March 2023

BUILDING BLOCKS

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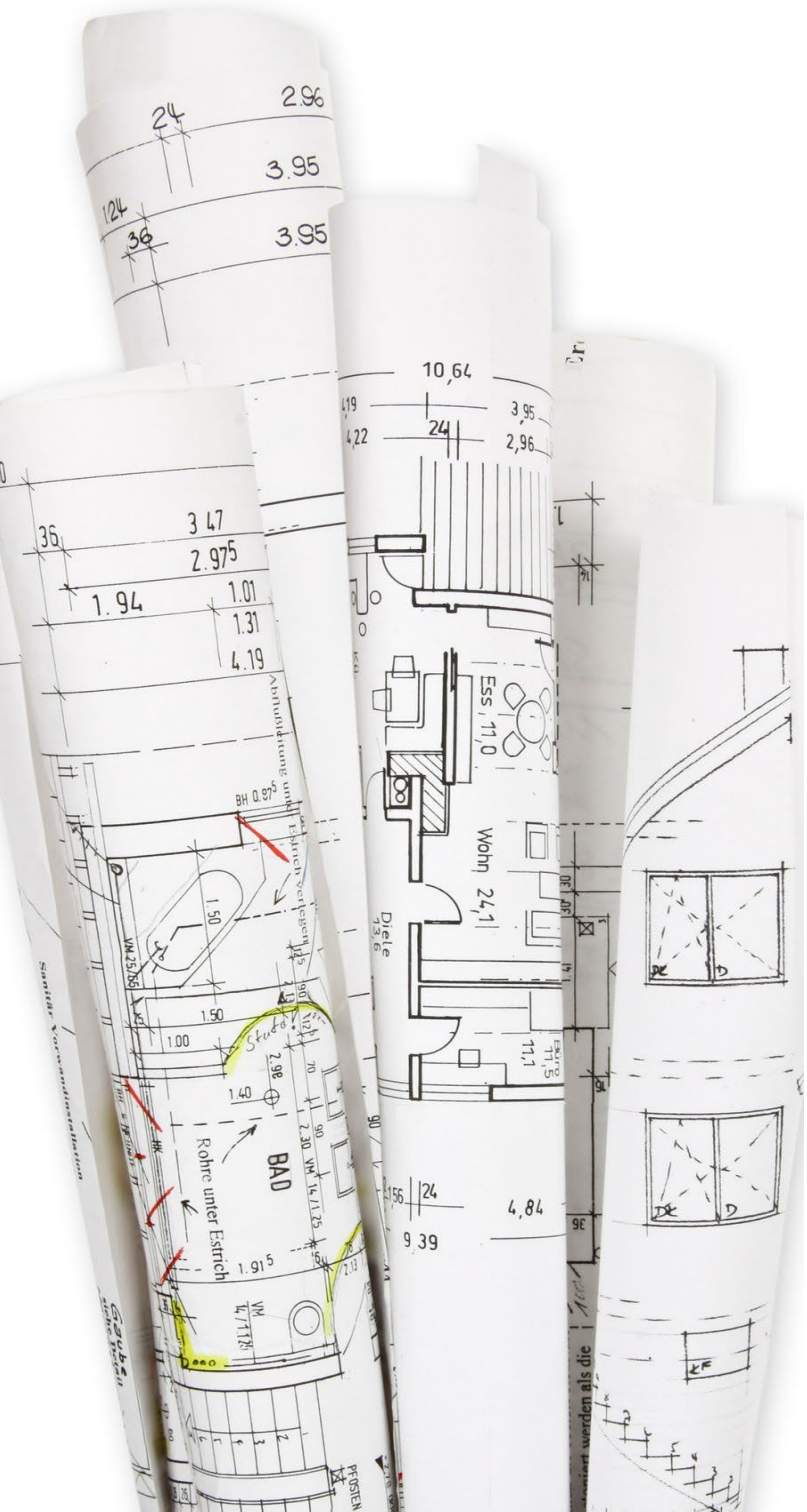

RISK MANAGEMENT – HOW TO MANAGE YOUR RISK

By: Eric O. Pempus, FAIA, Esq., NCARB
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WHAT RISK MANAGEMENT (RM) IS:

Before we discuss RM, let's focus what "risk" is. Britannica Dictionary definition of RISK is **the possibility that something bad or unpleasant (such as an injury or a loss) will happen**. The graphic below recognizes the overlap of the risks in the design professions and construction industry.

IN THIS ISSUE:

The Top 20 Construction Risks

DOCUMENT, LEGAL, AND CONTRACT RISKS

1. Change Orders
   Formal documents outlining changes that must be made on a construction project.
2. Stop Work Orders
   Legally binding documents that force some or all parts of a project to cease production.
3. Incomplete Drawings
   When architectural or engineering documents are not completed, leading to change orders.
4. Poorly Defined Project Scope
   Project boundaries should be clearly defined in scope statements and other documents.
5. Poorly Written Contracts
   Gaps in contract language can expose various stakeholders to legal/liability risk.
6. Contract Disputes
   These tend to arise whenever work is not done in accordance with specifications or at cost.

35% of construction projects are subject to at least one major change.

$1B is the value of equipment stolen from construction sites in the US every year.

FINANCIAL RISKS

7. Increase in Material Costs
   Unexpected cost spikes can be destructive to projects when materials = half of project costs.
8. Liquidated Damages
   A financial penalty on contractors when projects continue past the scheduled date of completion.
9. Regulatory Fines
   When workers fail to meet regulatory mandates, it can lead to hefty fines for contractors.
10. Damage or Theft to Equipment and Tools
    Insurance deductibles and project delays are the true costs of damaged or stolen equipment.
11. Project Delays
    On most projects, being set a single day behind schedule can equate thousands in costs.
12. Inaccurate Project Estimation
    Failure to budget work accurately can leave insufficient funds for materials, wages, and more.

ENVIRONMENTAL RISKS

13. Natural Disasters
    Wildfires, earthquakes, hurricanes, flooding, storms, tornadoes... no site is immune to these risks.
14. Poor Weather Conditions
    Any changes in normal weather conditions can lead to increased risk of incident on a project.

$15,000+ is the potential fine for one untrained worker.

SAFETY RISKS

15. Safety Hazards On-Site
    Exposed electrical, heavy equipment, extreme heights, airborne materials, etc.
16. Untrained Workers
    Workers conducting work without training are a threat to everyone else on a project site.
17. Unsecure Construction Sites
    With anything less than a secure perimeter, outsiders can easily gain access to project sites.

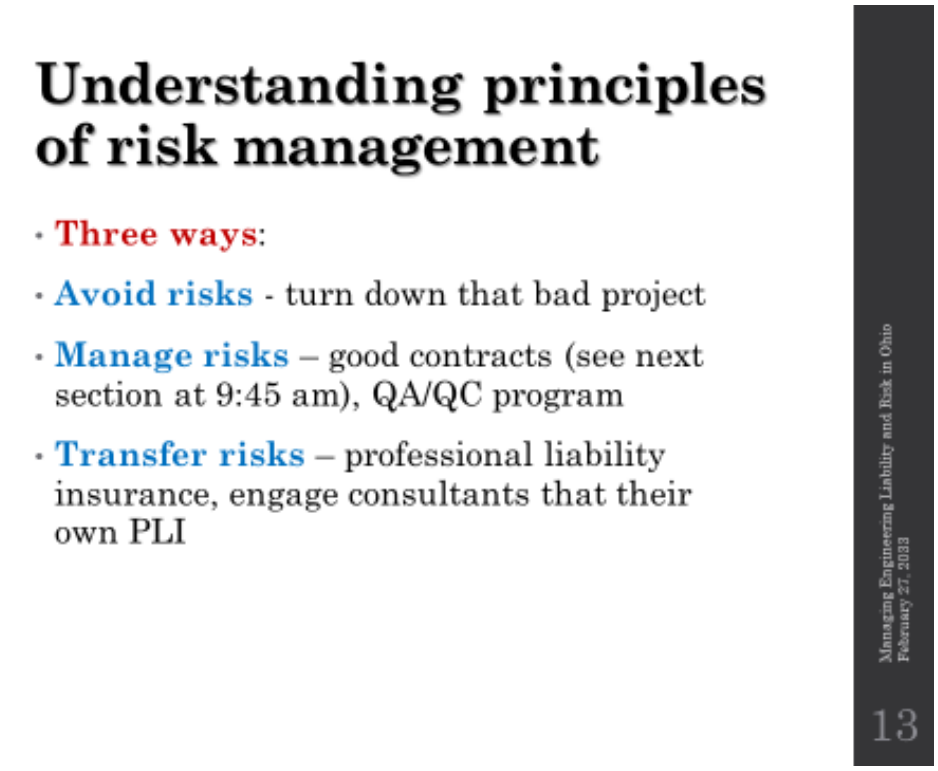
PRODUCTIVITY RISKS

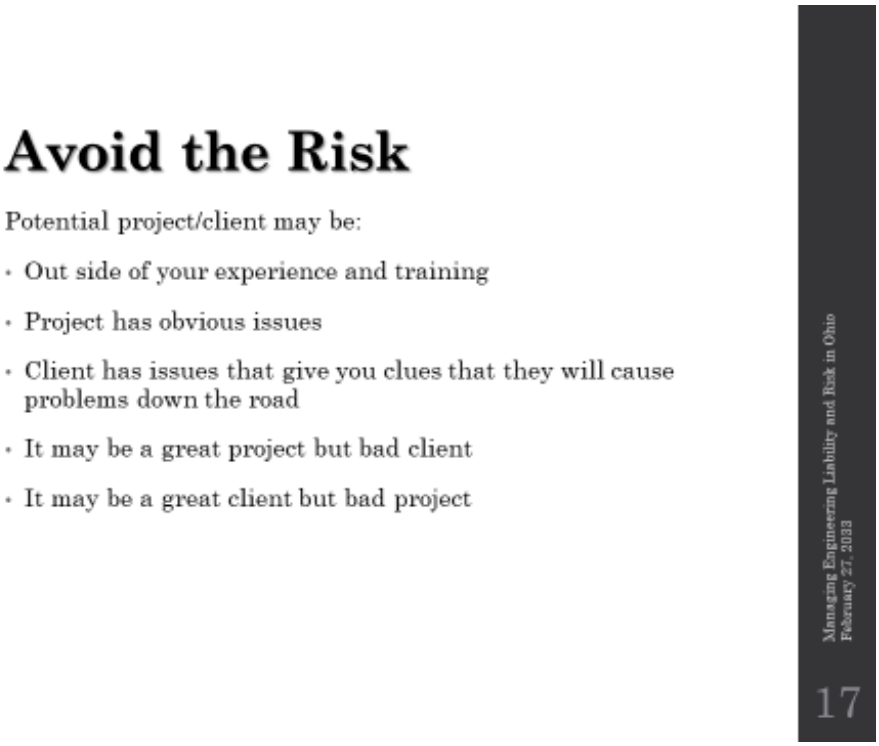
18. Labor Shortages
    An inability to source skilled labor or align that labor with project timelines can be damaging.
19. Trade Stacking
    When too many trades are working in the same area, it can limit capacity and production.
20. Material Availability
    An inability to source necessary materials can lead to delays or expensive substitutions.

https://mycomply.net/info/blog/20-construction-risks/

HOW TO MANAGE YOUR RISK

There are three recognized approaches to manage risks in the design professions and construction industry. These PowerPoint slides from one of my recent risk management presentations illustrate the approaches.





Manage the Risk

- Best way to manage risk is to "take the bull by the horns"
- Assign an experienced staff member to review the documents before they are issued (a second set of eyes)
- Implement and use a quality control/quality assurance procedure
- CASE: Council of American Structural Engineers – covered in the 2:30 pm program today

Transfer to Risk

- This is why you buy professional liability insurance
- Your policy covers what professional insurance services that you offer

"Professional Services" means those services provided by the **Insured** or by any person for whom the **Insured** is legally responsible acting in the capacity of an architect, engineer, landscape architect, land surveyor, interior designer, construction manager, technical consultant, environmental consultant, including **Sustainability** of any such service or as specifically endorsed hereon.

- And exclusions in your policy

Duty perform services in accordance with your standard of care in your profession

arising out of

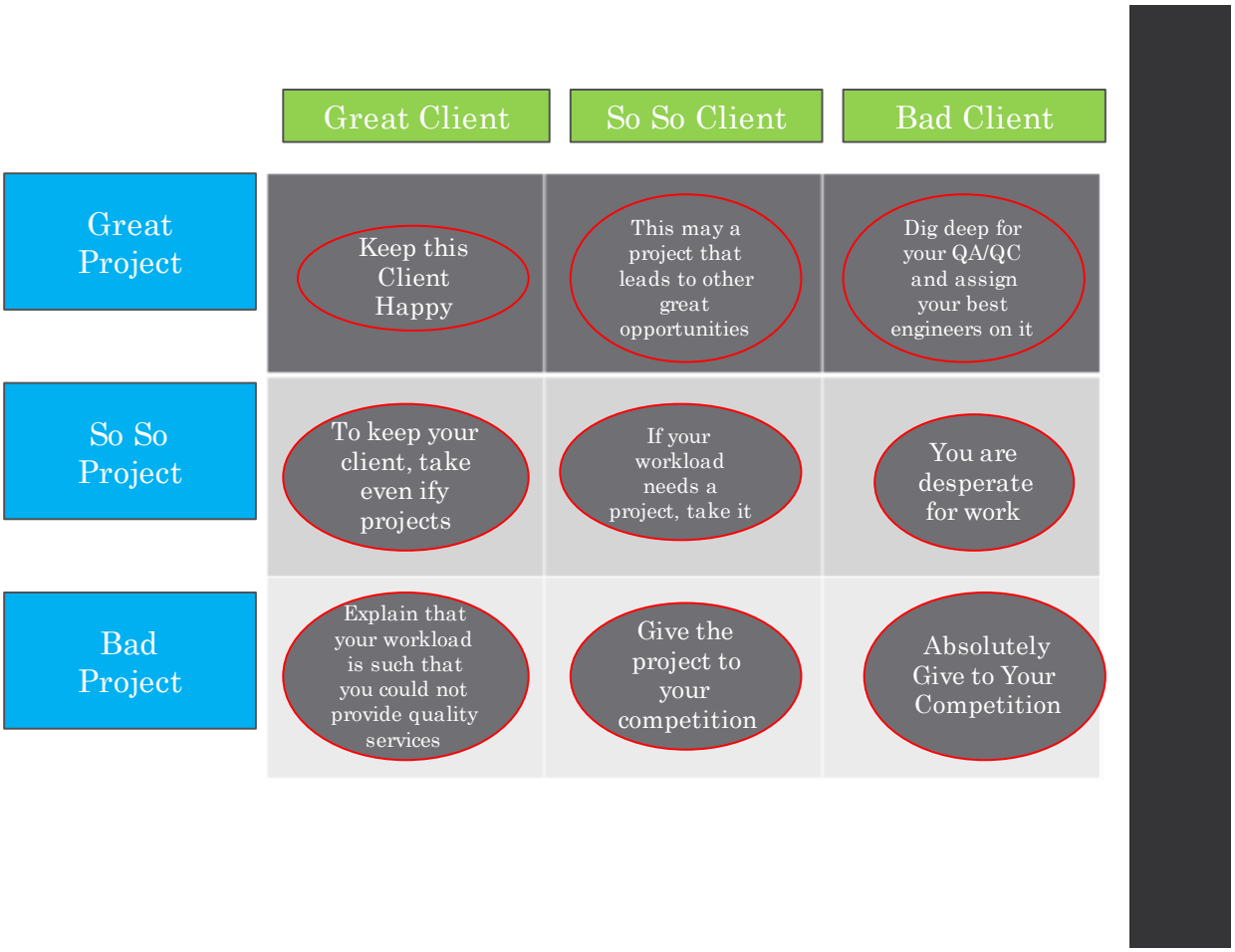
1. any **Insured's** actual or alleged liability under any oral or written contract or agreement, including but not limited to express warranties or guarantees; or
2. any actual or alleged liability of others that any **Insured** assumes under any oral or written contract or agreement.

However, this exclusion will not apply to the **Insured's** liability that exists in the absence of such contract or agreement.

SUMMARY

Once an architect or engineer (A/E) has determined what risks are involved in a project, and how to manage them, the last question is "What is the A/E's risk tolerance?" In other words, an A/E must determine the associated risks knowing that they may have not eliminated all the pitfalls in a particular project. At that point, given what the A/E has learned from their risk

manager, it is a business decision whether to move forward with the project. The risk manager cannot make the business decision for the A/E. One way to determine if a project or the potential client is too risky, and is a deal breaker, the following matrix can be helpful.



About the Author of this Risk Management Building Block Article

Eric O. Pempus, FAIA, Esq., NCARB has been a risk manager for more than 17 years with experience in architecture, law and professional liability insurance, and a unique and well-rounded background in the construction industry. He has 25 prior years of experience in the practice of architecture/engineering, and as an adjunct professor teaching professional practice courses at the undergraduate and graduate levels for the last 35 years. As a Fellow of the American Institute of Architects and AIA National Ethics Council 2021 Chair, he has demonstrated his impact on architectural profession. He has presented numerous loss prevention and continuing educational programs to design professionals and architectural students in various venues across the United States and Canada.

The above comments are based upon DesignPro Insurance Group's experience with Risk Management Loss Prevention activities and should not be construed to represent a determination of legal issues but are offered for general guidance with respect to your own risk management and loss prevention. The above comments do not replace your need for you to rely on your counsel for advice and a legal review, since every project and circumstance differs from every other set of facts.
***Disclaimer:** The viewpoints expressed in this article are those of the author(s) and are not necessarily approved by, reflective of or edited by other individuals, groups, or institutions. This article is an expression by the author(s) to generate discussion and interest in this topic.*

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Speaking Engagements:

"Ohio Professional Land Surveying Laws & Ethics"

- **Complying with Ohio Code of Ethics for Engineers and Surveyors**
- **Overview of Contract Law**

Webinar – April 27, 2023

Current Issues for Ohio Architects and Engineers

- **Working Under Ohio's Design Professional Licensing Laws**
- **Preventing and Resolving Ethical Issues on Ohio Construction Projects**

Webinar – May 31, 2023

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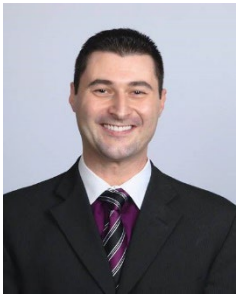

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