



XL Insurance

Steering in Today's Storm

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Your Presenter

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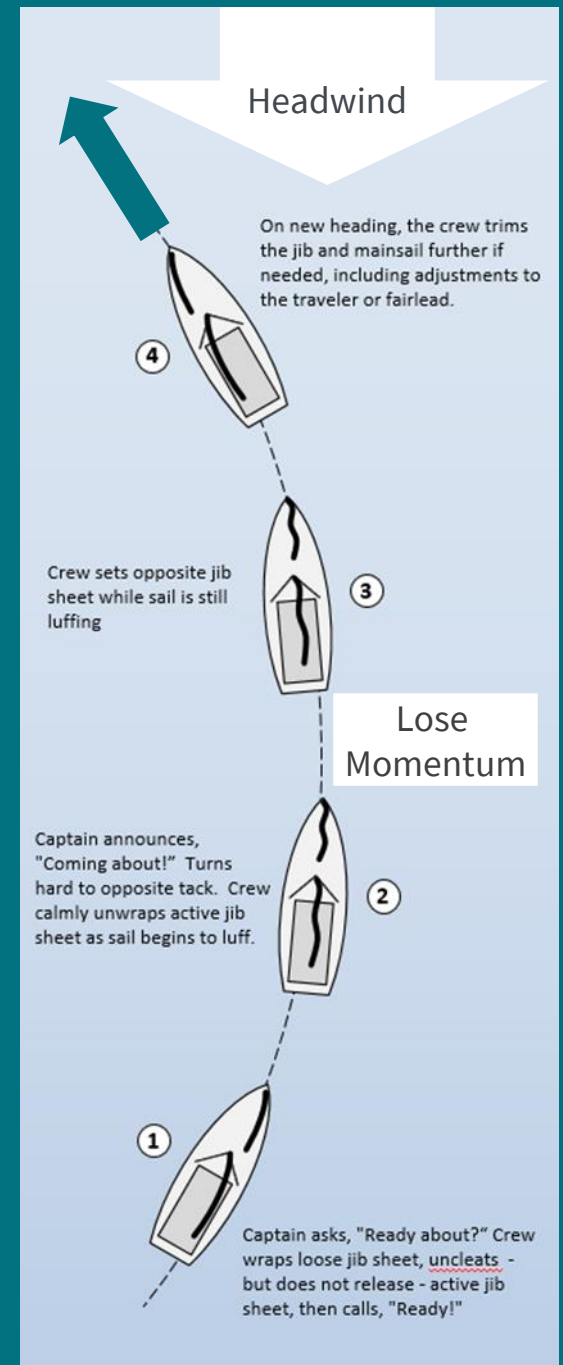




Steering in Today's Storm

AGENDA

- 1 Scope of Services
- 2 AXA XL Risk Drivers
- 3 Scope Mojo
- 4 Fight before the Fight
- 5 Summary



Program Objectives

(1.0 AIA LU/CEU)

1. At the conclusion of this program attendees will be able to define the key elements necessary to prepare a clear and appropriate scope of work for a proposal and further communicate and confirm the comprehension of this effort during project planning and execution.
2. Attendees will learn how to apply their comprehension of risk drivers to recognize, assess, and determine risks in proposed scopes of work as well as risks in trying to execute an inappropriate or unclear the scope of work.
3. After completing this program attendees will be able to examine the project or practice management processes they have in place (or may need to specify) to write an appropriate and clear scope of work for a proposal.
4. During this workshop attendees will discover an “unclear or inappropriate scope of work” may have far reaching consequences that contribute to or exacerbate a claim. Strategies to avoid this issue will be discussed.



1 Scope of Services

Contract Formation & Negotiation

1. the scope of services
2. schedule
3. compensation
4. general terms and conditions



Terms and Conditions

- the ground rules under which you will operate

- Limits of Liability
- Indemnification
- Liquidated Damages
- Termination
- Dispute Resolution
- Joint & Several Liabilities
- Third Party Beneficiaries
- Certification
- Dispute Resolution
- Fiduciary Duty
- Certification



Not Today

No

No

Scope of Services is . . .

a detailed description of everything
you intend to do for the client

- precise and complete as possible

- no ambiguity or question as to the duty or deliverable included within your basic fee



Source: AXA XL Contract Guide for Design Professionals

Scope of Services . . .

1

Basic Fee

Services the design professional will perform for a basic fee

2

Additional Fee

Service that are available to the client for an additional fee

3

Refused

Services that are specifically excluded because the client has refused them



Source: AXA XL Contract Guide for Design Professionals

No worries?

Complete

**No
ambiguity**

Precise

You will provide:

- “*any and all* engineering services necessary for the completion of the project“
- “*complete architectural services*”

You will:

- "assist in obtaining *all* approvals needed for starting the Work"

You will perform:

- “to the *highest* standard of practice”
- “to the satisfaction of the Client”





Scope of Services claims

Unclear or inappropriate scope of services

4%

closed claims
(5-year period)

4.4%

\$ loss
(5-year period)

3X

3-fold increase
over 20 years



Claims Multiplier

Potential to contribute to or exacerbate

87%

closed claims
(5-year period)

90%

\$ Loss/Expense
(5-year period)



2 Risk Drivers

AXA XL's Design Professional Insurance



2

classifications of causes leading to a loss prevention file or a claim being made

1) **TECHNICAL**

2) **NON-TECHNICAL**



Top Claims Trigger

Design Error

%	Top Claims Triggers
79%	Design error
8%	Specification error
6%	Survey error
5%	Code interpretation error
3%	Document deficiency

Claims-made coverage trigger

What is it?

A type of trigger that obligates an insurer to defend and/or pay a claim on an insured's behalf

The term “made” means notification to an insured that a demand for money or services is being requested





Top Elements most involved by Markets

(%Claims by Count)



Residential



General Building



Institutional



Infrastructure

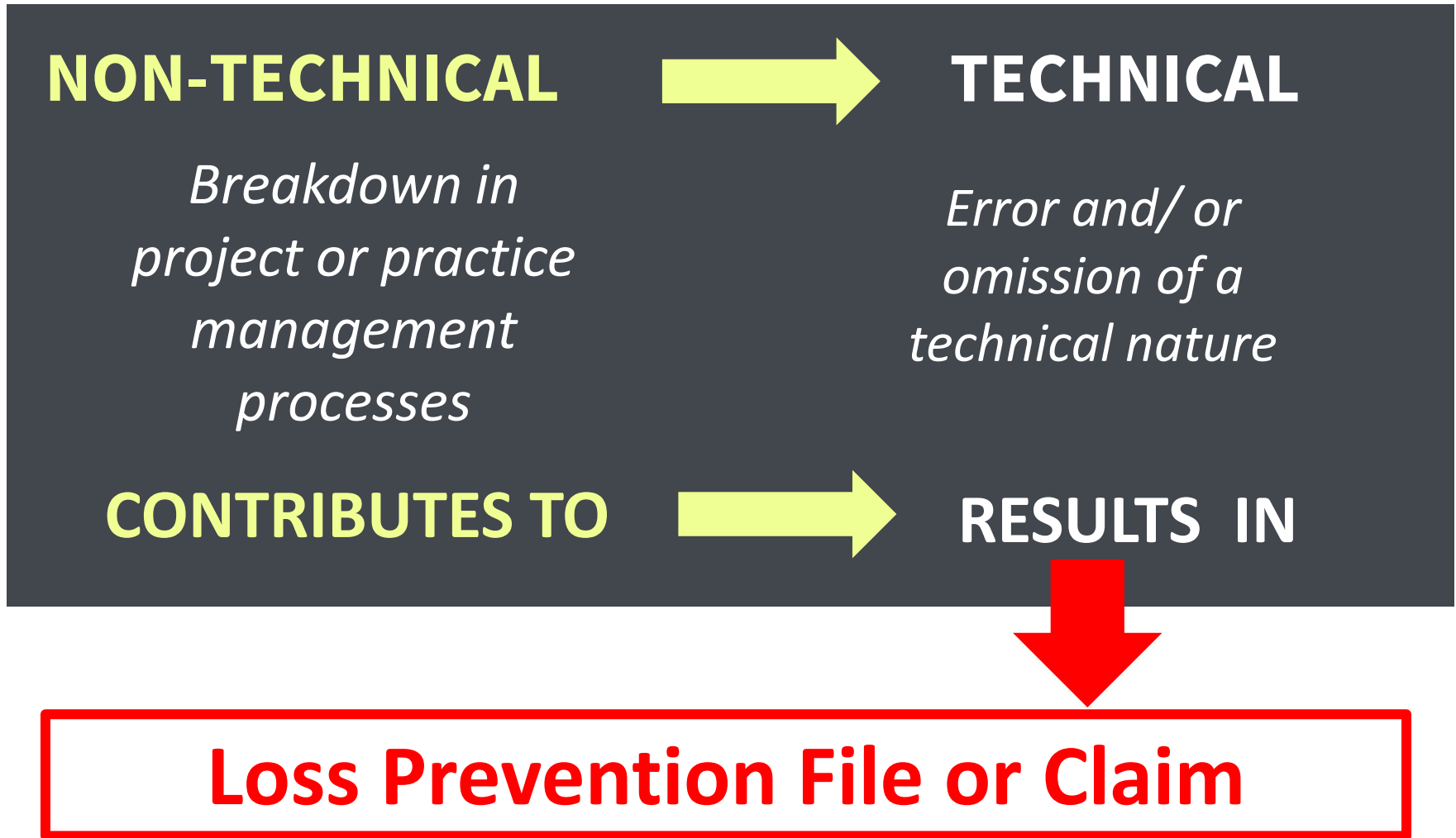
Highest



Walls	HVAC	HVAC	Pavement/Curbs/ Sidewalks
Foundation/Footing	Pavement/Curbs/ Sidewalks	Roofs	Grading
Grading	Walls	Walls	Sewage/ Wastewater Treatment
Roofs	Floors	Beams & Joists	Drinking Water System



Technical vs. non-technical



40% **Communications**

21% **Client Selection**

15% **Project Team Capabilities**

12% **Construction Phase Services**

8% **Quality Management**

5% **Negotiations & Contracts**



Top Six Non-technical Risk Drivers

Percent of claims
5-year period

Communications

Client Selection

**Project Team
Capabilities**

**Construction
Phase Services**

**Quality
Management**



**Top Six
Non-technical
Risk Drivers**

Root Cause

contributes to or
exacerbates issues in
all other risk drivers

Unclear or inappropriate scope of services

Risk Elements



- 30 total Risk Elements
- Specific sub-categories (elements) within each of the Risk Drivers
- 3-6 elements per Risk Driver

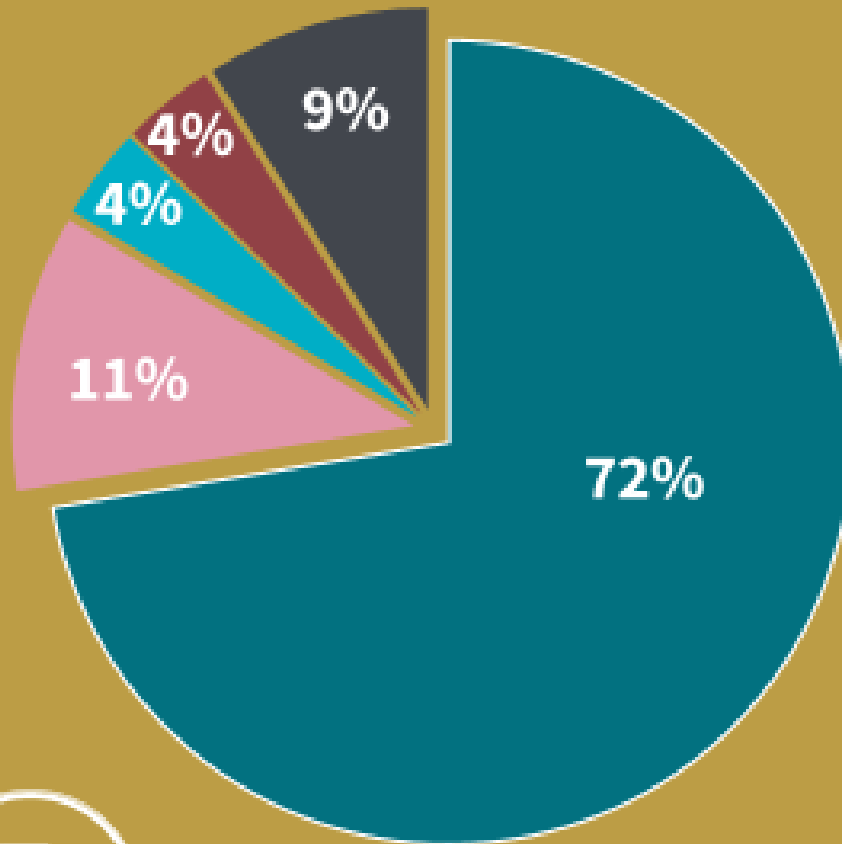
5-year data Risk Drivers (No. 6 by claims count)



Negotiations & Contracts

5%

of non-technical
Risk Drivers



AXA XL Risk Driver Elements

	Unclear & inappropriate scope of services
	Didn't formally evaluate client, project & associated risks
	No separate contingency fund set aside
	Deal-breakers in contract: indemnification, liquidated damages, warranties
	Multiple elements with 1 claim each



5-year data Risk Drivers (No. 6 by claims count)



Negotiations & Contracts

5%
of non-technical
Risk Drivers

AXA XL Risk Driver Elements

		% Claims by Count	% \$ Loss/Expense
	Unclear & inappropriate scope of services	4%	\$ 4.4%
	Didn't formally evaluate client, project & associated risks		
	No separate contingency fund set aside	< 0.2%	< \$ 0.2%
	Deal-breakers in contract: indemnification, liquated damages, warranties		
	Multiple elements with 1 claim each		

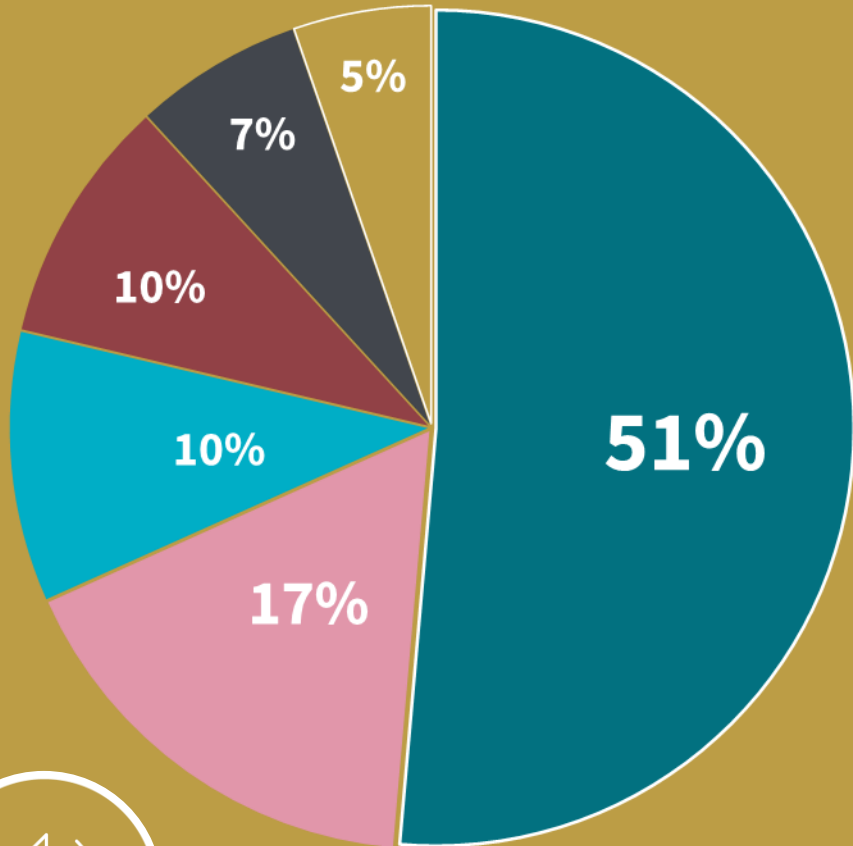


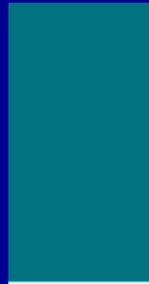





5-year data Risk Drivers (No. 1 by claims count)

Communications

40%
of non-technical
Risk Drivers

AXA XL Risk Driver Elements



	Lack of procedures to identify conflicts, omissions, errors
	CORE (Combination of Risk Elements)
	Scope of services not clearly /appropriately explained to client
	Lack of documentation regarding changes in scope, budget, etc.
	Project issues & potential disputes not handled correctly
	Project staff not aware of their responsibilities or expectations



5-year data Risk Drivers (No. 1 by claims count)



Communications

40%
of non-technical
Risk Drivers

AXA XL Risk Driver Elements

		% Claims by Count	% \$ Loss/Expense
	Lack of procedures to identify conflicts, omissions, errors	22%	\$ 15%
	CORE (Combination of Risk Elements)		
	Scope of services not clearly /appropriately explained to client	4%	\$ 6%
	Lack of documentation regarding changes in scope, budget, etc.	4%	\$ 4%
	Project issues & potential disputes not handled correctly		
	Project staff not aware of their responsibilities or expectations	0.2%	\$ 2%

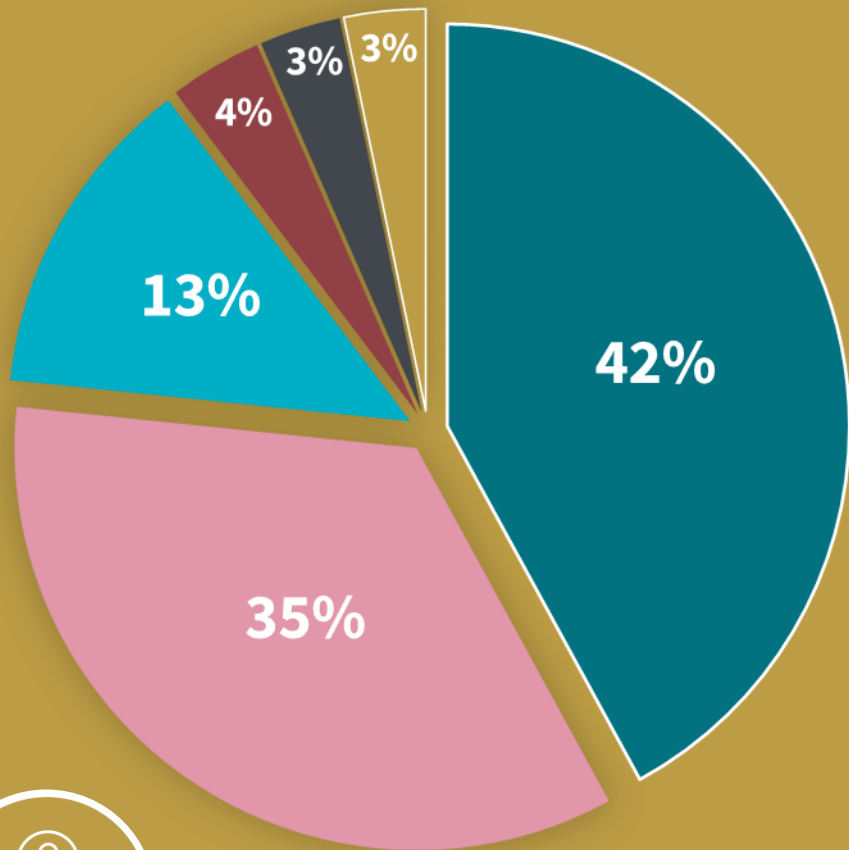


5-year data Risk Drivers (No. 2 by claims count)



Client Selection

21%
of non-technical
Risk Drivers



AXA XL Risk Driver Elements

	Client inexperienced in project/design issues
	Client has history of claims & litigation
	Client in poor financial condition
	Contractor selection: QBS vs. fee shopping
	No formal review of client
	Client behind or not paying design or contractor fees



5-year data Risk Drivers (No. 2 by claims count)



Client Selection

21%
of non-technical
Risk Drivers

AXA XL Risk Driver Elements

	Client inexperienced in project/design issues
	Client has history of claims & litigation
	Client in poor financial condition
	Contractor selection: QBS vs. fee shopping
	No formal review of client
	Client behind or not paying design or contractor fees

% Claims by Count	% \$ Loss/Expense
9%	\$ 3%
7%	\$ 10%



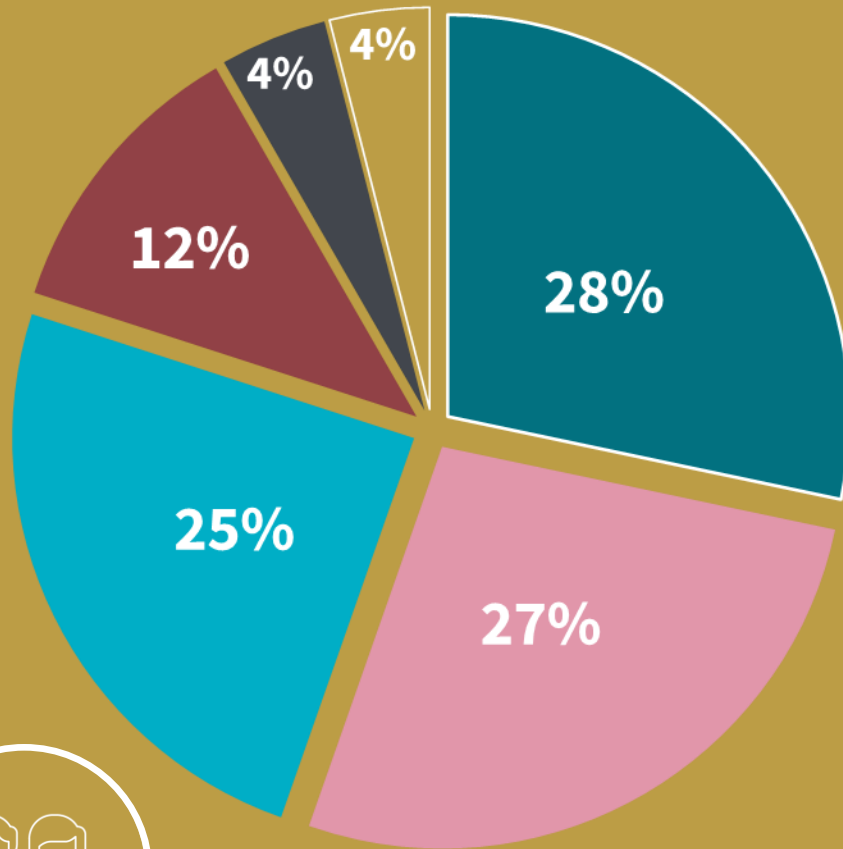
5-year data Risk Drivers (No. 3 by claims count)



Project Team Capabilities

15%

of non-technical Risk Drivers



AXA XL Risk Driver Elements

	Unqualified/deficient design staff assigned to project
	Inexperienced or deficient project manager
	CORE (Combination of Risk Elements)
	Design firm inexperienced in project type
	Unqualified/deficient on-site staff assigned to project
	Multiple elements of < 2% each



5-year data Risk Drivers (No. 3 by claims count)



Project Team Capabilities

15%
of non-technical
Risk Drivers

AXA XL Risk Driver Elements

		% Claims by Count	% \$ Loss/Expense
	Unqualified/deficient design staff assigned to project	5%	\$ 9%
	Inexperienced or deficient project manager	4%	\$ 11%
	CORE (Combination of Risk Elements)	4%	\$ 2%
	Design firm inexperienced in project type	2%	\$ 3%
	Unqualified/deficient on-site staff assigned to project	0.7%	\$ 1%
	Multiple elements of < 2% each		

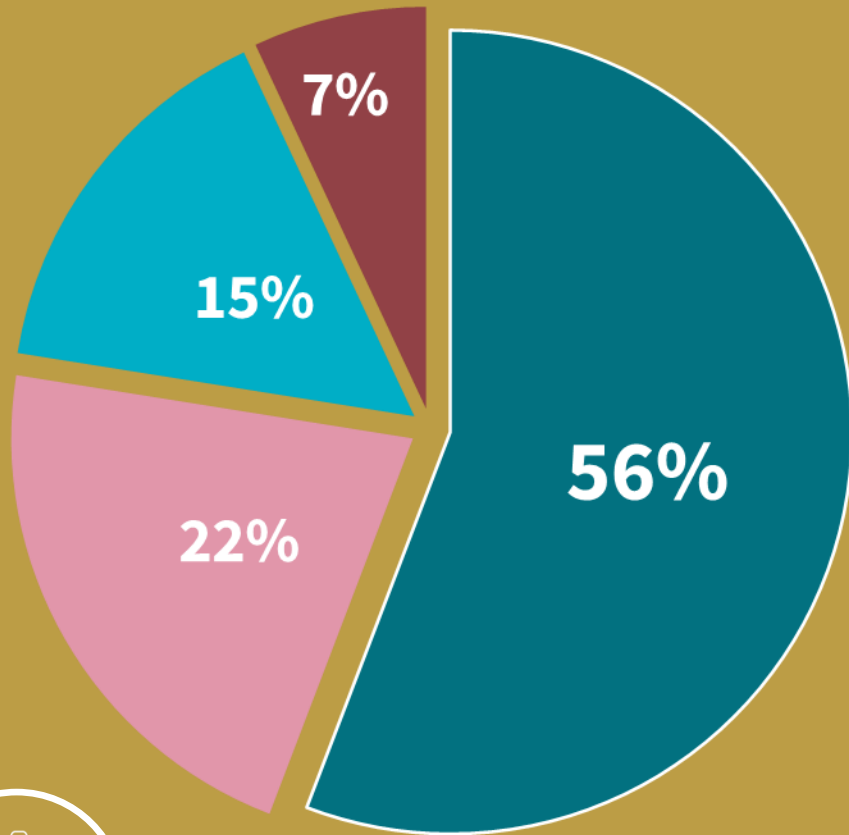


5-year data Risk Drivers (No. 4 by claims count)



Construction Phase Services

12%
of non-technical
Risk Drivers



AXA XL Risk Driver Elements

	Inappropriate construction observation
	Inappropriate/inconsistent shop drawing/submittal-review procedure
	Issue with contractor: arguing, trading, gratuitous undertaking
	CORE (Combination of Risk Elements)



5-year data Risk Drivers (No. 4 by claims count)



Construction Phase Services

12%
of non-technical
Risk Drivers

AXA XL Risk Driver Elements

		% Claims by Count	% \$ Loss/Expense
	Inappropriate construction observation	7%	\$ 7%
	Inappropriate/inconsistent shop drawing/submittal-review procedure	3%	\$ 2%
	Issue with contractor: arguing, trading, gratuitous undertaking	2%	\$ 2%
	CORE (Combination of Risk Elements)		

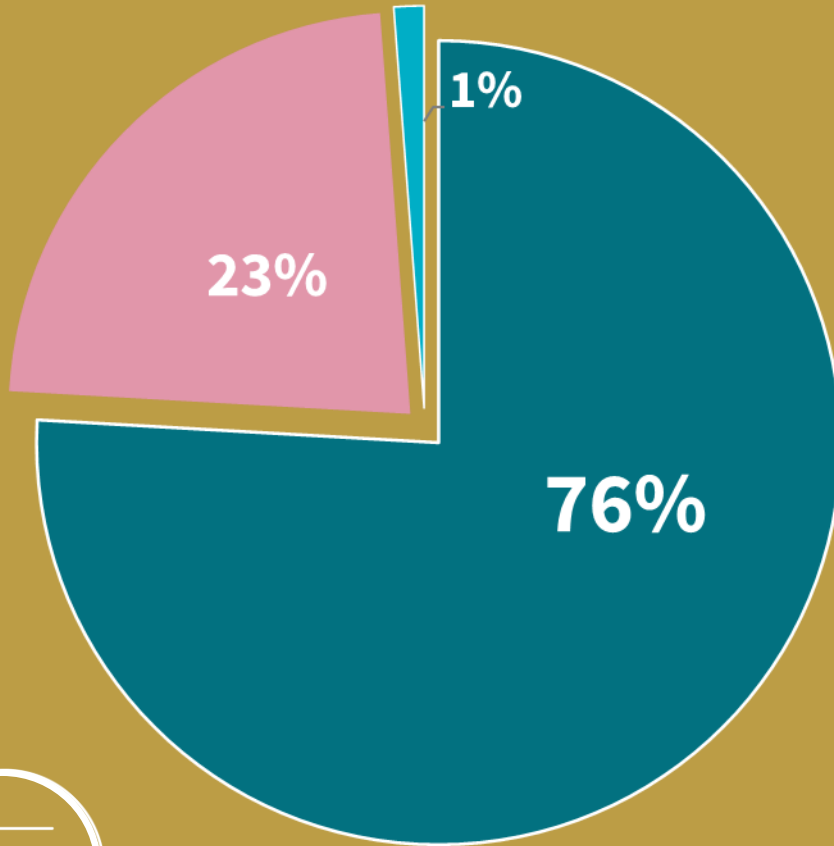


5-year data Risk Drivers (No. 5 by claims count)

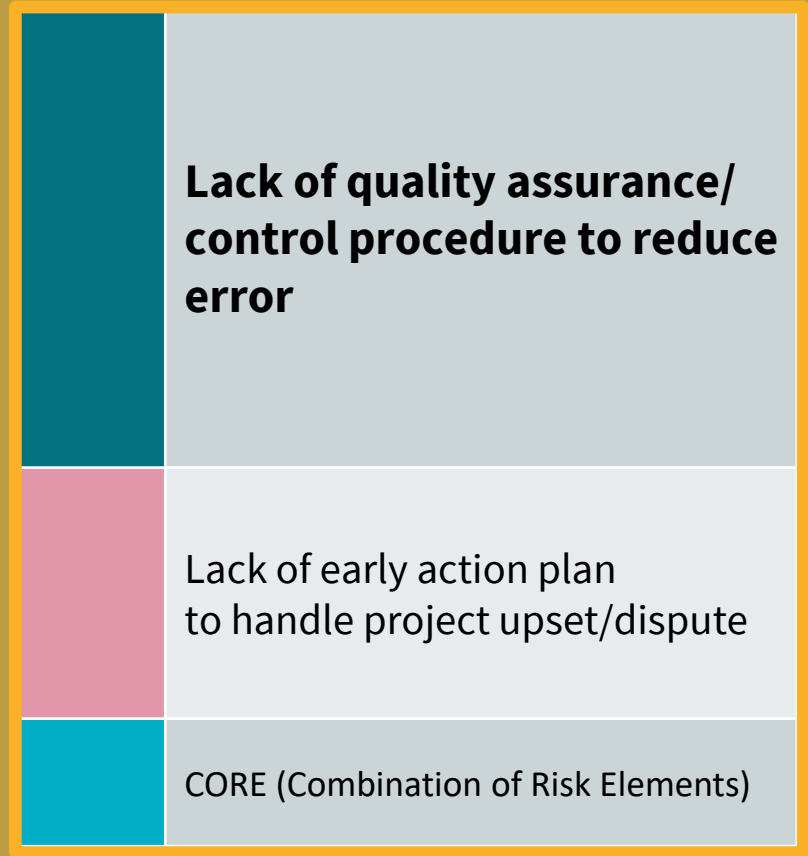


Quality Management

8%
of non-technical
Risk Drivers



AXA XL Risk Driver Elements



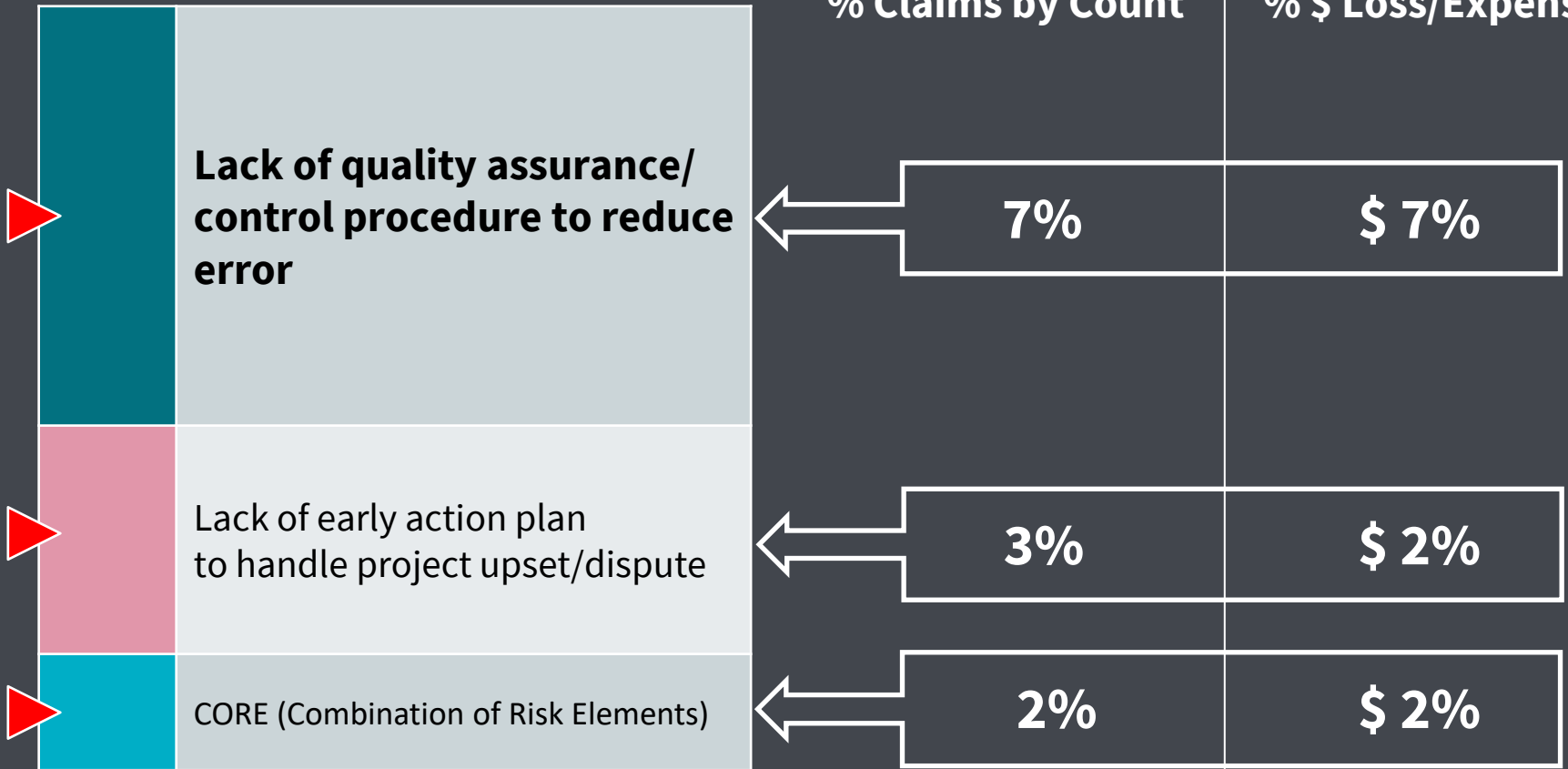
5-year data Risk Drivers (No. 5 by claims count)



Quality Management

8%
of non-technical
Risk Drivers

AXA XL Risk Driver Elements



Negotiations & Contracts

Unclear & inappropriate = claims multiplier

Negotiations & Contracts

	Unclear & inappropriate scope of services
	Didn't formally evaluate client, project & associated risks
▶	No separate contingency fund set aside
	Deal-breakers in contract: indemnification, liquidated damages, warranties
	CORE (Combination of Risk Elements)

Communications

▶	Lack of procedures to identify conflicts, omissions, errors
	CORE (Combination of Risk Elements)
▶	Scope of services not clearly/ appropriately explained to client
▶	Lack of documentation regarding changes in scope, budget, etc.
	Project issues & potential disputes not handled correctly
▶	Project staff not aware of their responsibilities or expectations

Client Selection

▶	Client inexperienced in project/design issues
▶	Client has history of claims & litigation
	Client in poor financial condition
	Contractor selection: QBS vs. fee shopping
	No formal review of client
	Client behind or not paying design or contractor fees

Project Team Capabilities

▶	Unqualified/ deficient design staff assigned to project
▶	Inexperienced or deficient project manager
▶	CORE (Combination of Risk Elements)
▶	Design firm inexperienced in project type
▶	Unqualified/ deficient on-site staff assigned to project
	Multiple elements of < 2% each

Construction Phase Services

▶	Inappropriate construction observation
▶	Inappropriate /inconsistent shop drawing/submittal review procedure
▶	Issue with contractor: arguing, trading, gratuitous undertaking
	CORE (Combination of Risk Elements)

Quality Management

▶	Lack of quality assurance/ control procedure to reduce error
▶	Lack of early action plan to handle project upset/dispute
▶	CORE (Combination of Risk Elements)



Claims Multiplier

Unclear or inappropriate scope of services

87%

closed claims
(5-year period)

90%

\$ Loss/Expense
(5-year period)



3 Scope Mojo

A photograph of modern skyscrapers with the word 'MOJO' overlaid in white text. The background features a clear blue sky and several tall buildings, including a prominent, tapering skyscraper on the left and a large, curved building with a diamond-patterned glass facade on the right. A construction crane is visible in the distance. The word 'MOJO' is centered in a bold, white, sans-serif font.

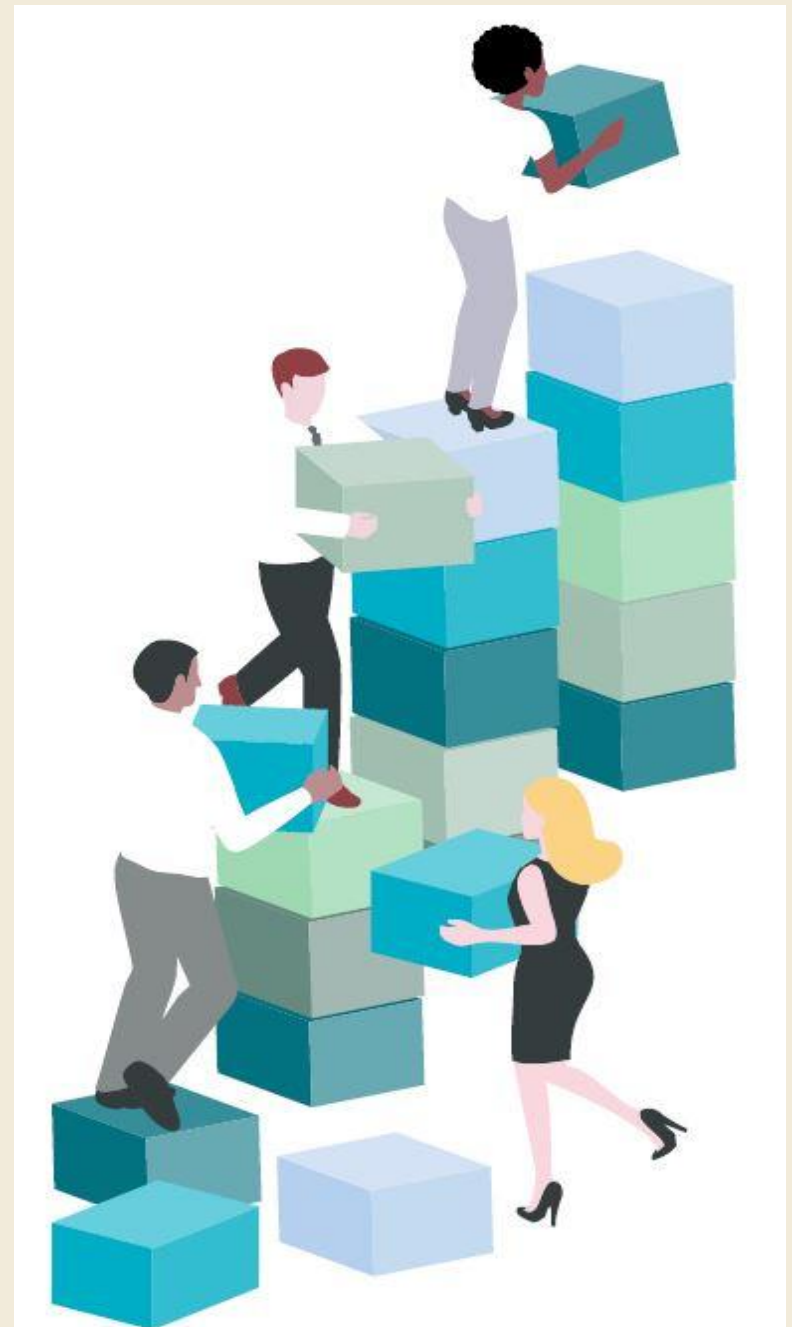
MOJO

Building Blocks

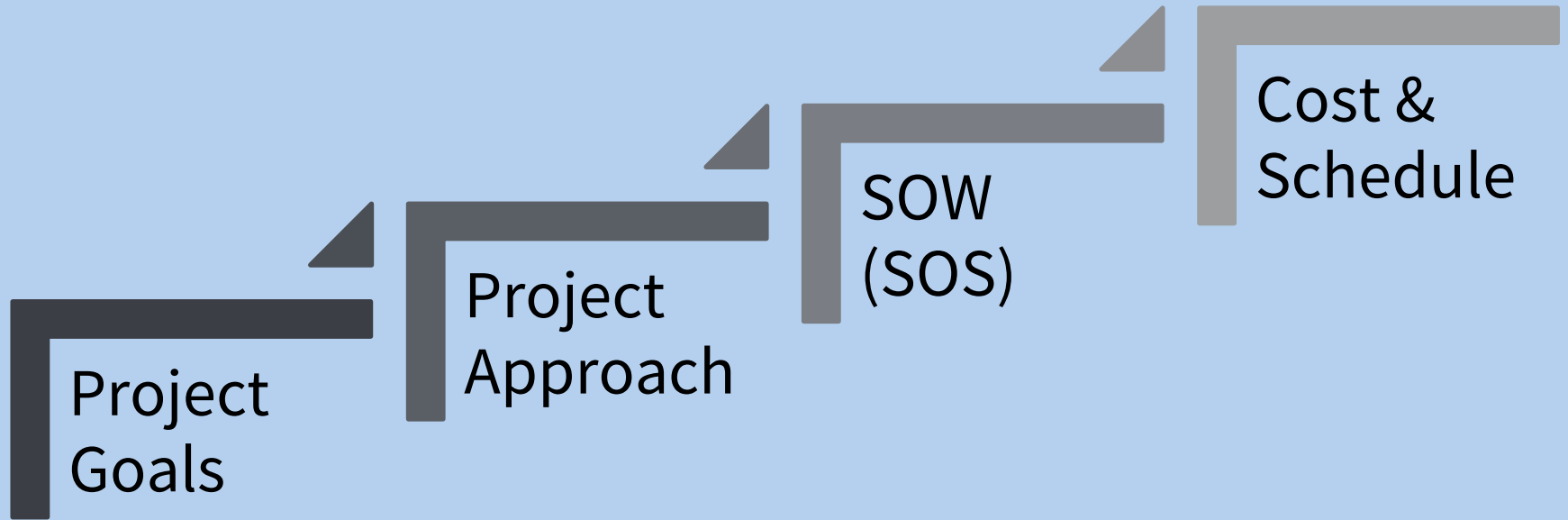
Proposal Scope

Project Scope

**Unknown
Scope**



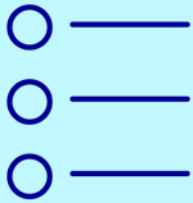
Define the Project Scope



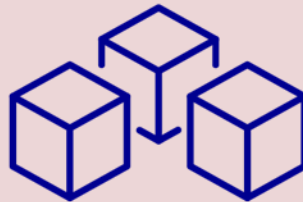
Understanding the Client's Needs

Proposal Cost Estimating Methods

Cost-based
Budgeting



Unit-price
Budgeting



Price-based
Budgeting



Your Proposal – What do you control?

- What is included in your basic fee?
- What requires an additional fee?
- What is excluded?
- What did you refuse to do?
- Identify assumptions in writing
- Who provides what?

- Resilient design?
- List all client deliverables
- List all firm deliverables
- Avoid vague language or vague tasks in SOW
- Confirm SOW (SOS) addresses all items in the RFP or work order

Your Project – Planning & Managing

Planning is Key

- Prepare a Project Management Plan
- Obtain written agreement with key project stakeholders on project objective, goals and outcomes
- Conduct internal & stakeholder project kick-off meeting
- Risk Management Plan

Manage Change

- Discuss change process – Kick-off
- Recognize & identify change
- Proactively communicate change
- Define impact of change
- Obtain approval for change
- Document change

One requirement of my project is to “define the project SOW,” now what do I do?

- Define client’s priorities/needs
- Define assumptions
- Obtain agreement with key project stakeholders on outcomes of this early stage of work
 - a decision
 - a study/report
 - an option(s)
 - project risks or constraints


- Obtain agreement on deliverable
 - Meeting (how many)
 - Memo (# pages)
 - Report (# pages)
 - Drawings (#)
- Confirm what you can control
 - define the fee and the schedule for this work, as well as the number of revisions



Fight before the Fight

4

The Fight before the Fight



**How have you
positioned your firm
if there is a problem?**

Don't be your own worst enemy

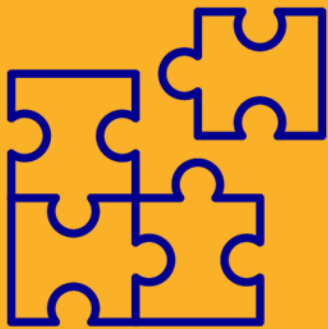
Negotiate
your
contract

Stick to the
scope

Keep it
professional

Fight now or fight later

Negotiate an appropriate contract



Prepare to
Problem Solve



Avoid
Dealbreakers



Clear Scope
of Work

Deal Maker

Stick to the contract SOW

AVOID

Amending contract simply by virtue of your conduct or actions after the contract is signed

INCLUDE

Contract clause that requires any amendments to the agreement to be in writing & signed by appropriate authorized parties

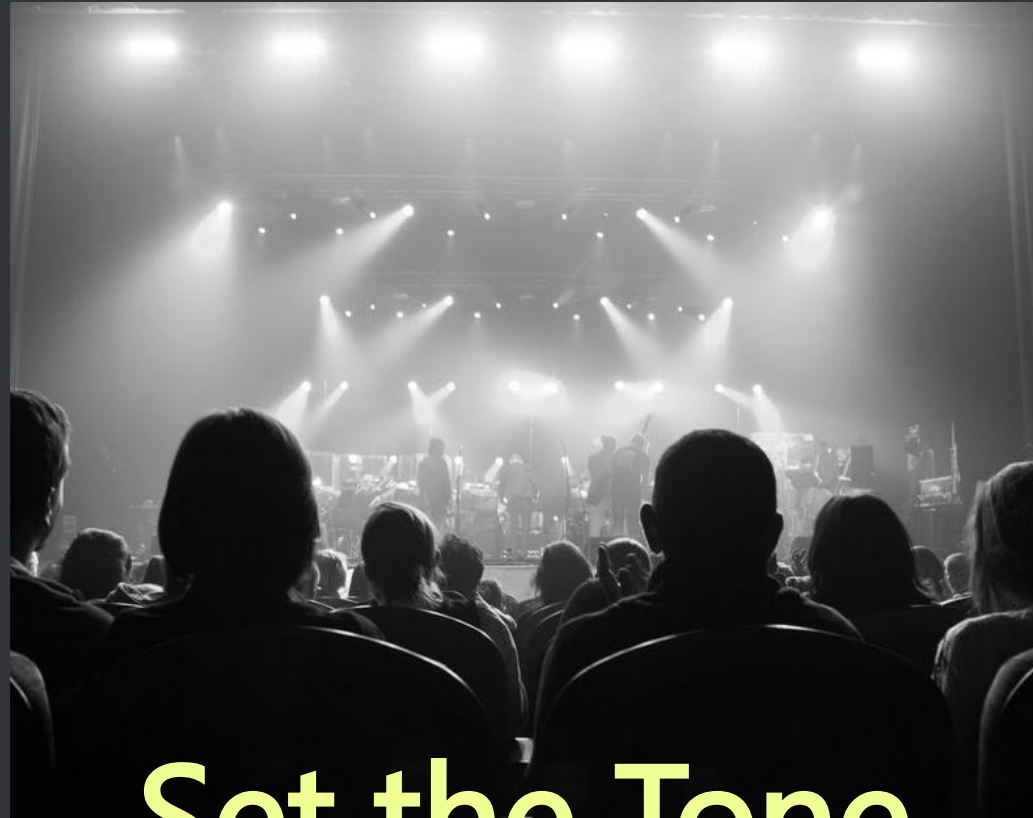
The glaring spotlight is unforgiving

Do not put yourself at a disadvantage

- Poorly worded, sloppy emails
- Inflammatory communication
- Dismissive behavior
- Lack of responsiveness

Evidence chain does not have to lead to the direct issue

- How will other people see your actions/behaviors?
- How will it influence their opinions?



Set the Tone

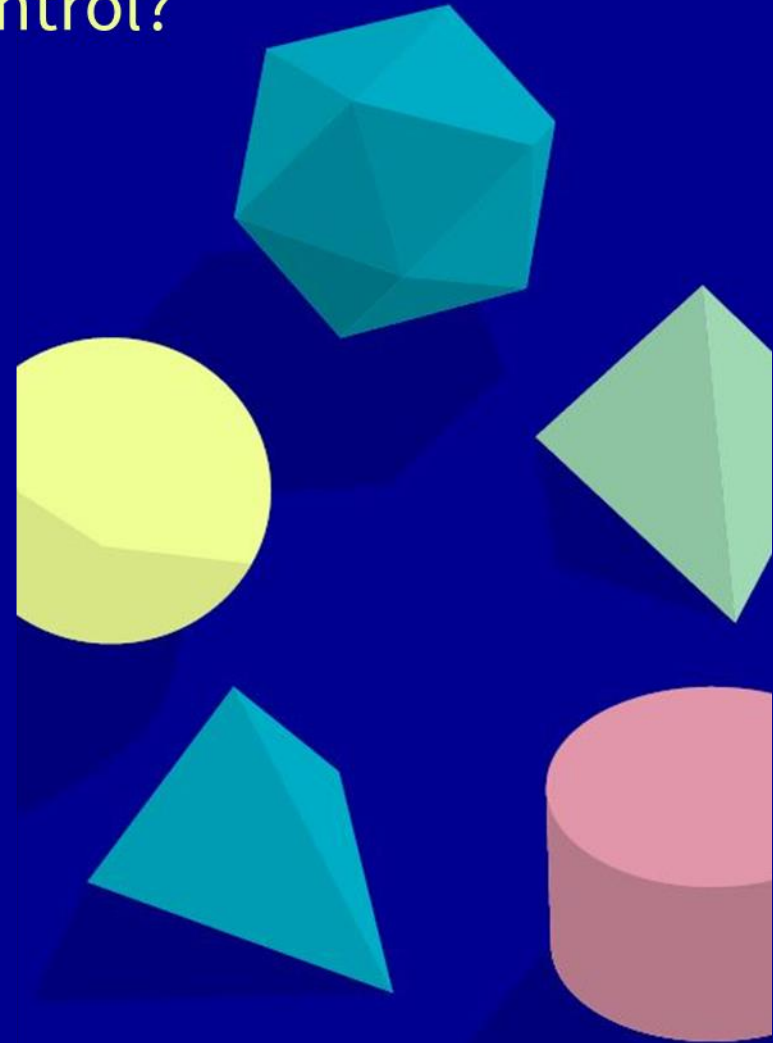


5 Summary

Unclear or inappropriate scope of services

What can you control?

1. Understand your client's needs
2. Identify & define the project goals
3. Use multiple cost-estimating methods
4. Project planning is key
5. Manage change
6. Define constraints when hired to define the SOW
7. Be well-positioned to fight a claim





Questions?



Thank you