


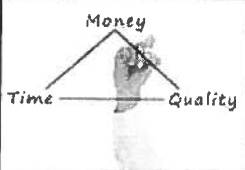
PROFESSIONALS AND THE LAW

The two things about the law.

- 1 The law protects the reasonable expectations of the parties
- 2 You are responsible for the foreseeable costs of your wrongful conduct

The two things about a surveying practice

- 1 It's all about trade-offs
- 2 The trade-offs are all about money, time, and quality.



Risky Business

TORT AND CONTRACT LAW

- Basic protection of negligence standard
 - Legal framework of protection
 - Based on standard of care
- Freedom to assume contractual obligations
 - Changing or creating rights
 - Exceeding normal legal liability



Risky Business

NEGLIGENCE AND LIABILITY

- Was there a breach of a duty?
 - What duty existed?
 - Was the standard of care met?
- If there was a breach of a duty, did it cause damage?
 - Can the damage be traced to the breach?
 - Could such damage have been expected?



Risky Business

SOURCES OF DUTY

- Common Law
What is expected of you as a professional?
- Statutory Law
What does the law require of you?
- Contract Law
What did you promise this client?



Risky Business

DEFINING LEVEL OF PERFORMANCE

- Standard of Care Issues
 - Is standard changed in a rational way?
 - Is professional obligation being replaced by a guarantee of service or result?
- Unfulfillable Expectations
 - Does client understand your need to use professional judgment?
 - Does client expect perfection?



Risky Business

BREACH OF CONTRACT

- Did a valid contract exist?
 - Could the parties enter into a contract?
 - Was there an agreement?
 - Was there consideration?
- If a contract existed, was it breached?
 - Was there a failure to substantially perform as promised?
 - If not performed in substantial compliance with the contract, what is an adequate remedy?



Risky Business

BREACH OF WARRANTY

- Was a promise made?
 - About time, cost, result?
 - Related to the services?
- Was there a right to rely on it?
- Did the party actually rely on it?
- Did the promise prove to be false?
- What harm did reliance cause?
- What remedy is adequate?



Risky Business

EXTENT OF EXPOSURE

- Who can recover?
 - Negligence: anyone harmed
 - Contract: anyone in privity
 - Warranty: anyone with reliance
- How much can they recover?
 - Direct and consequential damages
 - Insurance, business and personal assets
- How long before exposure ends?
 - Limited by statutes of repose and limitations
 - By contract risk can be unlimited



Risky Business

LEGAL LIABILITY SUMMARY

Liability may follow when four elements are present:

- Duty/Obligation
- Breach
- Causation
- Damages



Risky Business

CLAIMS AND COVERAGE



WHAT IS A CLAIM?

“A demand for money or services, naming you and alleging a wrongful act or pollution incident.”

CNA Professional Liability & Pollution Incident Liability Insurance Policy



Risky Business

PROFESSIONAL LIABILITY INSURANCE

What does it cover?

"...services that you perform for others on behalf of a named insured in your practice as an architect, engineer, land surveyor, landscape architect, construction manager, scientist or technical consultant."

CNA Professional Liability & Pollution Incident Liability Insurance Policy



Risky Business

PROFESSIONAL LIABILITY INSURANCE

Key Elements of Coverage

INDEMNITY: "(Payment of) all amounts in excess of the deductible up to the limit of liability that you become legally obligated to pay as a result of a wrongful act; or a pollution incident arising out of your activities..."



Risky Business

PROFESSIONAL LIABILITY INSURANCE

Key Elements of Coverage

DEFENSE: "(Defense of) any claim against you seeking amounts that are payable under the terms of this policy, even if any of the allegations of the claim are groundless, false or fraudulent."



Risky Business

WHY MANAGE RISK?

- Avoid claims and disputes
- Increase profitability
- Improve business relationships
- Satisfy expectations



Risky Business

THE RESULTS OF CLAIMS

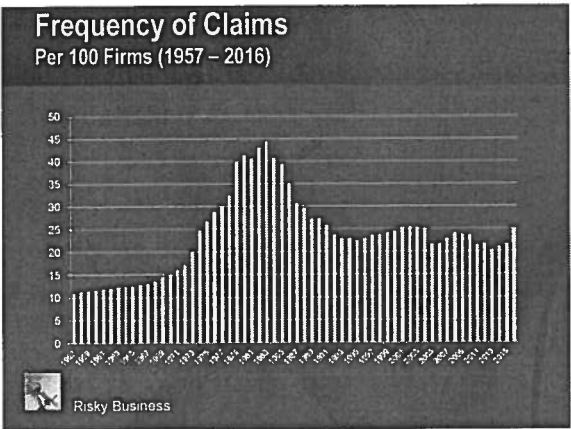
- Uninsured losses
- Lost productivity
- Adversarial relationships
- Damage to your reputation

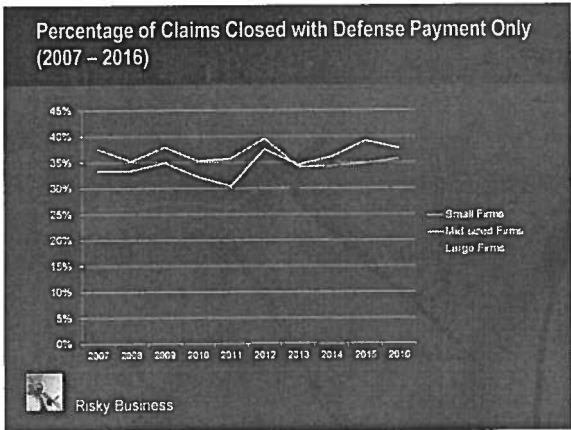


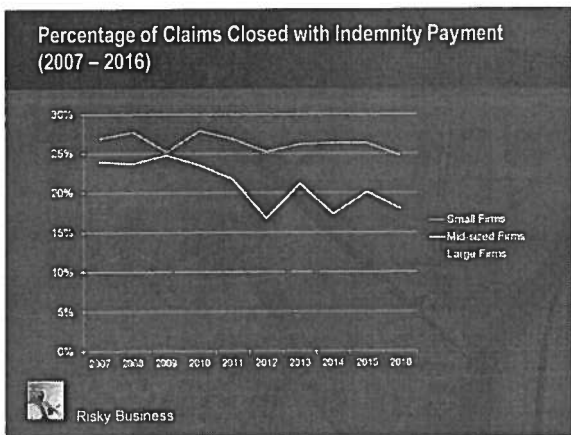
Risky Business

CLAIM TRENDS

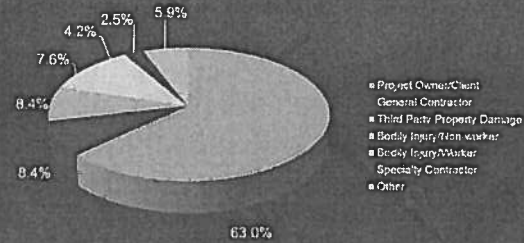








The Client: Frequency of Claims by Claimant ID (2007 – 2016)



Risky Business

EXPOSURE LEVELS AND CLAIM STUDIES

THREE GENERAL EXPOSURE LEVELS

Category 1 — This represents the lowest level of exposure for land surveyors. The claims from services in this category have historically resulted in lower severity, lower frequency or both.

- Boundary and Title Surveys
- Photogrammetric Surveys
- Geodetic or Control Surveys
- Mapping or Cartography
- Route Surveys for Engineering Projects



Risky Business

THREE GENERAL EXPOSURE LEVELS

Category 2 — From an insurance company's point of view these services have resulted in, and will potentially result in, somewhat higher frequency and severity.

- Subdivisions
- Topographic Surveys
- Construction Stakeout
- Hydrographic Surveys
- Site Plans



Risky Business

THREE GENERAL EXPOSURE LEVELS

Category 3 — At this level, the services are considered to be general civil engineering services and have the highest exposure.

- Plans or Specifications for Highways
- Natural Drainage Systems
- Utilities or Buildings



Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

- Staking for two new buildings incorrectly placed resulting in replacement of foundation
- Architect's drawings were ambiguous and incomplete with only two reference points
- Third point provided by telephone call but never documented or transferred to field.
- Claim for \$656,000



Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

Result:

- Claim filed for both direct costs and delays and extras expenses.
- Surveyor had no documentation of third point.
- Prudent surveyor would not have proceeded without documented information.
- Claim settled for \$362,500 after \$25,000 in defense costs.



Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

- No point of origin to lay out school.
- Architect provided information but later changed point of origin through addendum.
- School built in wrong location necessitating land purchase and road relocation.
- Allegation of failure to adhere to contract documents and losses of \$350,000.



Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

Result:

- Surveyor clearly liable for not identifying change in point of origin in addendum.
- Architect held responsible for not clearly identifying change or communicating change during process.
- Case settled in mediation for \$235,000 with legal expenses exceeding \$85,000.



Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

Situation:

- Surveying error resulted in misplacement of foundation.
- Contractor did not call for timely spot survey as required.
- Partially built structure demolished.
- Client claimed \$2 million in direct and consequential damages from both surveyor and contractor.



Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

Result:

- Admitted liability on part of surveyor.
- Contractor's delay in notifying surveyor to perform a spot survey found to add significantly to costs of demolition and reconstruction.
- Indemnity payment by surveyor of \$76,000 and \$7,000 in legal costs.



Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

Situation:

- Scope included subdivision plat and site improvement plans.
- FEMA flood plain map was incorrect.
- Houses located in flood plain.
- Owners claimed \$1.9 million in direct damages from flooding and diminished value of property because of flood plain



location.
Risky Business

CLAIMS STUDIES: SURVEYING SERVICES

Result:

- Although actions of surveyor might have been defensible, question of meeting standard of care would have required costly litigation.
- Initial defense costs were in excess of \$150,000.
- Decision made to settle with an indemnity payment of \$438,000.



Risky Business

RISK MANAGEMENT

- Know and protect your status as a professional.
- Recognize and manage risk.
- Understand that your assets are always at risk; insurance is not the only answer.
- Read and negotiate contracts carefully.
- Modify practice management to meet contractual obligations.
- Communicate and document.



Risky Business

QUESTIONS
