



X⁺ Insurance

Recent Trends

Evolving Standards, Best Practices, and What's Around the Corner

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Program Objectives

(1.0 AIA LU/CEU)

1. Attendees will gain a deeper understanding of current claims trends and the forces that are driving higher severity events, thereby bringing awareness to claim avoidance and mitigation.
2. At the end of this session, attendees will better appreciate the dynamic and shifting nature of the standard of care that governs their practice and how failing to keep up with changes from a national to local level can increase liability exposures.
3. Participants will learn about trends in higher severity claims and the potential pitfalls of artificial intelligence in a way that will drive additional risk management and situational awareness at the firm level.
4. This program will provide participants with the skills to recognize and evaluate potential liability risks at an early stage allowing for more opportunities to effectively manage risk.

Agenda

1. Current Claim Trends for Designers and Projects
2. Evolving Standard of Care
3. Best Practices: Non-Technical Risk Drivers
4. What's Next? Is Already Here

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Current Claim Trends for Designers and Projects

Design Professional Top 10 Trends

1 ECONOMY

Macro-economic uncertainty, inflation, interest rates, firms expense management.

2 TALENT

Design and construction firms continue to report labor shortages.

3 M&A

Continued M&A activity. Alternate funding continues to enter space. Ownership transition.

4 CLAIMS TRENDING

Technical issues continue to be a key driver. Structural, mechanical, and construction issues.

5 RISK MANAGEMENT

Firms' needs for risk management support is increasing but resources are shrinking.

6 SCOPE OF SERVICES

Expanding technical expertise at firms including software, analytics, AI expertise.

7 CONSTRUCTION

Contractors influence within space continues to increase. Will progressive D/B give firms equal footing?

8 CYBER

Design firms at risk throughout the construction process. The percentage of firms with coverage appears to be low.

9 CLIMATE

Sustainable design, adaptive re-use, energy, materials.

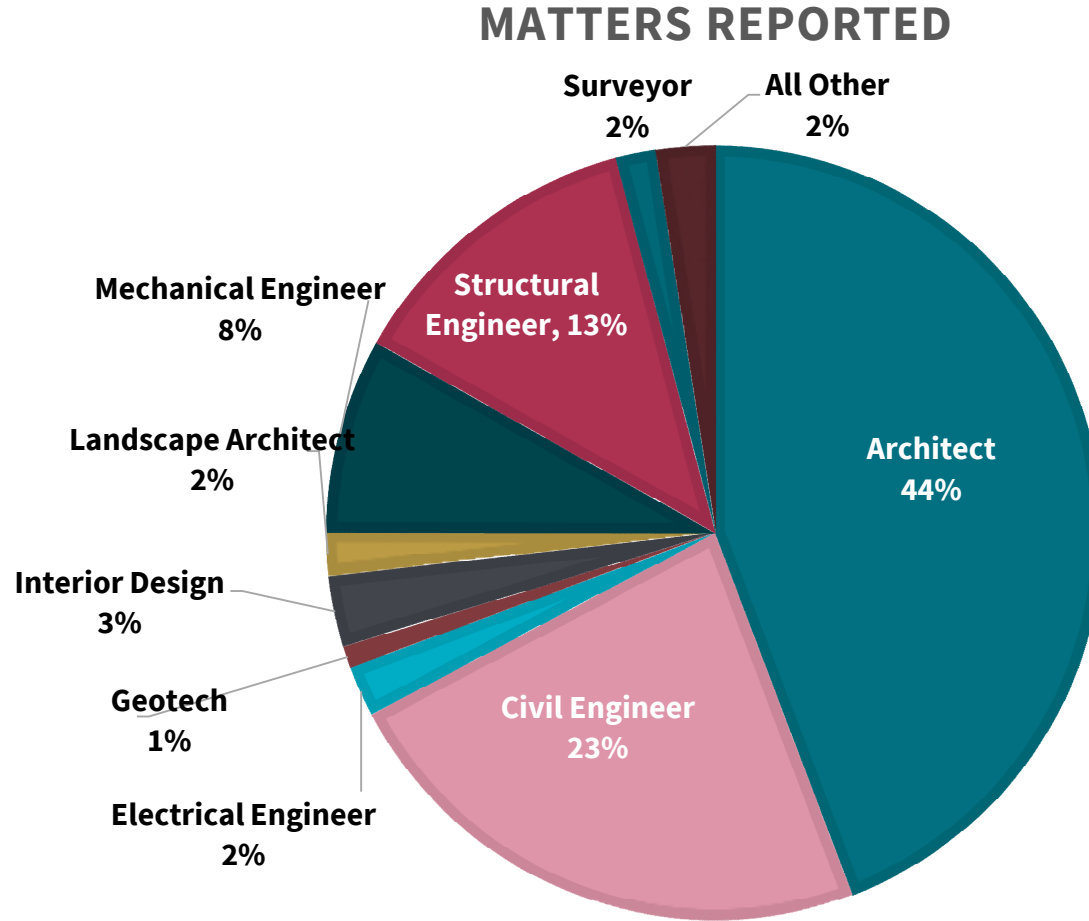
10 URBAN DENSIFICATION

Residential migration, need for affordable housing, rising claims in sector in near term.



New Matters Reported by Discipline

US 2024



Design Claim Trends

What we have been seeing ...



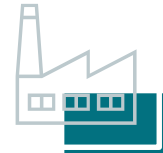
Residential

- Still up across the country but number of new matters is gradually flattening
- Foundation, water intrusion issues
- Condo / Apartments - more in the Western Region
- Wealthy custom homeowners



Infrastructure

- Overall increased volume across the country: roads, wastewater/pump plants, other basic infrastructure
- Failure of the project components
- Improper operation and/or maintenance
- Project Delays



General Building

- Slight uptick in public buildings, hotels, restaurants, community centers
- Noise transmission, HVAC, water intrusion



College/University

- Post-construction bodily injury
- Mechanical, water intrusion issues
- Downtick in public secondary schools

Contract Issues

What We've Been Seeing

- Flow down provisions – Bound by Prime Agreement
 - Arbitration
 - Onerous indemnity
 - Consequential damages
 - One-sided termination clauses
- Newer generation of leadership lacking historical claim knowledge
- Removing employee from project and impact on other projects
- Payment clauses waiving all claims
- Different Limitations of Liability



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Evolving Standard of Care

UT-JURY-CV-501

The Utah Standard of Care for design professionals is the degree of care, skill, and diligence that a professional reasonably should use in the performance of services. This standard applies to any professional who provides design services, including architects, engineers, landscape architects, interior designers, surveyors, and other design professionals. Under the Utah Standard of Care, a professional must use **the same degree of care, skill, and diligence as a reasonably careful professional in the same discipline would use under similar circumstances.** This means that professionals are expected to be knowledgeable in their respective fields **and to use the latest techniques and practices in their work.** A professional must be aware of the risks associated with their work and take reasonable steps to reduce these risks. The Utah Standard of Care also requires that a professional use reasonable judgment and judgment-making skills in the performance of their services. **This means that a professional must consider the interests of their clients and use reasonable discretion in making decisions.**

How should your professional services be judged?

Common law insurable standard of care

- **In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.**

Problematic elevated standard of care

- Best
- Best in class
- Highest standards
- Cutting edge
- Nationally recognized design
- Award winning
- Legacy project
- Free from error or defect
- First class design
- Guaranteed project performance level
- Putting the client's interest above all else

Factors impacting the standard of care

- More extreme weather events
- High damage cases
- Larger projects



Designers' responsibility for constantly evolving standard of care

- Prevailing scientific understanding and data
- Media reports and experience of you and your peers
- Rapidly evolving and updated codes, regulations, laws, and licensing requirements
- Industry group standards
- Code compliance may not satisfy the standard of care
- Program requirements might not reflect the standard of care and might not be correct



What would a reasonable designer do? Communicate!

Manage Client Expectations

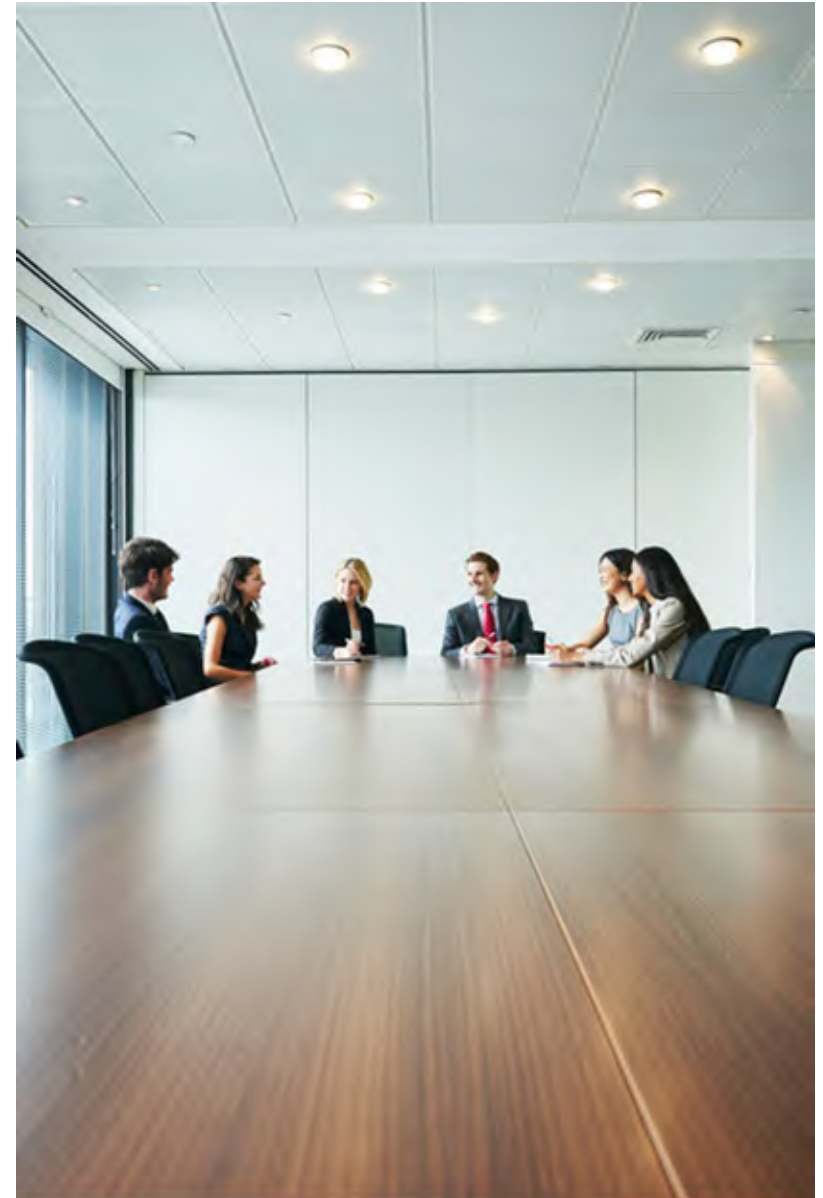
- Warn the client that the area is known for expansive soils
- Tell the client that the location is high in moisture, so extra measures need to be taken which will increase costs
- Tell the client that the site will require an ADA or accessibility specialist
- Convey to your client that designing to a 100-year flood event might not be enough to prevent significant property damage resulting in business interruption
- Be on the same page with your client



Document! Document! Document!

Biggest key to communicating expectations

- Alternative design proposals and recommendations
 - RFP, proposal and discussions re: program requirements
- Deliver the facts re: budget, schedule and quality
- Rephrase the conversation
 - 1,000-year event versus 0.001% probability
- Issue spot – know what you don't know
- Protect yourself contractually



Best Practices: 6 Non-Technical Risk Drivers



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Top non-technical Risk Drivers

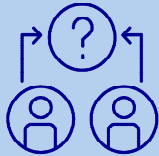
 **Proprietary Research**



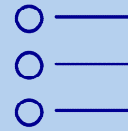
1. Communication



4. Construction Phase Services



2. Client Selection



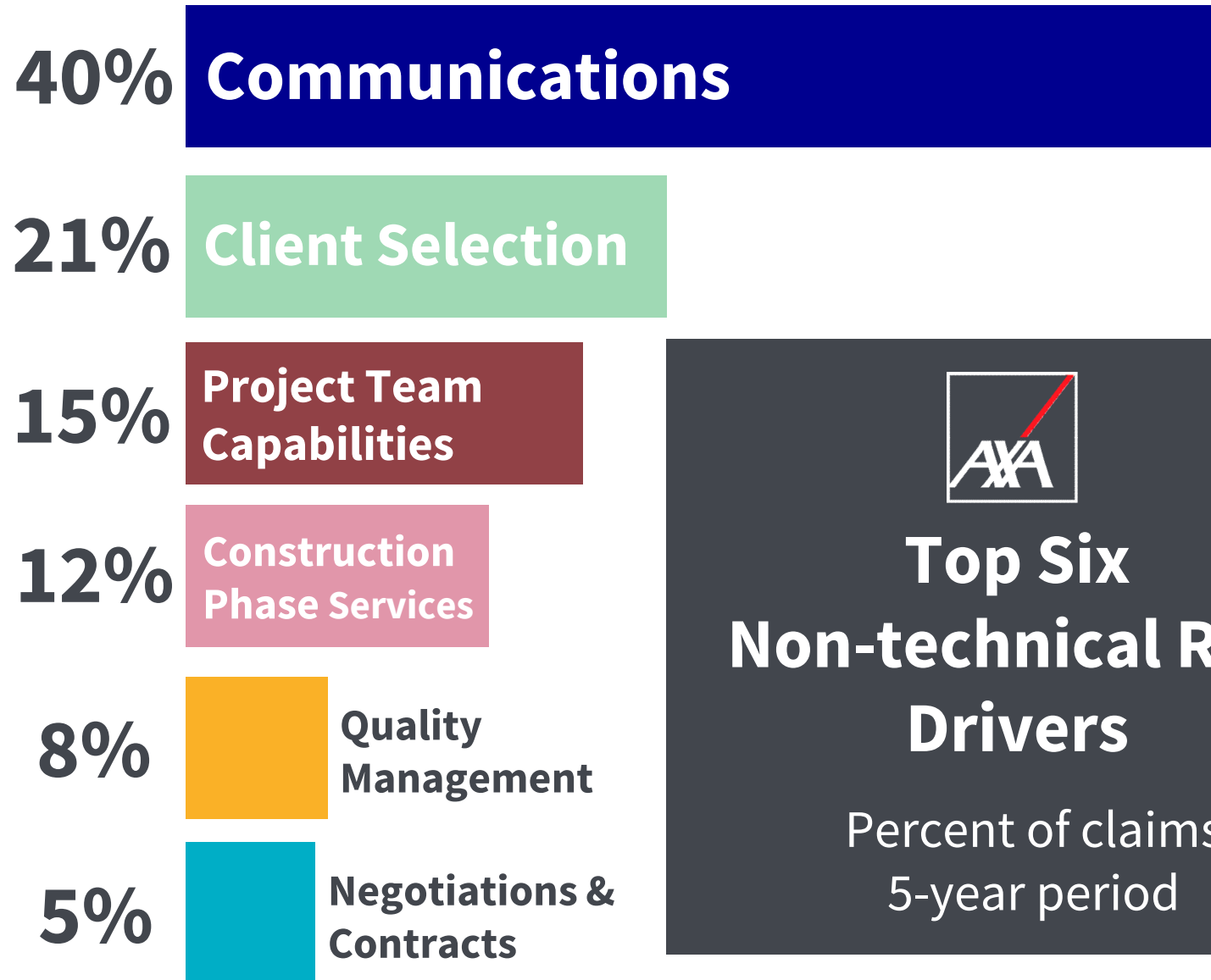
5. Quality Management



3. Project Team Capabilities



6. Negotiations & Contracts



**Top Six
Non-technical Risk
Drivers**

Percent of claims
5-year period



What's Coming is Already Here!

Claims cost more

- Severity up 25% over the last four years
- Large firms average \$150K per claim excess of deductible obligations
 - 40% increase since 2015
- Material cost escalation
- Increase in salaries and labor costs
- Legal costs increasing
- Increased insurance premiums
- Inflation



More Unfavorable Verdicts

- Bigger Projects = Bigger Claims
 - Consequential damages - delay and loss of use
- Nuclear verdicts
 - Trend in jurors distrusting or hostile to corporate defendants – seeking profits over safety
 - Unsavory evidence unrelated to liability “demonstrate bad actors”; e.g., inappropriate emails, chats or text messages
 - People’s hardship and victimhood lead to desire to punish corporate defendants
 - People de-sensitized to large numbers
- Don’t be last person standing



Cybersecurity

- Misdirected money
- Ransomware
- General systems breach
- Identifying vulnerabilities



Artificial Intelligence

- New possibilities for design professionals
- Risks
 - A.I. recorded meetings
- Solutions



Changes in government policies

- Tariffs
 - Increase construction costs
 - Delays in supply chains and project completion
- Executive Orders
 - EO 11466 - Dismantling DEI could impact DBE/MBE/WBE businesses
 - Jeopardize certifications
 - Might affect bids and existing projects
- What Can You Do?
 - Diversify revenue streams
 - Build stronger relationships with primes



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