late

WARNING SIGNS

- Initial schedule was unrealistic
- Contractor fails to mobilize key equipment
- Contractor labor shortage
- Contractor inability to procure specified products
- Contractor using perceived A/E delays to justify critical path slippage
- Contractor critical of design
- Flurry of RFIs

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ADDED RISK

- Projects with high economic damage potential; e.g., health care
- Liquidated damages in contract
- Contractor performance bond pressure
- Contractor has no insurance for pure delay

Jobsite Accident

ISSUE

- Worker injured or killed

WARNING SIGNS

- An investigator or reporter wants to talk to you
- You are contacted by the injured party's lawyer
- A project stakeholder is criticizing your role
- You receive a subpoena for records

ADDED RISK

- Significant injuries or death
- You provide an unprepared statement to a lawyer, investigator or the press
- The injured party works for a contractor who performs all the work
- Governmental immunity for Client
- Reptile theory

Subpoena for Project Files

ISSUE

- You receive a subpoena or request to access your project files

WARNING SIGNS

- There is litigation between the Owner and Contractor or a bodily injury / wrongful death lawsuit
- You receive a litigation hold from a lawyer

ADDED RISK

- You fail to report this internally and to your broker, and you respond to the subpoena
- Your contract has a broad confidentiality provision
- You turn over information that the other side is not entitled to
- You let hostile lawyers into your office to copy files

Project Communication Breakdown

ISSUE

- Communications between your office and other project stakeholders has ceased or slowed

WARNING SIGNS

- You are disinvited from meetings or crucial meetings occur without you
- Your emails and phone calls are not being returned

ADDED RISK

- Client or contractor has questioned the quality of your work
- Third-party hired to review your work

Personnel Turnover

ISSUE

- A project stakeholder is experiencing turnover of key personnel

WARNING SIGNS

- Contractor's PM left during construction
- Long-standing client contact retires or is replaced
- Turnover on your team with little notice

ADDED RISK

- Turnover occurring in tight labor market
- Schedule slipping
- Owner with a “new sheriff in town” mentality
- Contract clause that allows client to replace your employees at its discretion

Slow, Partial or No Payment

ISSUE

- Your payments are significantly delayed

WARNING SIGNS

- The Client will not respond to inquiries as to why payment is late
- The Client has expressed dissatisfaction with your services

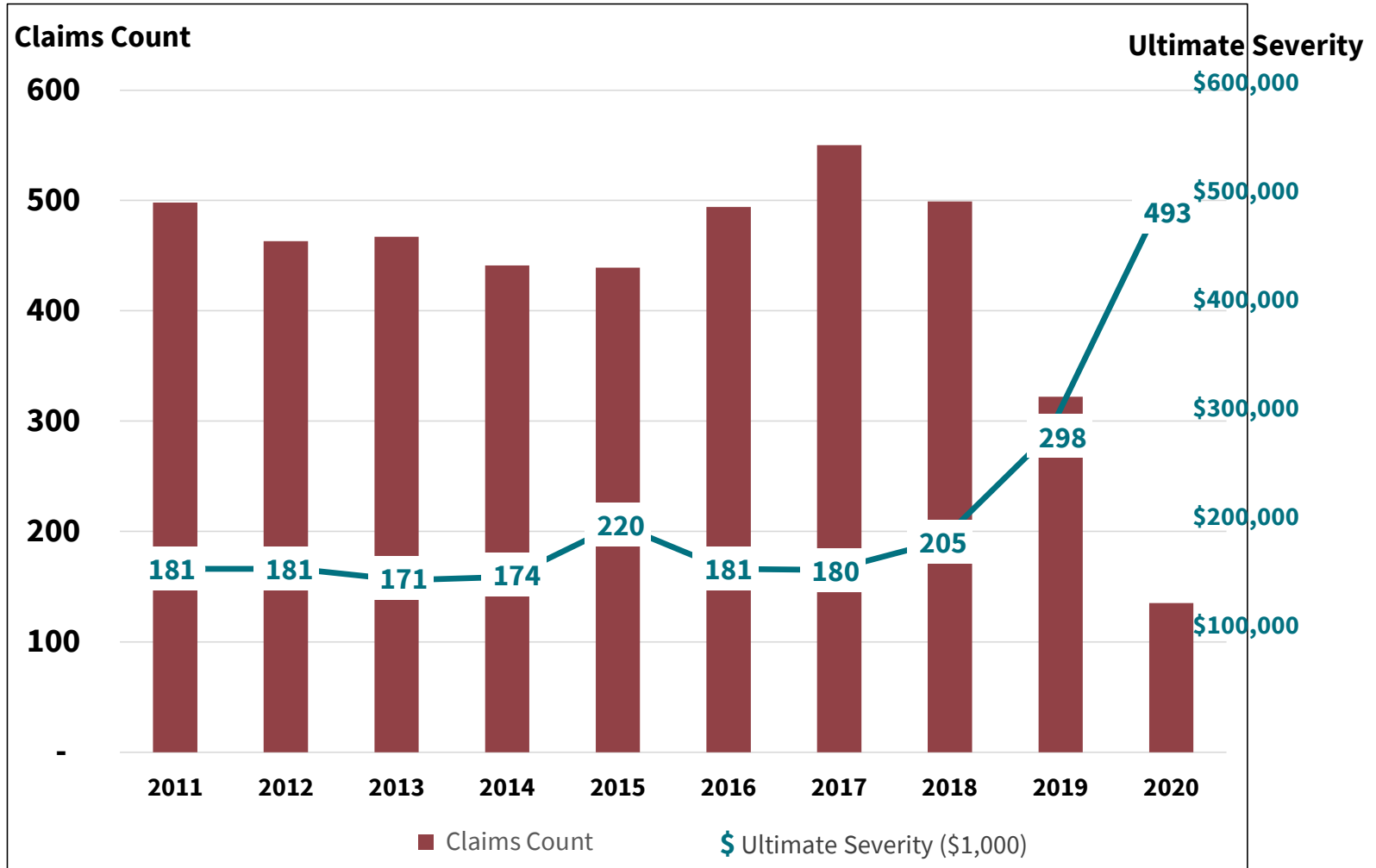
ADDED RISK

- Your contract allows the Client to withhold “disputed” amounts
- You waive the payment terms in your contract
- You waive your lien rights
- You sue for fees without discussing with your broker and/or carrier

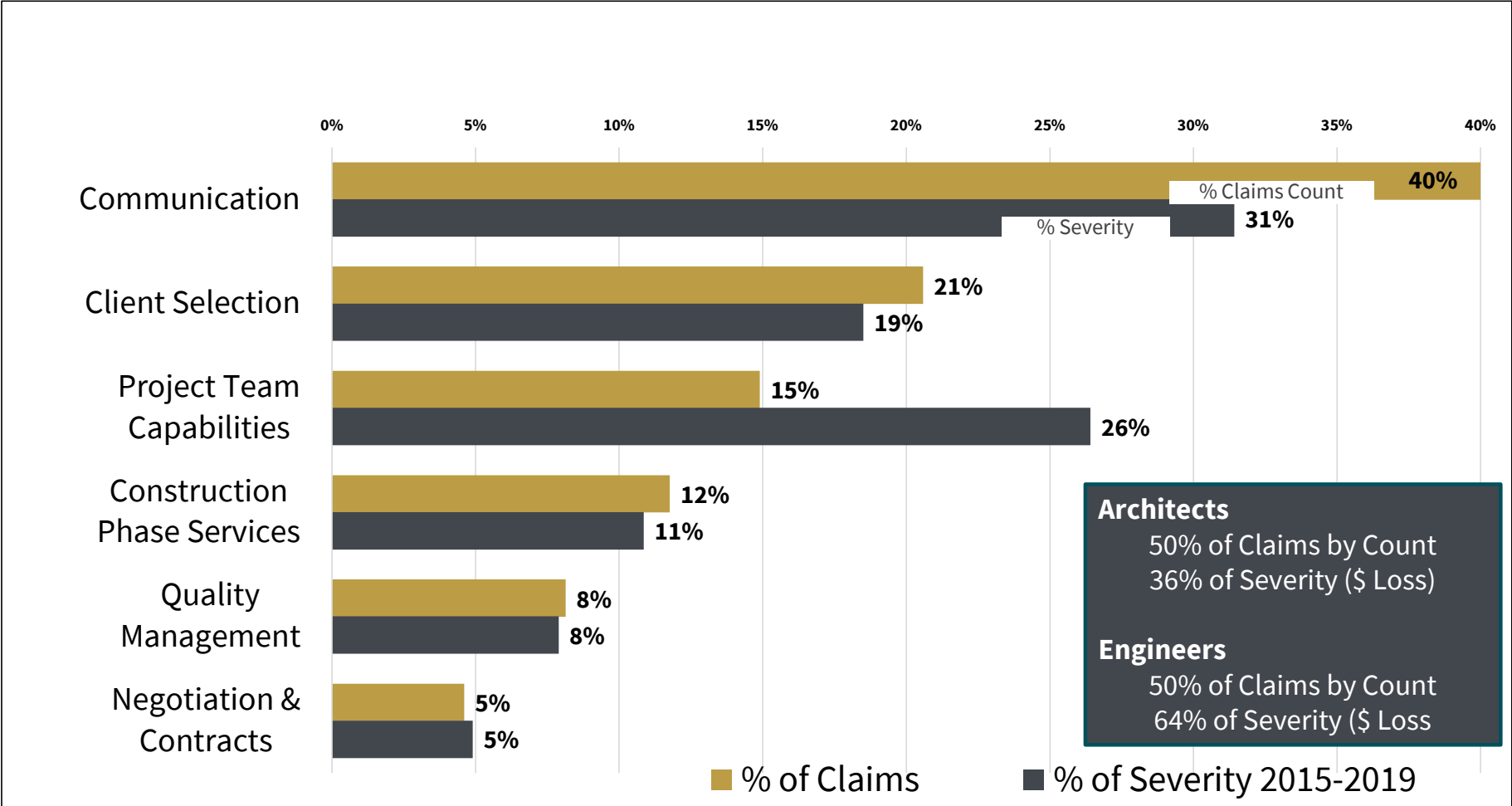


3 Making a Claim Worse

10-year Claims by Count & Average Ultimate Severity



AXA XL % Claims and % Severity 2015-2019



Things that Can Make A Claim Worse

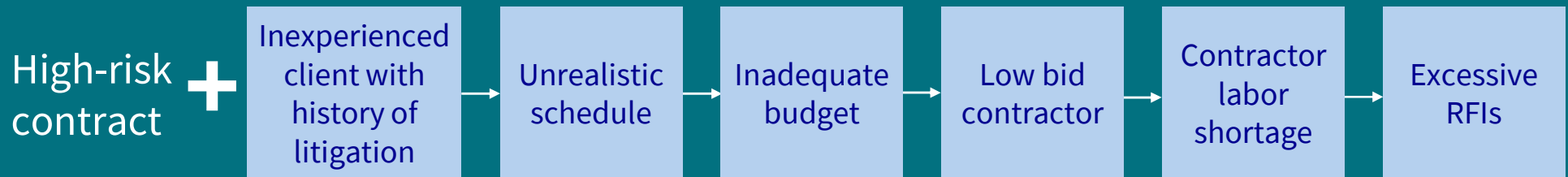
- Admissions of liability
- Inflammatory emails, instant messages or texts
- Poor document management
- Cyber breach / ransomware





4 Developing Situational Awareness

Accrued Risk (Compounded Risks)



- Standard of care** Error free CDs, award-winning first-class design or LEED Silver
- Indemnity** Defend and indemnify client for any claim arising out of services
- Subconsultants** Under-insured subconsultant with low limitation of liability
- Free redesigns** Free redesign if client unsatisfied or if the lowest construction bid exceeded the estimate you provided
- Payment** Client pays invoices in 60 days if satisfied in exchange for waiving statutory lien rights
- Ownership of documents** Client owns all designs, sketches, concepts, plans, specifications and work product the moment you create it and without payment
- Staffing** Client can replace your employees when it wants

Situational Awareness

1. Perception of elements in the environment
2. Comprehension or understanding of the situation, and
3. Projection of future status



How to Develop Situational Awareness

- Communicate potential issues internally
 - Red flags at Go / No-Go
 - Problem contract clauses
 - Concerns with client, contractor, suppliers, jobsite
- Utilize proven risk management tools
 - Contract Review Checklist – Ex. 1
 - Go / No-Go Checklist – Ex. 16
 - Project Management Plan
 - Crisis event plan
- Annual training



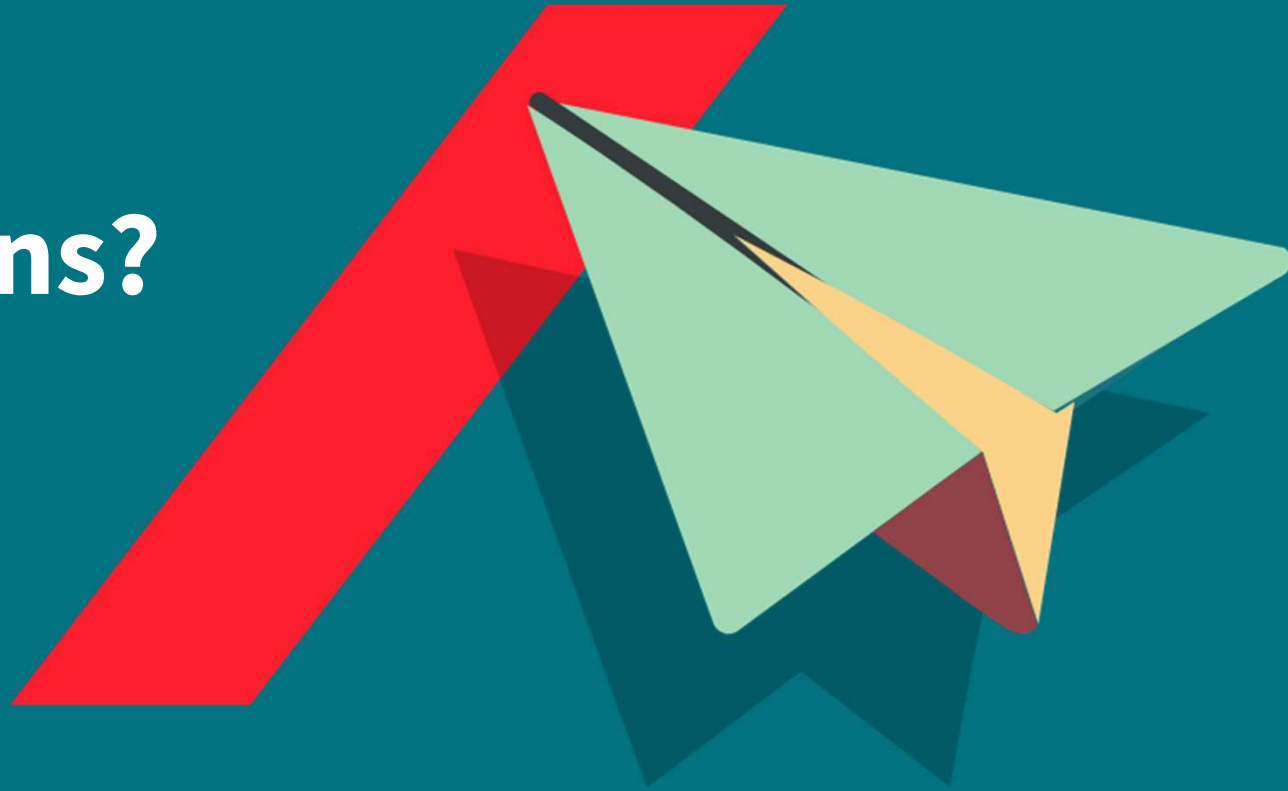
Understand How and When to Elevate a Concern

- Follow internal protocols
- Minimize initial written communications
- Do not admit liability
- Notify broker
- Open a loss prevention file
- Get legal counsel engaged if necessary
- Understand crisis event coverage





Questions?





Connect with me!
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