



## **Introduction**

The economic climate has dramatically changed the landscape for many A/E firms. Industry surveys indicate 92% of all design firms have been negatively impacted by the economic downturn. Firms have been forced to reduce overhead and implement cost-cutting measures including reduction in staff, reduced workweeks, changes in business practices, operations, explore new markets and service segments in an effort to stay afloat and increase revenue. All realities in today's economic environment, however in many cases is altering the risk characteristics of the firm. Many firms are unknowing implementing change that is increasing their risk and liability exposures. When making business decisions, risk management needs to be at the core of those decisions. Firms that are not considering the risk verse rewards and implementing effective strategies for mitigating exposures are increasing their chance of liability claims. Adding fuel to this fire, during slow economic conditions, claims and litigation are on the rise due to alleged negligence, error and omissions and clamaints trying to recoup losses.

## **Survey Methodology**

SmartRisk LLC, a risk and performance management-consulting firm conducted a survey of 20 A/E law firms across the United States that specialize in design and construction litigation. These law firms are on the front-lines for handling A/E legal disputes and an excellent resource for obtaining valuable insights on claim trends, legal developments and challenges for the industry. With this important information, design professionals, agents, brokers and insurance carriers are in a better position in making informed decisions for mitigating risk and liability exposures.

The survey results provide regional perspectives as well as a national outlook of claim trends and litigation developments. Validation of this information is demonstrated with 630 years of combined of experience and 292 attorneys representing the law firms nationally.

## **Primary Survey Focus**

- Claim Trends
- Sources of Claims
- Unique Trends Driven by the Economic Climate
- Court Cases and Legal Developments
- Green, IPD, Suspended/Abandoned Projects
- Loss Prevention Recommendations

### Acknowledgements & Participants

SmartRisk would like to recognize and thank the attorneys and their firms for participating in the survey. The following 20 law firms and attorneys are in alphabetical and recognized leaders in handling A/E litigation.

1. Clausen Miller, Chicago, IL., **James M. Hoey**
2. Collins Collins Muir + Stewart, LLP, South Pasadena, Ca., **Brian K. Stewart**
3. Daniels Kashtan Downs Robertson and McGirney, Miami, FL., **Michael Kashtan**
4. Donovan Hatem LLP, Boston, MA., **Kenneth B. Walton**
5. Fisk & Fielder, P.C., Dallas, TX., **Hollye C. Fisk**
6. Folk & Associates, P.C., Phoenix, AZ., **P. Douglas Folk**
7. Foran Glennon Palandech & Ponzi PC, Chicago, ILL., **Douglas Palandech**
8. Gordon & Rees LLP, San Francisco, CA., **Dion Cominos**
9. Greve Clifford Wengel & Paras, LLP, Sacramento, CA., **Gary L. Vinson**
10. Hall & Evans, LLC, Denver, CO., **Benton J. Barton**
11. Hinckley Allen Synder LLP, Hartford, CT., **Timothy T Corey**
12. Jones Waldo Holbrook & McDonough, PC, Salt Lake City, UT., **Craig R. Mariger**
13. Lane Powell PC, Settle, WA., **Stanton Phillip Beck**
14. Lewis Brisbois Bisgaard & Smith LLP, New York, NY., **David M. Pollack**
15. Lewis, King, Krieg & Waldrop, P.C., Nashville, TN., **David N. Garst**
16. Morris Polich & Purdy LLP, Las Vegas, NV., **Nicholas M. Wieczorek**
17. Plunkett Cooney, Bloomfield Hills, MI., **Scott H. Sirich**
18. Saul Ewing LLP, Washington, D.C., **Thomas Schaufelberger**
19. Siesennop & Sullivan, Milwaukee, WI., **W. Wayne Siesennop**
20. Wilson Elser Moskowitz Edelman & Dicker LLP, White Plains, NY., **Thomas M. Gambardella**

## Key Survey Findings

- 85%: A/E firms taking on more risk.
- 80%: Seen unique claims or claimants driven by economic conditions
- 80%: Changes in the frequency and/or severity of claims
- 70%: Claims brought within two years of project completion
- 80%: Increase in contractor failures causing A/E claims
- 75%: Seen or anticipate green/sustainable claims

## Disciplines with Highest Frequency of Claims:

- Architects: 29%
- Structural: 24%
- Civil: 16%

## Projects with Highest Frequency of Claims:

- Condominiums: 28%
- Residential Sub-Divisions: 19%
- Public Projects: 19%
- Schools: 13%

## When Claims Are Brought Against A/E's:

- Within two years following completion: 70%
- Prior to completion: 17%
- One year after completion: 33%
- Two years after completion: 17%

### **Top Sources of Claims**

- 1) Project delays, low bids, budgetary problems and contractor failures.
- 2) Design flaws, owner experience and unrealistic expectations.
- 3) Inadequate contract language, insufficient scope and fees.

## SmartRisk A/E Law Firm Survey Report

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### General Information

#### Question 1 - Contact Information

Contact Person	James M. Hoey	Brian K. Stewart, Esq.	Michael Kashtan	Kenneth B. Walton	Holly C. Fisk	P. Douglas Folk	Douglas Palandech	Dion Cominos	Gary L. Vinson	Benton J. Barton
Mailing Address	10 South LaSalle Street	1100 El Centro St. 91030	3300 Ponce de Leon Blvd	Two Seaport Lane	2710 N. Stemmons Frwy., 400 North Tower	3636 N. Central Avenue, Suite 600	222 N. LaSalle St.	275 Battery Street 20th Floor	garyvinson@greveclifford.com	1125 Seventeenth Street, Suite 600
City/State/Zip	Chicago, Illinois 60603	South Pasadena, CA 91030	Miami/Florida/33134	Boston, MA 02210	Dallas, TX 75207	Phoenix, AZ 85012	Chicago, Illinois 60601	San Francisco, CA 94111	Sacramento, CA 95833	Denver/CO/80108
Phone	(312) 855-1010	626-243-1100 X. 131	305-448-7988	617-406-4524	214-638-3744	602-222-4400	312 863 5000	415 9865900	916 669-3912	(303) 628-3403
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Website	www.clausen.com	www.ccmslaw.com	www.dkdr.com	donovanhatem.com	www.fiskfielder.com	www.folklaw.com	www.fgpp.com	www.gordonrees.com	greveclifford.com	www.hallevans.com

#### Question 2 - Number of years your law firm has been specialized in A/E litigation?

**Summary: A total of 630 years of experience for all law firms.**

	35	25	25	25 years (this Firm and predecessor Firm)	22	More than 20 years	Since its inception, 2001	35	30	30
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#### Question 3 - Number of attorneys in your firm specialized in A/E litigation?

**Summary: A total of 292 attorneys for all firms specializing in A/E litigation.**

	10	25	20	50	3	5	Five	22	3	7
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#### Question 4 - Identify the insurance carriers you represent as panel counsel:

Confidential	We work with all the carriers	Lexington James River Zurich Shand CNA	Beazley, Lexington, CNA, XLDP, Travelers and others	ACE USA AIG ARGO Arrowpoint Beazley Group CNA Everest Great American Custom Insurance Hudson Insurance Group Lexington Liberty International Navigators Specialty Risk Services Travelers XL Design Professional Zurich	We are panel or approved counsel for all major insurers insuring design professionals in the Southwest.	Beazley, RLI, Liberty Int'l, Zurich, XL Design Professionals, Phelps Dunbar, Insight, Hudson Ins. Co.	XL, Zurich, Lexington, CNA, Hudson, Aspen, Everest, Argo, Ace, Beazley, Catlin, Liberty, Markel, QBE, St. Pauls/Travelers, and Terra	XLDP, CNA, Lexington, Hudson, Travelers, Zurich American, RISK	Lexington Insurance Company; Beazley; Great American Custom; XLDP; Markel (Evanston Insurance Company)
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### General Information

#### Question 1 - Contact Information

Contact Person	Timothy T Corey	Craig R. Mariger	Stanton Phillip Beck	David M. Pollack	David N. Garst	Nicholas M. Wiecezorek	Scott H. Sirich	Thomas Schaufelberger	W. Wayne Siesennop	Thomas M. Gambardella
Mailing Address	20 Church Street	170 South Main Street, Suite 1500	1420 Fifth Avenue, Suite 4100	199 Water Street	424 Church Street, Suite 2500	3883 Howard Hughes Parkway, Suite 560	38505 Woodward Ave., Ste. 2000	26000 Virginia Ave., # 1000	200 N. Jefferson St.	3 Gannett Drive
City/State/Zip	Hartford CT 06103-1221	Salt Lake City, Utah 84101	Seattle/WA/98101	New York, New York 10038	Nashville, Tennessee 37219	Las Vegas, Nevada 89169	Bloomfield Hills, Michigan 48304	Washington D. C. 20037	Milwaukee/WI/53202	White Plains, New York 10604
Phone	860-331-2720	801-521-3200	(206) 223-7000	212-232-1419	(615) 259-1366	702-862-8300	(248) 594-8228	202.295.6609	414 2231710	914 323-7000
Fax		801-328-0537	(206) 223-7107	212-232-1399	(615) 259-1389	702-862-8400	(248) 902-4040	202.295.6709		914 323-7001
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Website	www.haslaw.com	www.joneswaldo.com	lanepowell.com	www.lbbslaw.com	www.lewisking.com	www.mpplaw.com	http://www.plunkettcooney.com/	www.saul.com	none	wilsonelser.com

#### Question 2 - Number of years your law firm has been specialized in A/E litigation?

**Summary: A total of 630 years of experience for all law firms.**

	30	More than 35 years	Over 110 years	15	30	40	50	5	W. Siesennop has been specializing 29 years in A/E	30 years
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#### Question 3 - Number of attorneys in your firm specialized in A/E litigation?

**Summary: A total of 292 attorneys for all firms specializing in A/E litigation.**

	15	3	More than 12	25	10	25	3	3	3	15 New York and 40 nationwide
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#### Question 4 - Identify the insurance carriers you represent as panel counsel:

	Beazley Selective Travelers Great American The Hartford	XL Design Professional Beazley Insurance Hudson Insurance Chartis Insurance (Lexington Insurance) RAMCO Terra Insurance Travelers Insurance Evanston Insurance Argo Pro	All	Lexington, Beazley, Zurich, Hudson, RLI, Arrowpoint	XL Design Professional; CNA Pro; Travelers; Liberty International Underwriters; Zurich NA; Chartis; Beazley; ADI/Hudson; Everest; Arrowpoint Capital;	XLDP; CNA; Terra; Lexington; Hudson; Everest; Chartis; Travelers; PIA; Hiscox	Beazley/Certain Underwriters at Lloyds London, CNA Pro, Lexington AIG, ACE USA, Navigant, CNA Pro, Hudson Insurance Group, XL Design	Beazley		Travelers, Houston Casualty, Lexington, Beazley, ACE, One Beacon and Kemper
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### Question 5 - Provide additional information you would like about your law firm.

	Please visit our website	We are a boutique mid-size firm that engages in the vigorous representation of the design professional in all aspects of their professional practice.		We are a highly specialized a/e Firm with a number of Partners with significant trial experience	2 registered architects/attorneys 1 registered professional engineer/attorney	Our firm grew as a construction law practice first, followed by our insurance defense practice. Our knowledge of design principles and best practices, coupled with our understanding of construction means, methods and materials performance enables us to quickly and accurately assess claims and disputes. This knowledge base also helps us to better understand and direct the work of expert witnesses, and to explain complicated technical issues to judges, juries, and other decision-makers.	A mid-sized litigation defense firm with a vibrant subrogation practice, practicing in Chicago and S. Cal.	We have one of the largest A&E practices in California as well as in many of our 18 nationwide offices. See <a href="http://www.gordonrees.com">www.gordonrees.com</a> for further detail.		Founded in 1932 in Denver, HALL & EVANS is a regional litigation law firm. We are nationally recognized for our experienced trial and appellate lawyers. Our attorneys have historically tried more lawsuits and handled more appeals than any other firm in Colorado. We have a robust practice defending architects and engineers, and we have led the way in developing new and favorable case law for design professionals and their insurers.
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### Question 5 - Provide additional information you would like about your law firm.

	A great business and construction law firm	We are a full service, regional law firm with branch offices in Park City, Utah, St. George, Utah and Mesquite, Nevada. We provide A/E defense in Utah, Idaho, Nevada and Wyoming.	Oldest firm in the Northwest. We represent more A/E firms than all of the rest combined.	LBBS has over 700 lawyers with 20 offices in 10 states. We are equipped to represent our A&E clients in a broad range of areas beyond A&E defense.	Lewis, King, Krieg & Waldrop, P.C. is a litigation firm of about 60 lawyers located in Nashville and Knoxville, Tennessee. The firm handles professional liability, construction defect, product liability, general casualty, and commercial litigation across Tennessee and regionally.	MPP is a multi-faceted law firm with 40 years of experience representing design professionals. Our partners (some of whom are licensed architects and engineers) are active in professional organizations such as ACEC and AIA.		Handle complex matters only		Wilson Elser has 750 attorneys in 21 offices nationwide handling a wide variety of professional liability matters.
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## Claim Trends and Litigation Information

### Question 6 - In the past few years, have you seen claims and litigation increase, decrease or stay the same for A/E's?

**Summary: 45% indicated litigation is the same, however expect increases in the near future, 40% stated increases, 15% have seen decreases.**

Increase/Decrease/Stay the same	Increase	Stay the same	Stay the same	Stay the same	Stay the same	Increase	Stay the same	Increase	Decrease	Increase
Please explain	The increase has been slight to moderate.	We thought there would be a large uptick in claims activity with the recent downturn and it has actually been pretty flat. There may be some slight increase in numbers but nothing like what was expected. There also seems to be some slight increase in severity of the claims but also some opportunities to resolve some matters quicker and at a lower cost we believe as a direct result of the dire financial circumstances of some claimants.		Even though the economy has experienced a downturn, my experience has been that the pace of claims has been steady with no significant increase or decrease.		Over the last ten years, the frequency of claims has increased, most notably with residential construction defect claims involving condominiums and subdivisions. While the volume of those claims has tapered off recently, other types of professional liability claims continue to arise following the boom years of the late 1990's and early 2000's. Since the recession took hold in 2007, we have also seen an increase in collection actions and lien foreclosures by our A/E and contractor clients.	The claim is about the same, but w/ more litigation over collection issues.	The poor economy has largely driven this trend. More deals have gone bad, less credit/financing available, more at stake, more disputes and owners/contractors looking for additional targets.	Increased in 2007 - 8. Decreased in 2009	Despite efforts by the Colorado Legislature to curtail construction and design defect litigation in the early 2000s, claimants and claimants' attorneys have continued to pursue claims and file lawsuits in increasing numbers. Generally, statutes and court decisions have come down favorably for design professionals. However, at the same time, claimants' attorneys have found new and creative ways to threaten exposure. Additionally, Colorado's statutes of limitations and repose are watered down, which allows some claims to be brought many years after completion of a project.

# SmartRisk A/E Law Firm Survey Report

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<b>Summary: 45% indicated litigation is the same, however expect increases in the near future, 40% stated increases, 15% have seen decreases.</b>											
Increase/Decrease/Stay the same	Increase	Increase	Decrease	Stay the same	Increase	Stay the same	Increase	Decrease	Stay the same	Stay the same	
Please explain	In this era of the great recession owners and contactors are more apt to extend the invitation list to a liability party	I believe the frequency of claims has increased on average, but the severity of claims has decreased on average. We are seeing more "nickel and dime" claims than we previously saw.	The frequency has reduced but the severity (amount in dispute) has increased.		In challenging economic times, owners and developers view design professionals and their insurance policies as untapped sources of revenue. Failed projects often lead to fee disputes, which are a common source of claims.	Claim frequency has been fairly steady but claim basis has trended toward claims arising from contractor performance issues and claims implicating economic damages as opposed to repair cost or property damage.	For whatever reason, we are busier now than ever with AE claim work.	fewer files because clients have fewer projects due to the slowdown in the economy	More large claims but less small claims		The claim count in the litigation programs and the coverage/monitoring programs we handle nationwide is roughly the same, although a slight decrease in the last quarter of 2009.

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### Question 7 - Have you seen any unique claims or claimants based on slow economic conditions?

*Summary: 80% have seen unique claims or claimants driven by slow economic conditions.*

Yes/No	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes
Please explain	Relatively small change order disagreements escalate	A number of failed private developments that claimed that "but for" the negligence of the design professional, they would have hit "paydirt" but instead missed the market. Therefore, the design professional is responsible for all of the lost profits, etc. of the now failed development project whether commercial, residential, industrial, etc. Clients are forced to sue for fees because clients will simply not pay any money or be reasonable on terms.	Claims relating to lost sales of commercial or condo projects due to delay. The damage claims are typically very large. We have seen a number of claims filed by developers seeking to recover money from any source available to make up for losses caused by poor economic conditions.	There is an increase in claims arising out of the Owner's effort to "recoup" monies expended on a project for cost overruns that allegedly arise out of design errors.		Developers are more likely to assert professional negligence claims or breach of contract claims in defense of our client's collection actions.	We have seen condominium boards try to circumvent the economic loss doctrine by seeking recovery against the A/E community for breach of the implied warranty of habitability.	Foreclosures, bankruptcies, fiduciary duty claims, etc.		1. One notable example involves a recent claim for "lost square footage." The plaintiff claimed that our architect client did not carefully consider and advise the owner on its budget challenges. The plaintiff argued that the finished building had too many costly "bells and whistles" which could have been eliminated to save budget dollars and build a bigger facility. 2. In other cases we have handled, plaintiffs have claimed that construction delays caused partly by design errors have led to missed market opportunities, loss of sales, loss of rents, higher refinancing charges and other financial impacts.

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### Question 7 - Have you seen any unique claims or claimants based on slow economic conditions?

*Summary: 80% have seen unique claims or claimants driven by slow economic conditions.*

Yes/No	Yes	Yes	Yes	No	Yes	Yes	No	Yes	Yes	Yes
Please explain	Claims for failing to meet cost expectations are increasing	Claims involving delays to residential housing developments now include significant damages claims for "missing the market". Also, A/E firms are suing more frequently for unpaid fees, invoking errors and omissions counterclaims.	Lack of financing/funds mid-project "inspires" claims.		Failure of project financing due to alleged design error or failure to design to budget; claims by software suppliers to design professionals; contractor claims arising from failure to detect or prevent construction defects; bonding company claims arising from failure to prevent construction defects leading to contractor default.	More claims arise involving payment disputes or contract collection actions which result in retaliatory counter claims against the design entity.	See below	more common to see condominium purchasers sue a project for loss of value when the decrease is really due to general economic conditions	More claims from developers trying to cover their losses in this down market and more claims on projects due to value engineering	There has been an increase in claims resulting from A/E firms pursuing fee disputes. Also, claims involving an owner failing to realize anticipated profits for terminated/delayed projects due to the economy.

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### Question 8 - Have you seen any changes in the frequency and/or severity of claims in the past few years?

*Summary: 80% indicated changes in the frequency and/or severity of claims.*

Yes/No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes
Please explain	More frequent Severity is about the same	A bit of an uptick in severity but overall fairly flat.	Frequency has been about the same or slightly less however the severity has increased dramatically.	I have seen an increase in recent years in claims involving serious bodily injury or death to the plaintiffs that are brought despite weak theories of liability against the design professionals.		Frequency is steady although the mix of claims has changed as noted in prior answers. Severity of claims has increased but that is probably due as much to the number of projects built in our market during the boom years, and the larger scope of public projects built over this time.	Not, a whole lot of difference w/ respect to the frequency and/or severity of claims in comparison to years past.	Higher frequency/severity	More claims for less severe losses	In response to defendant-friendly legislation and court opinions, plaintiff's attorneys have gotten increasingly creative in alleging theories of liability. These theories have been advanced to avoid the economic loss rule, limitation-of-liability clauses and damages caps. Plaintiffs are also motivated to trump up the potential damages exposure to account for costs, interest and attorneys' fees, if such items may not be recoverable under the operable contract.

### Question 9 - What percentages of claims would you estimate are brought against A/E firms prior to project completion and in the years following completion? (total 100%)

*Summary: 70% of claims are brought within two years following the completion of a project: 17% prior to completion, 33% one year after completion, and 18% two years following completion.*

Prior to project completion	50	17	5	10	20	5	20	40	10	5
One year after completion	25	25	35	25	40	28	50	40	25	5
Two years after completion	15	15	20	30	20	50	20	10	25	10
Three years after completion	10	12	10	20	10	10	5	3	25	20
Four years after completion		7	10	10	5	1	5	1	15	20
Five years after completion		5	5	3	0	1		1		10
Six years after completion		5	3	2	0	1		1		10
Seven years after completion		5	2		0	1		1		10
Eight years after completion		5			0	1		1		10
Nine years after completion		3			0	1		1		0
Ten years after completion		1			5	1		1		0

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### Question 8 - Have you seen any changes in the frequency and/or severity of claims in the past few years?

*Summary: 80% indicated changes in the frequency and/or severity of claims.*

Yes/No	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	No
Please explain	see 14 and 13 above	I believe the frequency of claims has increased on average, but the severity of claims has decreased on average. We are seeing more "nickel and dime" claims than we previously saw.	See above.		Greater frequency of claims. In poor economic conditions, parties are willing to litigate more aggressively over smaller amounts of money.	Claim expense is up as more matters are litigated and owners/contractors attempt to recoup project budget shortfalls or cost overruns by alleging E&O against the design team. Especially in public works/government contracts, professional liability policies are viewed as cost recovery assets by ownership.	More claims and for more significant amount. I believe a lot of failed developers are trying to recoup losses by making weak claims against design professionals and others.	fewer, potentially more severe	Severity is up due to design errors during value engineering	Note 13 above.

### Question 9 - What percentages of claims would you estimate are brought against A/E firms prior to project completion and in the years following completion? (total 100%)

*Summary: 70% of claims are brought within two years following the completion of a project: 17% prior to completion, 33% one year after completion, and 18% two years following completion.*

Prior to project completion	0	8	32	10	10	10	10	10		33
One year after completion	90	48	10	10	50	10	60	50	10	20
Two years after completion	5	20	10	10	20	15	6	30	20	20
Three years after completion	5	10	10	50	10	15	6	10	20	20
Four years after completion		5	10	10	10	10	6		20	1
Five years after completion		3	10	10		10	6		10	1
Six years after completion		2	10			10	6		10	1
Seven years after completion		1	2			5			10	1
Eight years after completion		1	2			5				1
Nine years after completion		1	2			5				1
Ten years after completion		1	2			5				2

## SmartRisk A/E Law Firm Survey Report

	Clausen Miller	Collins Collins Muir + Stewart, LLP	Daniels Kashtan Downs Robertson and McGirney	Donovan Hatem LLP	Fisk & Fielder, P.C.	Folk & Associates, P.C.	Foran Glennon Palandech & Ponzi PC	Gordon & Rees LLP	Greve Clifford Wengel & Paras, LLP	Hall & Evans, LLC
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**Question 10 - What would you identify as the top three major sources of A/E claims? (i.e., inadequate fees, budgetary problems, low-bid contractors, inexperience, design flaws, inadequate contract provisions, client experience and expectations, other)**

*Summary: Top sources of claims; 1) Project delays, low bids, budgetary problems and contractor failures. 2) Design flaws, owner experience and unrealistic expectations. 3) Inadequate contract language, insufficient scope and fees.*

1	Design Flaws	Client experience and expectations	design errors	Low-bid contractors	client experience and expectations	Poor definition of scope and coordination with others	Poor communication re: program objectives with Owner	poorly defined work scope/contracts	inexperienced / unsophisticated clients	Unreasonable client expectations of "perfection"
2	Client Expectations	Inadequate fees	poor contract language	Owner-budgetary problems	low-bid contractors	Technical error	Inadequate project detailing/poor specifications	failure to document in writing	low bids	Conflicts between plans, specifications and subconsultants
3	Fee Disputes	Design flaws	inexperienced owners	Inadequate contract provisions	inadequate contract provisions	Disappointed expectations	contractor inexperience	design e&o	clients budgets are inadequate	Inadequate documentation, decisions and C/A efforts

**Question 11 - Provide additional information for the previous question on the top three sources of A/E claims.**

				Low-bid contractors on public school projects typically try to make-up for monetary losses with baseless claims at the end of the Project.	No additional comments	Imprecise scoping leads to errors and omissions by members of the project team who do not clearly understand the project's requirements; also leading to failures to coordinate with other disciplines. We have also seen more technical errors in the use of survey equipment--particularly use of GPS for construction staking--and claims by clients who expected something different or better than what the A/E thought the contract required.	There is a surfeit of claims against the A/E which originate in poor understanding and communication of project scope/intent. The design might be very good, but the claims go to basic misunderstanding regarding the product which was to be delivered.			1. Sophisticated owners and general contractors willfully act unsophisticated when arguing for design liability. 2. Architects are expected to have perfectly coordinated sets of plans, specifications and design work of subconsultants, and they are blamed for change orders and other post-design development issues. 3. It is often difficult to reconstruct key events and decisions years later, and designers are often blamed for failing to "catch" construction errors.
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**Question 10 - What would you identify as the top three major sources of A/E claims? (i.e., inadequate fees, budgetary problems, low-bid contractors, inexperience, design flaws, inadequate contract provisions, client experience and expectations, other)**

*Summary: Top sources of claims; 1) Project delays, low bids, budgetary problems and contractor failures. 2) Design flaws, owner experience and unrealistic expectations. 3) Inadequate contract language, insufficient scope and fees.*

1	Inadequate fees	Contractor underbid a Fixed Price contract	Poor communication	design flaws	Underfunded owners wishing to take advantage of imperfections in A/E services	Contractor performance/qualification/change orders	design flaws	client experience and expectations	Developer's expectations	Budgetary problems
2	outsourcing scope	Poor coordination of Design Documents/Design Flaws	Budget	contract language	Fee claims that lead to PL counter-claims	Poor staffing of project by design professional	inexperience contractor	design flaws	V/E design errors	Project delays
3	client expectations unrealistic	Unreasonable Owner expectations	Stupid contractors	budgetary issues/low bid contractors	Contractor failures	Client expectations and scope creep	poor contract language	inadequate contract provisions	low bidding contractors	Design flaws

**Question 11 - Provide additional information for the previous question on the top three sources of A/E claims.**

	too little peer review and the pressure on fees does not allow the care and peer review we had in the past	If the Contractor underbids a Fixed Price contract, once the Contractor sees the variance in the job cost report, the Contractor will make claims to the Owner which usually involve allegations of design errors or omissions.	Communication setting clear expectations (re fee, scoping, etc.) still continues to be the most common source of dispute. Lack of coordination of design deserves special mention too.			Contractors drive an increasing number of claims and seem able to persuade ownership that increased costs are design related.		contract provisions are often unclear on the scope of work and responsibilities for construction administration		1.The economy has tightened financing and forced issues to the front which may have been resolved previously. 2.Project delays resulting in the owner miscalculating both the cost and profit involved in projects. 3.Project modifications/changes which may have been resolved before are now pushed harder.
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### Question 12 - In your practice area, which disciplines have had the highest frequency of claims?

**Summary: Disciplines with Highest Frequency of Claims: Architects: 29%, Structural: 24% and Civil: 16%.**

1	Architect	Soils engineers	MEP	Architects	Geotechnical engineers	Civil engineers	Architect	architect	Architects	Structural engineers
2	Civil Engineers	Architects	architects	Mechanical Engineers	MEP engineers	Surveyors	Structural Engineer	structural	Geotechnical Engineers	Geotechnical engineers
3		Structural Engineers	structural	Civil Engineers	Architects	Architects	MEP Engineer	civil	Structural Engineers	Civil engineers

### Question 13 - Related to the previous question, identify the causes these disciplines obtain a higher frequency of claims.

	Nature of client, e.g. condominium associations	We live in an area with hillsides that is also seismically active. There is also a lot of low bid public work.		Architects are the number one target because they are frequently viewed as the "captain of the ship" on a construction project.	Geotechnical engineers - low fee/large damage Architects - growing project complexity MEP - growing project complexity	Large scale land developments during the boom years have generated grading and drainage plans that were not always followed. Recent flood claims have exposed risk of severe claims. Survey claims relate primarily to topographic mapping and construction staking. Architects and civil engineers are seeing an increase in ADA/FHAA claims for disability access restrictions.	Again, poor communication/lack of scope definition w/ owner and the vicarious liability which exists w/ architect contracting w/ engineering sub-consultants.	the architect touches all the other disciplines and is thus most often a target	Architects because they provide the broadest range of services. Geotech's because of unpredictable soil behavior; S.E.'s because of building movement.	1. Expansive soils in Colorado; more robust designs are disfavored due to higher expense; failures lead to high damages. 2. Expansive soils; robust designs disfavored; too much art, not enough science. 3. Water management issues lead to biggest problems; claims have higher damages due to difficulty in designing and doing repairs; too much art, not enough science; work is often changed and covered up by subsequent trades.
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### Question 14 - In your practice area, which project types have had the highest frequency of claims?

**Summary: Projects with Highest Frequency of Claims : Condominiums: 28%, Residential Sub-Divisions: 19%, Public Projects: 19% and Schools: 13%.**

1	Condominiums	Condos	Condominiums	Public project	Medical	Residential subdivisions and condominiums	Condominium	commercial	Residential Sub Divisions	Multifamily residential (mostly condos)
2	Residential	Schools	public projects	Condominiums	Office	Construction staking	Schools	residential	Private Commercial Construction	Public works (utilities, roads, bridges)
3	Municipality Work	Other public works	other private	High End Residential	Sports facilities	Schools	Residential	public	Schools	Single family homes

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### Question 12 - In your practice area, which disciplines have had the highest frequency of claims?

**Summary: Disciplines with Highest Frequency of Claims: Architects: 29%, Structural: 24% and Civil: 16%.**

1	structural	Architects	MEP	structural engineers	Civil Engineers	Architects	MEP	mechanical engineering	Arch. in condo design	Architect
2	civil	Geotechnical Engineers	Geotech	architects	Architects	Structural engineers	Civil	structural engineering	Arch in commercial or municipal design	Structural engineer
3	mechanical	Structural Engineers	Structural	electrical engineers	Surveyors	Civil/Geotechnical engineers	Structural	architecture	Civil engineers	Surveyor

### Question 13 - Related to the previous question, identify the causes these disciplines obtain a higher frequency of claims.

	cost consequences structural mistakes destroy a project	Architects normally retain the other design disciplines, so their liability exposure is broader. In this area of the country we have both expansive and hydrocollapsible soils. Differential movement of structures is not uncommon. The structural engineers don't receive a sufficient fee to properly coordinate their work with the other design disciplines. With the Project design websites there is nobody serving as a coordinator of the various design documents.	1. 10 lbs. of ___ in a 5 lb. bag 2. High variability of materials, interpretation 3. Attempts to be tricky to save materials	underpinning problems large municipal projects with inadequate staff complex design issues with inadequate experience	Tighter storm water regulations; rapid changes in civil design and pollution control methodology; Clean Water Act enforcement; ADA and Fair Housing enforcement; environmental activism; architects' role as prime professional.	Architects are historically seen as the "prime professional" on the contract, leading to heightened expectations.		varying standards within the industry		1.The architect is the prime interface with the owner. 2.Structural issues tend to significantly impact the project, making them more costly and difficult to resolve. 3.Survey issues are often early in the project and with significant impact, requiring immediate resolution.
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### Question 14 - In your practice area, which project types have had the highest frequency of claims?

**Summary: Projects with Highest Frequency of Claims : Condominiums: 28%, Residential Sub-Divisions: 19%, Public Projects: 19% and Schools: 13%.**

1	vertical high rise	Multifamily housing	Mixed use	schools/universities	Condominiums	Small commercial	can't really rank them	condominiums	Condos with stick construction	School construction
2	bridges	Hospital and medical office buildings	public works	condominiums	Subdivisions	Public Works		office buildings	Subdivision utility development	Condominiums
3		Municipal public works	condo	shopping centers	High End Residential Projects	Residential		Schools		

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### Question 15 - Related to the previous question, identify the causes these projects obtain a higher frequency of claims.

	Difficult clients	Condos involve demanding owners and if there is a problem in the design or construction, it tends to repeat itself. Schools and public works is infected by the low bid public work environment.	high owner expectations combined with low fees and poor quality control	see comments above	Complexity Budget/schedule Major scope	Residential CD and condo cases were popularized in California and migrated here to Arizona. Claimants could use repetitive design elements and large number of units built to inflate damage claims. Those cases have tapered off significantly as recoveries were not as big as plaintiffs had hoped for. Construction staking cases have generated contractor or developer claims for extra work; they are a challenge to defend because the stakes no longer exist by the time the claim is asserted. School projects present the risk of marginal designs and poor construction due to limited budgets and over summer vacation periods.	With the first two categories, most often we have expectation interests that are not met, generally over qualitative adequacy of the design.	the current economic/lending climate has driven the increase in claims involving commercial developments	These projects have higher likelihood of errors and often unsophisticated clients and low ball contractors	1. Plaintiff's attorneys marketing to property managers; attorneys marketing to HOAs; complexity of design; construction; lower design and construction budgets; personal investments at stake; favorable statutes and case opinions for homeowners. 2. Contractors with errors and delays blame designers; coordination of design and contractor trades; overlap between public employees' duties and designers' duties in design and C/A; unreasonable expectations for money and performance by elected officials. 3. Publicity; cheap labor; poor construction techniques; cheap investments at stake; favorable statutes and case opinions for homeowners.
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### Question 16 - By an estimated percentage, how would you break down claims filed against A/E's between the private and public sectors? (total 100%)

*Summary: 70% of claims occur within the private sector, 30% in the public sector however on the rise .*

Private	85	60	70	60	80	80	75	75	70	65
Public	15	40	30	40	20	20	25	25	30	35

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**Question 15 - Related to the previous question, identify the causes these projects obtain a higher frequency of claims.**

	risk and fee pressure	The developers do not provide sufficient fee to designers for multiple family housing, the drawings are not sufficiently detailed, the contractors are less skilled and the owners have unreasonable expectations.	More \$ at issue	School Boards and condo boards-unit owners are extremely difficult.	Under-funded development; collapse of the housing market; management by HOAs; contractor failures	Weakness in owner sophistication or staffing leads to project communication breakdown.		complexity and client expectations	Usually the developer's expectations or the need of the A/E to help the developer with its risk. The developer also cuts the A/E time on site but expects better observations.	1.Budgetary constraints with school construction, particularly in California. 2.Budgetary constraints of condominium developers, along with the multitude of owners.
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**Question 16 - By an estimated percentage, how would you break down claims filed against A/E's between the private and public sectors? (total 100%)**

*Summary: 70% of claims occur within the private sector, 30% in the public sector however on the rise .*

Private	70	75	75	40	80	70	60	50	80	65
Public	30	25	25	60	20	30	40	50	20	35

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### Question 17 - Related to the previous question for claims in the public or private sectors, please explain your response.

		It is about evenly split. The public jobs can exhibit more severity in terms of claim value.	Much more work in the private sector up until last year.		Private - unknowledgeable client, unreasonable expectation Public - opposite	This split reflects the orientation of our client base but should be comparable to other firms. Switch away from competitive bid award of public construction projects and use of partnering or other ADR procedures on public projects has tended to reduce incidence of claims on public projects.	The owners on public projects tend to be more forgiving and interested in claim resolution.		Often the public sector has better budgets, more experienced people, and steps for multiple plan reviews	Colorado's building boom for the last 15 years has led to growth in claims by both sectors. Multifamily residential cases have trumped all others, both in numbers and scope of each typical lawsuit.
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### Question 18 - By an estimated percentage, identify the filing of claims against A/E's by entity.

**Summary: Entities filing claims; Client/Owner: 65%, General Contractor: 14% and Subcontractor: 8.5%.**

Owner/Client	50%	68	50%	40%	60	75%	50	70	70	85
General Contractor	10%	22	20%	30%	10	20%	0	20	20	5
Subcontractor	10%	4	15%	10%	5	3%	0	5	10	10
Third-party	30%	4	10%	15%	20	1%	25%	5		0
Other		2	5%	5%	5	1%	25	0		0

### Question 19 - By an estimated percentage, identify damage types filed against A/E firms.

Economic loss	50%	65	50%	50%	40	65%	50	55	40	70
Property damage	30%	25	15%	20%	50	30%	25	42	55	20
Bodily Damage	20%	9	5%	20%	5	3%	25	3	5	5
Other		2	30%	10%	5	2%		0		5

### Question 20 - Have you seen an increase in contractor failures?

**Summary: 80% stated increase in contractor failures are causing A/E claims.**

Yes/No	Yes	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes
If yes, please explain any increase	Perhaps a slight increase	The entire industry is in distress so this creates its own problems and has some impact on A&E claims but thankfully has, to date, not been too dramatic.	If surety involved they tend to be aggressive re: claims vs. A/E			It can either help or hurt. If the contractor fails before collecting on extra work claims, the owner is less likely to pass through to A/E. On the other hand, the A/E is often only party left with insurance for economic loss.	I'm not certain how the contractor failures have impacted A/E claims	impact from joint/several liability, fewer deep pockets, project delays/abandonment, and contractors blaming failures on A&E	In the long term, it could be a benefit as the less capable contractors exit the arena	We have not noticed a direct impact; however, at times, GL insurers and sureties have stepped in for failed contractors and then later attempted to pursue subrogation and other types of reimbursement claims.

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## Question 17 - Related to the previous question for claims in the public or private sectors, please explain your response.

	public owners have a business relationship with A/E's thus disputes can be resolved more easily and creatively than one of projects	The public sector owners are often more knowledgeable and are not profit driven. Public owners rarely sue design professionals unless they become embroiled in disputes with the contractor.	Private is more sensitive to \$		Due to inadequate budgets, public entities have become more aggressive in pursuing PL claims against design professionals. Nevertheless, the majority of the claims we encounter come from private owners, developers, and contractors.	Private sector contracts have increased numbers and less than experienced principals.		self explanatory		Public sector claims in California involving school construction projects are significant.
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## Question 18 - By an estimated percentage, identify the filing of claims against A/E's by entity.

**Summary: Entities filing claims; Client/Owner: 65%, General Contractor: 14% and Subcontractor: 8.5%.**

Owner/Client	90	80	100% (Economic Loss Rule state)	50	60	35	60	75	70	50%
General Contractor	5	10		10	20	40	20	15	15	35%
Subcontractor	5	5		30	10	10	10		8	5%
Third-party		5		10	5	10	10	10	7	5%
Other					5	5				5%

## Question 19 - By an estimated percentage, identify damage types filed against A/E firms.

Economic loss	40	75	80	50	30	50	30	60	70	53%
Property damage	30	15	19	20	50	30	10	10	30	32%
Bodily Damage	30	10	1	30	20	10	10	30	>1	10%
Other						10	50 - contract damages			5%

## Question 20 - Have you seen an increase in contractor failures?

**Summary: 80% stated increase in contractor failures are causing A/E claims.**

Yes/No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes
If yes, please explain any if none	none	Sureties have raised as defenses to the performance and payment bond claims that A/Es negligently certified payments. Sureties have also alleged design errors and omissions as defenses to performance bond claims.	Often blamed on poor design, resulting in claims		When the contractor is unable to cure construction defects or address its warranty obligations, owners see the design professional as the only viable target for claims arising from construction defects.	Contractors are becoming more aggressive at filing claims against the design team to either shift responsibility or leverage money to make up for contract overruns.	Economy		Cutting costs to get the job and then performing poorly results in increased pressure on the A/E to catch and reject the poor workmanship.	The economy has put additional pressures on contractors, resulting in additional A/E claims.

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**Question 21 - Based on low contractor backlogs, many contractor bids are coming in well below engineering estimates. Do you think this increases risk for A/E firms?**

**Summary: 80% stated low contractor bids below engineering estimates are increasing risk for A/E firms.**

Yes/No	Yes	No	Yes	Yes	No	No	Yes	Yes	Yes	Yes
Please explain	This could result in change order submissions	Too early to tell but I don't think there will be an increase in claims from the low bids themselves but the eventual fallout might be a problem with contractors trying to make it up on the backside.	They will try to make up dollars thru claims	Contractors are desperate so they low-bid and under staff projects which leads to mistakes and claims.		I view this a neutral indicator. Many of the weak contractor firms have already failed, and won't be asserting claims. Also, scope of projects going out for bids are reduced, so risk exposure may not be as great as in past. I'm not expecting low bid prices to trigger unusual pressure by contractors for change orders.	High risk if the contractor's strategy is to bid low and then claim extras alleging design error or omission.	increased driver of change orders and resulting claims	When there are cost over runs, the contractors will blame them on the A/Es	This situation will further cause an owner to have unrealistic expectations. If the engineering estimate is accurate, the contractor will do the work and ask for more money in a change order, or refuse to do the work. Or, the contractor will have labor shortages when higher-profit work returns. When questioned, the contractor will resort to finger-pointing to pass the buck away from its own non-performance. Often, a contractor will then raise "bad design" allegations, which will cause the owner and others to more carefully comb the plans and specifications for errors, omissions and conflicts.

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**Question 21 - Based on low contractor backlogs, many contractor bids are coming in well below engineering estimates. Do you think this increases risk for A/E firms?**

**Summary: 80% stated low contractor bids below engineering estimates are increasing risk for A/E firms.**

Yes/No	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Please explain	as long as the design works it should be fine plus if the contractor fails the surety will step in	If a contractor underbids a fixed price contract, the contractor will make claims against the Owner, often for alleged unbid work due to errors and omissions in the drawings.	They are buying jobs and looking for claims/change orders	Inexperienced or corner cutting contractors lead to claims	In a proper case, a claim could be asserted for loss of project financing due to over estimation of construction cost.	Traditional project delivery allows for budget gaps-- increased use of alternative delivery methods may help this situation.	Owner's will sue saying costs exceeded design.	Yes--it suggests that the contractors may not be able to complete the job for the price bid and will seek to recover through change orders or will simply not complete the job. In resulting litigation Architect may be brought in.	See answer to No. 27	The inability of contractors to make their fair profit in the initial bid leads to change order requests and/or shortcuts in the construction itself, increasing the risk of claims.



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### Question 22 - Has accounts receivable for A/E firms been a driver of claims?

*Summary: 80% stated accounts receivable has been a driver of A/E claims.*

Yes/No	Yes	Yes	No	No	Yes	Yes	Yes	Yes	Yes	Yes
Please explain:	Fee disputes may turn into a counterclaim	To some degree as there is always a risk that a claim for fees may generate a counter claim for negligence but it has not been as dramatic as expected given the amount of suits over fees.		Design Professionals typically exercise more restraint before pursuing a fee claim if they know the fee claim will be met with an e/o claim.	Fee claims generate counterclaims	Yes, to a degree. If we are pursuing a collection, and the developer has assets to protect, it will consider asserting a professional liability claim to serve as an offset.	In Chicago, virtually all A/E firms have high accounts receivable.	collection cases typically trigger E&O claims	When an A/E files a collection action, it almost always results in a cross-complaint for E&O	We have seen many situations where our clients are not paid timely, or never paid. When our clients have asserted fee claims or threats of litigation to collect, counter-threats of "bad design" are often alleged. Even if the counter-threat is simply a bargaining tool to gain leverage, the allegation often becomes a claim that must be reported, investigated and defended.

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### Question 22 - Has accounts receivable for A/E firms been a driver of claims?

*Summary: 80% stated accounts receivable has been a driver of A/E claims.*

Yes/No	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Please explain:		More A/E firms are suing for unpaid fees and are receiving errors and omissions counterclaims.	As always, fee claims result in malpractice claims	claims for fees sometimes result in claim for damages.	Many firms were caught in the financial crisis with large fee balances on projects that were not constructed. Efforts to collect these fees resulted in claims that the projects failed due to design error, late performance of services, or some other fault of the design professional.	When design entity files a collection action for unpaid fees, client will use litigation claims and alleged E&O to offset or intimidate the designer from pursuing remedies.	Defensive counterclaims are filed in response regardless of merits.	Have not noticed in my practice.	Developer wants the A/E to help with the risk and often will not pay last bills. A/E will sue and then be sued for malpractice.	Financing for projects is tighter than ever, resulting in streamlined bids from A/E firms to secure the work. A failure of the owner to timely pay the agreed upon fee oftentimes leads to fee disputes, with the increased chance of the owner asserting a claim even simply as a defensive set off.

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### Question 23 - Do you see A/E firms taking on more risk driven by slow economic conditions?

**Summary: 85% stated A/E firms taking on more risk driven by slow economic conditions.**

Yes/No	Yes	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Please explain:	Possible if seeking work in slow economic times	Unfortunately, this is somewhat inevitable but with good contract language even if price is a driver, hopefully some of this can be mitigated.		A/E firms are taking on projects outside their areas of expertise because they need the work	Must have/no negotiation contracts	Yes. Some are not negotiating contracts as hard as they should to reduce risk of contract claims; particularly indemnities. Some firms are also taking less profitable work or work in new project types with which they do not have as much experience.	The risk is in the low margin which the firm's affected by the slow economic conditions accept. The low margins in turn mean more potential for owner dissatisfaction since controlling costs mean less experienced people with less supervision are providing the service.	given poor economy and slow pace of development/housing starts, A&E are more apt to select questionable clients and/or work beyond their comfort zones	The reduced amount of work available is causing hungry firms to accept more risk so they can keep the doors open	A few examples: 1. Many firms have laid off staff, and it is certainly more risky to do complex work with a skeleton crew. 2. Many higher-end firms have dropped down into residential or other work that they normally do not do, and design, risk management or other expertise in certain basic areas may be lacking. 3. Many owners are requiring designers to sharply reduce design fees, which is less motivation to provide careful and complete work. 4. Reduced fees also means reduced work for specialty subconsultants who may have helped prepare a better and more complete product. 5. Many designers to reduce or eliminate fees charged for construction administration services (C/A), so construction deviations and errors are not caught.

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**Question 23 - Do you see A/E firms taking on more risk driven by slow economic conditions?**

**Summary: 85% stated A/E firms taking on more risk driven by slow economic conditions.**

Yes/No	Yes	Yes	Yes	No	Yes	Yes	Yes	No	Yes	Yes
Please explain:	fee pressure	When work is slow, A/Es are less selective in the clients they serve, are slow to suspend services when fees are unpaid or paid untimely and are more willing to provide services for insufficient fees.	Sloppy contracting (assuming risks they would not otherwise consider), thin margins	I see owners / developers less willing to engage in complex projects due to costs so architects are given less opportunity to attempt risky designs.	Firms are afraid to negotiate proper contracts. They are willing to perform services in "new" areas with which they are unfamiliar. Many firms have a hard time saying "no" to an owner with a viable project and money for professional service fees.	Depends on the size and market position of the firm. Small offices may experience lesser cash flow which encourages the "if I don't sign this contract someone else will" practice on job selection.	Firms are less concerned about pressing contract provisions that reallocate risk.		Sometimes they can identify a marginal developer but still take the project because of lack of work.	The number of projects are down and the need for design firms to stay active is significant. Some firms are accepting assignments for reduced fees, with fewer contractual safeguards.

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### Question 24 - Describe briefly court cases or legal developments in your law practice region.

	More allocation of fault	The recent Crawford v. Weathershield case mandates, under some situations, that a design professional may have to defend an owner even before or in the absence of any negligence by the A&E. However, good contract negotiation and risk management should mitigate or prevent this from occurring.	recent cases have increased exposure for individuals over and above contract terms and LOL clauses	See below.	Nothing unique	We have seen positive impacts on claims and litigation from changes in legislation and court rulings. Arizona's certificate of merit statute works to reduce incidence of claims that have no merit. Notice and opportunity to repair statute on residential construction is helping to steer residential CD cases into ADR and out of court. Arizona appellate courts have upheld contractual limitations of liability and currently evaluating economic loss doctrine. At the trial court level, Arizona juries tend to be conservative with their awards.	Reaffirmation of economic loss doctrine and identification of duty to third parties premised on terms and conditions of O/A agreement.	many cases involving retrofits, upgrades, conversions, etc.	Most settle. The time and expense of trying a design / construction defect case is intimidating to clients and many carriers.	We have seen a number of recent cases and legislation on: 1. Enforceability of damages caps. 2. More anti-indemnity statutes. 3. Economic loss rule extensions and exceptions. 4. No prejudgment interest can be awarded for repairs not completed. 5. Erosion of the statute of limitations and expansion of the discovery rule. 6. Electronic discovery and spoliation.
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### Question 24 - Describe briefly court cases or legal developments in your law practice region.

	<p>economic loss rule in flux emerging law on liability for budget busts if that is a contract term</p>	<p>The economic loss rule adopted by the Utah Supreme Court and Utah Code Ann. 78B-4-513 (a codification of the economic loss rule) have largely eliminated suits against design professionals by persons not their clients.</p>	<p>Too broad. Contractual remedies need to be clear.</p>	<p>privity, labor law application to design professionals, inclusion of negligence claims within breach of contract claim are frequent areas of decisions.</p>	<p>Tennessee recently revised its Lien statutes. Architects and engineers can perfect liens for unpaid services on projects actually constructed.</p>	<p>California/Nevada: Crawford v. Weather Shield--contractual duty to defend triggered at claim tender, not liability finding. UDC-Universal Development v. CH2M Hill--defense obligation separate from indemnity obligation.</p>	<p>This can't be done in a short response.</p>	<p>economic loss rule spreading into the District of Columbia</p>	<p>Courts are accepting limit of liability clauses and no consequential damage clauses.</p>	<p>In New York, the recent amendment to Insurance Law sec 3420 provides greater leeway for insureds in reporting claims to insurers under claims made policies.</p>
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### Question 25 - Describe the enforceability of the economic loss rule, limitations-of-damages, indemnity and damages allocation in your law practice region.

	Generally enforced	Generally speaking the economic loss doctrine should preclude many third party claims for purely economic loss but many of the judges in our area just don't understand or don't want to understand it so this has been frustrating. Limitations of liability clauses are generally reviewed favorably so long as the court understands them and they are clear, unambiguous and there was at least an opportunity to negotiate.	LOL has recently been interpreted not to apply to individual professionals. Economic loss rule applies in Florida. Indemnity is upheld if provision complies w/statute and case law.	The economic loss defense is enforced against negligence claims. In addition, limitation of liability clauses are enforced if they are reasonable.	All viable in Texas with limitations	ELD is currently under review by Arizona Supreme Court. We are hopeful some unfavorable Court of Appeals decisions will be narrowed or reversed. Supreme Court has upheld limitation of liability by contract. Risks posed by contractual indemnities continue to be high because intermediate form indemnities with duty to defend are enforceable in private projects. Anti-indemnity statute for public works is more favorable to A/E: intermediate and broad form indemnity are prohibited.	Economic loss precludes negligence claims against the A/E, which means direct rights of action from contractors are not cognizable. Limitation of damages between contracting parties are enforceable but invalid as to third party claims. Indemnity in construction contracts based on a non-fault, i.e., contractual basis is deemed void and against public policy (Ill. has an anti-indemnity statute making consensual risk shifting through indemnity provisions void ab initio.	The Aas case is generally upheld to preclude cases of pure economic loss against those not in privity with claimant. LOL clauses generally upheld against contracting parties. Indemnity/defense obligations are being given broad reading in light of Crawford and recent UDC v. CH2MHill cases. Waiver of consequential damages general enforced.	They work well	1. The ELR in Colorado is strong and enforceable in non-residential cases. In residential cases, designers and other construction professionals owe independent duties of care. We successfully convinced the Court of Appeals to extend the ELR to cover fraud claims based on intentional conduct in 2009. 2. Limitations-of-damages clauses are enforceable in most non-residential situations. Colorado follows the majority rule that the limitation amount must be reasonable, and usually it will be reasonable if tied to the designer's fee amount. 3. Indemnity agreements are generally enforceable, but only to the extent of the indemnitor's scope of responsibility. Colorado passed an anti-indemnity statute in 2007 barring attempts by an indemnitee to be indemnified for its own negligence and limiting additional insured coverage thusly. 4. Damages must be allocated among potential tortfeasors. Damages must also be allocated between repair and betterment. (Cont'd.)
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**Question 25 - Describe the enforceability of the economic loss rule, limitations-of-damages, indemnity and damages allocation in your law practice region.**

	very uncertain	<p>The economic loss rule as applied by the Utah Supreme Court bars most all non-contract claims against design professionals when there is no personal injury or damage to "other property". Section 78-4-513, Utah Code Ann. further restricts the prosecution of non-contract claims. Limitation of liability is enforceable if the contract provision is clean and unequivocally Utah's anti-indemnity statute does not apply to Owner/ Designer professional contracts.</p>	<p>Anti-indemnification statute seeks to limit indemnity to that party's negligence. Economic loss rule applies. No case directly on point concerning Limitations of Liability and/or damage allocation but commonly understood to be enforceable. Probably depends on bargaining power.</p>	<p>economic loss rule applies, limitations of liability will be enforced if not grossly unreasonable</p>	<p>In 1991 the Tennessee Supreme Court issued a decision that greatly narrowed the application of the Economic Loss Doctrine in this State. Tennessee follows a modified comparative fault doctrine that requires apportionment of fault between parties and non-parties responsible for the plaintiffs' injuries. A plaintiff found to be 50% or more at fault receives nothing.</p>	<p>Mandalay vs. Terracon -in Nevada ELD applies to design professionals. LOL still an open issue</p>	<p>Statute of limitations for action of recovery for breach of contract is 6 years. For action involving death, personal injury or property damage against an A/E is 10 years. Michigan does not require an indemnity provision to expressly state the indemnitor must indemnify the indemnitee for the consequences of the indemnitee's own (sole) negligence so long as the provisions language establishes that was the parties intent. Economic loss doctrine in Michigan has been limited to contracts for the sales of goods. The doctrine has not been applied to contract for services or to contracts for mixed good and services. The doctrine has been applied to a claim for negligent misrepresentation.</p>	<p>Varies with each of the three jurisdictions</p>	<p>Wisconsin still considers A/E to be a service and not a product although some lower courts apply economic loss to A/E services. See #31</p>	<p>In New York, there is no contribution for a case seeking purely economic loss per the Court of Appeals decision (Board of Education v Sargent); however, an exception is if a design professional is sued for malpractice, even for claims sounding only in economic loss. The design professional may plead another design professional as the rationale is that the claim against the original design professional sounds in tort irrespective of the nature of the damages sought and thus contribution lies (Schauer v Joyce). A design professional may contract to limit damages (Rector v Calamus Group). Concerning the General Obligation Law prohibits being indemnified for the negligence of the indemnitee as contrary to public policy. A First Department decision in Dutton, however, holds that despite the GOL, a party can be indemnified to the extent it is not negligent.</p>
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### Question 25 - Describe the enforceability of the economic loss rule, limitations-of-damages, indemnity and damages allocation in your law practice region. (Cont'd.)

										(Cont'd.) Construction defect damages categories are limited to 3 types, "whichever is less," per Colorado statute.
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### Question 26 - Have you seen, or anticipate claims related to sustainable/green projects?

**Summary: 75% stated they have seen or anticipate claims related to green/sustainable projects.**

Yes/No	Yes	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes
Please explain:	Cutting edge work may result in unreasonable expectations	I suppose that some claims will come but claims driven purely because it is a "green" project, are not likely. I don't really see that as a problem if it is managed properly.	Potential claims in the future if the building does not perform as represented	I have not seen this happen yet.	Anticipate/not seen	Due to lack of clarity in contract language and technical nature of some standards, there are likely to be more claims in this field. Areas of particular concern involve performance and efficiency of HVAC systems and energy utilization.	There will be litigation and has been perceived level of certification is not met. Arguably, the A/E will be subject to expectation type claims are made by owners regarding qualitative issues which result in lower grade accreditation.	There, the line between professional service and warranty is blurred so more exposure possible in light of certification requirements. further, A&E's dealing with new/different products they haven't before specified thus leading to claims.		We have not seen any actually alleged, but we have heard of some threatened, and we anticipate future claims relating to failure of green performance, failure to obtain certifications, "green washing," additional expense- and delay-based claims and inadequate product specifications.

### Question 27 - Have you seen, or anticipate claims for A/E's when restarting suspended and/or abandoned projects?

**Summary: 55% have seen, or anticipate claims when restarting suspended and/or abandoned projects.**

Yes/No	Yes	No	Yes	No	No	Yes	Yes	Yes	No	No
Please explain:	Changed conditions may result in disagreements	I suppose that it will happen but I don't see it as a driver in the claims area.	Potentially if new design team is involved and they pick thru plans and find problems	I have not seen this happen yet.		This is always a risk if plans and conditions in the field are not re-evaluated to account for any changes in conditions that have occurred during the period of time the project was on hold or abandoned.	Yes, there will be claims associated w/ the costs of re-instituting suspended projects when the A/E makes time investiture necessary for resumption. Owner will contend that is simply part of the original consideration given that suspension was a known risk.	Code changes, financing issues, deterioration of materials during delays, etc.		We have not yet come across this situation, or advised clients facing it.

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### Question 25 - Describe the enforceability of the economic loss rule, limitations-of-damages, indemnity and damages allocation in your law practice region. (Cont'd.)

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### Question 26 - Have you seen, or anticipate claims related to sustainable/green projects?

**Summary: 75% stated they have seen or anticipate claims related to green/sustainable projects.**

Yes/No	Yes	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Please explain:	the learning curve for LEED is going to be painful there are many liability traps for the unwary	I have not seen any of these claims.	Untested materials. Benefits usually lower than anticipated, costs higher.	Non compliance with lead requirements and advertised compliance will lead to new claims.	We have not seen many claims in this area, but believe the language of the 2007 AIA Owner/Architect model agreements will lead to claims that architects failed adequately to consider and inform owners of sustainable design options.	LEED certification will result in contract and misrepresentation claims.	Haven't seen any, but I suppose they'll come.	anticipate; promises or warranties unmet	This is just another area in which claims will be made. We are already seeing claims for heating costs because of alleged design failures.	We have not seen sustainable/green project claims, as yet. There is, however, a great deal of discussion/anticipation concerning such claims.

### Question 27 - Have you seen, or anticipate claims for A/E's when restarting suspended and/or abandoned projects?

**Summary: 55% have seen, or anticipate claims when restarting suspended and/or abandoned projects.**

Yes/No	No	No	Yes	No	Yes	Yes	Yes	Yes	No	Yes
Please explain:		I have not seen any of these claims.	Claims for improper advice re "mothballing."		When suspended projects are restarted, the fundamental project parameters often change. Architects are expected to redesign, eliminate services, cut corners, and otherwise engage in risky behaviors to make the subject project viable.	IP issues; code update; successor liability on design issues; licensing implications.	Restarts are a problem. Conditions change and often contracts don't.		unknown	As the economy recovers and projects restart, there will be issues involving possible changes in the design or construction team, financing and possibly project conditions.

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### Question 28 - Have you seen, or anticipate claims related to Integrated Project Delivery (IPD)?

**Summary: 65% have "not" seen, or anticipate claims related to Integrated Project Delivery (IPD).**

Yes/No	No	No	No	Yes	Yes	Yes	No	Yes	No	Yes
Please explain		I think that IPD should actually lessen claims over the long haul. Many claims are driven by poor communication or poor timing of communication which, IPD, when fully implemented should reduce.	to early	I have not seen these claims yet, however, I expect these types of claims to occur because IPD is a new project delivery method.	Anticipate/not seen	Since it's new and requires a greater degree of management skill and experience than some early users have, we expect to see some claims. We are not anticipating a significant increase in frequency or severity however, because adoption will be gradual. Pure IPD is not yet permitted in public works projects in Arizona; additional regulations must be enacted. Adoption in the private sector is also rather slow.		Compatibility of systems, experience and multiple parties with input on designs are big issues.		IPD is new, and it utilizes different relationships, software, tools and expectations. Published information also refers to "mutual risk and reward." Anything innovative will draw claims based upon lack of familiarity, fear, perceived unfairness or the inability of contract documents to "catch up" to the innovation.

### Question 29 - Is your law firm experiencing collection problems?

**Summary: 50% of law firm are experiencing collection problems, 50% stated no problems.**

Yes/No	No	Yes	No	No	No	Yes	Yes	Yes	Yes	Yes
Please explain	Not with regard to insurers	Many clients are suffering greatly and while we are sympathetic, we have bills to pay too so we try and work out payment plans, etc.				The question is somewhat ambiguous. Our clients are suffering collection problems.	With the high deductible client, our firm has experienced both late and no pay on A/Rs for services rendered.	Realization rates are lower than usual by about 2-5 %	Some A/Es, when sued, have trouble paying the deductible on their E&O policy	Many design clients have been unable or unwilling to pay deductible obligations for defense costs. Insurance companies have been slower to pay.

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### Question 28 - Have you seen, or anticipate claims related to Integrated Project Delivery (IPD)?

**Summary: 65% have "not" seen, or anticipate claims related to Integrated Project Delivery (IPD).**

Yes/No	No	No	Yes	No	Yes	No	No	No	No
Please explain		I have not known a single project locally to use the Integrated Project Delivery method.	Increased cost. Nobody "guarding the henhouse."		Any departure from traditional project delivery methods can lead to confusion and disputes regarding roles and responsibilities.	Been waiting on these for three years and have yet to see them.			

### Question 29 - Is your law firm experiencing collection problems?

**Summary: 50% of law firm are experiencing collection problems, 50% stated no problems.**

Yes/No	Yes	Yes	No	No	No	Yes	No	No	Yes	No
Please explain	money is slow everywhere	Our accounts receivable has grown during the downturn.				Design firms experiencing cash flow issues lag in paying legal expense. PLP provisions which include high deductibles place the burden on the attorney to collect from client, even if carrier steps up after deductible exhaustion.			Insured's deductible.	Clients are paying timely, however, the level of scrutiny of invoices has increased.

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### Question 30 - Have you seen any change in carriers' willingness to pay or make adjustments for settlement expectations?

**Summary: 65% stated carriers have not made adjustments in claim settlements.**

Yes/No	No	Yes	No	No	No	No	Yes	Yes	No	Yes	
Please explain		There has been a general tightening on settlement authority over the past 10 years or so that has accelerated with the downturn.					About the same as always. Some carriers will risk over-paying to settle early and limit defense costs. Others are reluctant to acknowledge the likely settlement value as early as they should. Most are doing what they should to settle claims promptly for a fair value.	My sense is that mediation is the dispute resolution flavor of the day and carriers are very interested in ADR to both cap the expense side and bring closure to files, regardless of the file's underlying merits.	A greater willingness to settle seems to exist at this time as there are perceivably bigger downsides in trying cases and increasingly high transactional costs in litigating matters		Generally, our marching orders from insurers have been to investigate the claims as quickly as possible, push for mediation and settlement, fix the amount of exposure, and turn off the spigot of defense fees and costs.

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Question 30 - Have you seen any change in carriers' willingness to pay or make adjustments for settlement expectations?										
<b>Summary: 65% stated carriers have not made adjustments in claim settlements.</b>										
Yes/No	Yes	Yes	No	No	No	Yes	No	No	No	No
Please explain		Some carriers have become very aggressive in denying coverage under the "claims made and reported" requirement of policies continuously renewed over long periods. One carrier has required its "risk engineers" to evaluate losses before accepting settlement recommendations of counsel.	Not sure I understand the question.			Some insurers are being more aggressive at disclaiming coverage for contractual risks and in not being willing to front the deductibles.				

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**Question 31 - What do you foresee as claim trends and liability issues for A/E firms in the next few years?**

*Summary of claims and liability issues for the next few year: 1) Increase on public projects, green/sustainable project claims. 2) Contracts; problems with firms not pushing back on contract terms and indemnity provisions. 3) Reduced scope and inadequate technical skills and reviews of firms. 4) Account Receivables; firms more inclined to let accounts receivable grow and to sue for unpaid fees. 5) Project & Client Selection; firms accepting work from less desirable clients and receiving*

	Continued challenges in slow economic times	Public entities that cut deals with contractors and don't invite A&E's to the pre-settlement discussions and then pursue claims against the design team. Public entities and to a lesser degree private companies that are cash strapped that which will cut favorable deals as they are less willing to fund outside counsel than they were in the past. There is a dangerous trend toward more onerous indemnity clauses that mandate that an a&e defend an owner even before liability is proven. More design-build projects should lessen the number and severity of claims.	Trends may go more to public sector as that work increases. Also may see more claims related to stalled projects	In this tough economic climate, A/E firms will need to ensure that they enter into good contracts with appropriate liability protections.	No significant changes	Claims involving a lack of technical skill and competence will continue arise. Areas in which we anticipate such claims include survey and mapping fields--due to low fees and reliance on GPS or aerial photogrammetry without sufficient QA/QC--and the design of mechanical systems. Flooding claims arising from grading and drainage designs, or failure to coordinate drainage across multiple projects in the same watershed, will also add to volume. Indemnity claims will probably cause the most significant burden in defense dollars and loss even if the underlying liability case is not that strong because clients been compelled to sign contracts with unfavorable indemnities.	I think the majority of claims arise in poor scope understanding and/or inadequate project definition. The A/Es biggest potential claimant remains the owner, who expect more while paying less.	Green issues, broadened indemnity obligations, liability to non-contracting parties, BIM, etc.	They should be lower because fewer projects are being built and the gross number of claims should be less.	1. Intentional torts alleged to defeat ELR. 2. Using a designer's stamp to allege "breach of warranty." 3. Increased focus on C/A failures. 4. Green building issues.
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**Question 31 - What do you foresee as claim trends and liability issues for A/E firms in the next few years?**

*Summary of claims and liability issues for the next few year: 1) Increase on public projects, green/sustainable project claims. 2) Contracts; problems with firms not pushing back on contract terms and indemnity provisions. 3) Reduced scope and inadequate technical skills and reviews of firms. 4) Account Receivables; firms more inclined to let accounts receivable grow and to sue for unpaid fees. 5) Project & Client Selection; firms accepting work from less desirable clients and receiving*

	see 13,14 15	During the downturn a more significant portion of A/E work is in the public sector, where claims frequency is less than in the private sector. This should reduce claims frequency. The dollar volume of A/E work is down, which should reduce claims frequency. A/Es are accepting work from less desirable clients and receiving inadequate fees. This will increase claims frequency. A/Es are more inclined to let accounts receivable grow and to sue for unpaid fees. This will increase claims frequency. I expect claims frequency over the next two years to be steady, or possibly decrease.	More green/sustainability risk	LEED,	We expect the current challenges to continue for so long as construction activity is down. Upon resumption at or near historical levels, we expect issues regarding from lack of capacity due to the movement of design professionals to other industries.	More competition as the economy picks up; more contractual risk taking; more retaliatory suits for fees or cost overruns.			More claims because of economic problems for developers, municipal budget issues, and contractor failures.	The economy forcing firms to accept marginal projects, with less contractual security, and more limited financing may be problematic.
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**Question 32 - What loss prevention recommendations would you have for A/E firms today?**

*Loss Prevention Recommendations: 1) Remain strong on contracts terms. 2) Obtain adequate scope and fees for services. 3) Maintain focused on good clients and project selection. 4) Improve project communication and documentation. 5) Concentrate on technical expertise and ensure peers reviews are conducted. 6) Provide construction phase services with qualified personnel. 7) Stay on top of account receivables. 8) Apply effective risk management strategie*

	Document, document, document	Remain firm on strong contract terms. Watch receivables and don't let empty promises get in the way of sound financial decisions. Don't short cut review of the work product before it goes out the door as to do so will result in problems. Younger calculator and internet engineers letting programs do it all without doing proper engineering analysis will lead to claims so always do a double or triple check on what the computer spits out. Avoid dangerous indemnity traps.	To be aggressive in trying to work out client issues when they arise	Good contracting is one key to claim avoidance.	Well negotiated, written contract	Careful client selection is at the top of the list. Negotiating good contracts with proper scope and exclusions will also help. Avoiding unfavorable indemnities or other risk shifting terms will also serve to reduce liability exposure. Within the firm, we recommend the adoption and implementation of a risk management plan to identify, assess, treat and control risks for professional liability claims. Resort to negotiated contract arrangements that involve the contractor during the design phase--such as CM at risk, design/build or IPD--also help to reduce liability exposure due Refusing to accept projects with unreasonable or uncompensated risks is also a good part of an effective risk management strategy. With the advent of new technology for design and survey tools, time, money and leadership involvement should be invested to assure the firm is properly utilizing these tools, its risk management program is updated to account for new risks, and that members of	Heavy documentation, particularly in establishing scope, project requirements and compensation.	Good contracts and properly documenting projects are the key. More often than not, multi-million dollar cases turn on that one ambiguous contract clause or the confirming email that never got sent. A&E's need to understand that when matters progress to litigation, all bets are off and the documentary trail becomes critical.	Better contracts, and care in selecting clients	1. Communicate more often, openly and effectively, and on all issues whether good or bad. 2. Better documentation of design changes, supplemental drawings, supplemental instructions and C/A efforts. 3. Better contract drafting to include certain favorable provisions. 4. More coordination of subconsultants' work. 5. More tailored, coordinated specifications.
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## SmartRisk A/E Law Firm Survey Report

	Hinckley Allen Synder LLP	Jones Waldo Holbrook & McDonough, PC	Lane Powell PC	Lewis Brisbois Bisgaard & Smith LLP	Lewis, King, Krieg & Waldrop, P.C.	Morris Polich & Purdy LLP	Plunkett Cooney	Saul Ewing LLP	Siesennop & Sullivan	Wilson Elser Moskowitz Edelman & Dicker LLP
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	do internal peer review stick with you sweet spot do not chase low margin work to feed overhead	Don't let accounts receivable grow, suspend work earlier if fees are not being paid. Just because you are willing to accept less fee doesn't mean the Owner's expectation for the quantity or quality of services is less.	Back to basics re contracts and communication	limitation of liability and no indemnification provisions is essential in the contract. Better contracts with subcontractors and owners explaining no liability for errors of engineering subs who design outside scope of architects skill. Possible ratification by engineer sub of K with owner/architect to bypass vicarious liability.	Focus on ensuring fee payment so that this issue does not become a motivation for PL claims. Consider requiring prepayment of fees, retainers, bank letters of credit, and personal guarantees. Other businesses and professions require reasonable assurance that contract amounts will be paid, and the design professions should adopt commercially reasonable policies to avoid fee disputes.	Review contracts and negotiate important terms--do not sign the "standard" agreement; educate clients on scope and responsibility.			Contract clauses such as listed in No. 31.	Stringent contract review before engagement. Better documentation of project discussions and changes during the project.
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## SmartRisk A/E Law Firm Survey Report

	Clausen Miller	Collins Collins Muir + Stewart, LLP	Daniels Kashtan Downs Robertson and McGirney	Donovan Hatem LLP	Fisk & Fielder, P.C.	Folk & Associates, P.C.	Foran Glennon Palandech & Ponzi PC	Gordon & Rees LLP	Greve Clifford Wengel & Paras, LLP	Hall & Evans, LLC
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### Question 32 - What loss prevention recommendations would you have for A/E firms today? (Cont'd.)

						(Cont'd.) the firm understand the strengths and limitations of these new tools.				
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### Question 33 - Any additional thoughts or comments for the A/E community?

	Keep up the good work	It has been and will continue to be a rough ride but the strong will not only survive but they will prosper when this downturn (like all others before it) subsides.		Not at this time.	Seek competent legal advice on contract issues. I see too many design professionals who lack necessary business/contract experience at all levels of firm size.	This geographic market will continue to provide opportunities for growth as the market returns to a growth mode. The challenges facing A/E's must be addressed as they undertake to re-build their practices.	Very hostile workplace w/ low margins and many sources of owner dissatisfaction. I would urge that owners be thoroughly vetted before engagement.	Hopefully the economy continues to rebound and better fortunes lie ahead.		Many of our design clients have expressed extreme heartache over the litigious climate, coupled with a down economy. Even the best firms have been sued, sometimes multiple times, and the challenges of litigation demand time and money that cannot be used to chase after profitable work. Many of our architect and engineer clients have expressed nostalgia for the "good old days" before lawsuits were common, when work was more collegial, when profit margins were better, and longing for a return to the creative process of identifying problems and working on solutions for their clients.
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## SmartRisk A/E Law Firm Survey Report

	Hinckley Allen Synder LLP	Jones Waldo Holbrook & McDonough, PC	Lane Powell PC	Lewis Brisbois Bisgaard & Smith LLP	Lewis, King, Krieg & Waldrop, P.C.	Morris Polich & Purdy LLP	Plunkett Cooney	Saul Ewing LLP	Siesennop & Sullivan	Wilson Elser Moskowitz Edelman & Dicker LLP
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### Question 32 - What loss prevention recommendations would you have for A/E firms today? (Cont'd.)

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### Question 33 - Any additional thoughts or comments for the A/E community?

	pay for attorney expertise and look beyond the billable hour to the value billed and service rendered each month		Clearly a stressful time. Novel payment schemes to match funding availability (e.g., partial ownership interests, additional payments tied to sales or rental, etc.) have allowed some work to move forward.			Be aware of court cases imposing liability outside of the indemnity/negligence/standard of care areas. Contractual defense obligations may not be covered under a practice policy and will result in huge expense risks.			no	As the economy recovers, there will be greater opportunities for design firms. Embrace the opportunities, but do so prudently. Make sure that contracts are carefully reviewed. Also make sure that budget cuts and possible lay offs during the recession didn't reduce your necessary project capabilities and experience as you look to move forward.
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### Conclusion

This is a challenging period for many A/E firms just trying to survive. Economic indicators have shown that the slow-down will continue throughout 2010 and well into 2011. In an effort to stay alive, many firms are making difficult adjustments to staffing levels, operations and business practices in an effort to reduce overhead and increase revenue opportunities. It is important firms are aware of the risks when making operational alterations and remain focused on implementing effective strategies mitigating risk and liability exposures. Based on the results of this law firm survey, 85% of A/E firms are taking on more risk today. Another SmartRisk survey of 17 A/E insurance carriers specializing in professional liability (PL) insurance substantiated that finding with 82% indicating A/E's are accepting more risk driven by economic conditions [www.smartrisk.biz/products](http://www.smartrisk.biz/products). Slow economic conditions increases claims and litigation with claimants more willing to file a complaint quicker and for smaller amounts. It is important that A/E firms understand that implementing effective risk management strategies should be at the core of their practice and a consideration when making every business decision. When assessing A/E firms operations and practices, SmartRisk has found the higher performers and most profitable firms have implementing solid risk management strategies.

## About SmartRisk and the Author

SmartRisk LLC is a consultancy providing risk and performance management services for the design and building industry. SmartRisk believes that design professionals who are knowledgeable regarding risk and liability exposures and incorporate effective risk management strategies are in a better position to prevent and mitigate losses as well as improve performance.

Timothy (Tim) Corbett, Founder and President of SmartRisk has over 25 years of experience developing and implementing risk and performance management programs for design, environmental and building professionals. Mr. Corbett has implemented model programs for numerous firms, including international engineering/construction firms Bechtel and EG&G, where he obtained a Department of Energy (DOE) Top Secret Security "Q" Clearance. Tim has held VP and Director Positions with insurance carriers DPIC and Zurich with responsibilities for Underwriting, Risk Management and Industry Relations. Mr. Corbett is a member of American Council of Engineering Companies (ACEC), American Institute of Architects (AIA), and the United States Green Building Council (USGBC). Tim sits on numerous national committees, is called upon as a speaker at regional and national forums, has been published and quoted on the topics and owns copyrights to risk management practices and strategies. Mr. Corbett holds a BS degree in Security & Risk Management, MS degree in Management, Architectural Design & Technology Certificate, Environmental studies degree and is LEED certified.

If you have any question, Tim's contact information; t; 626-665-8150, [tcorbett@smartrisk.biz](mailto:tcorbett@smartrisk.biz), [www.smartrisk.biz](http://www.smartrisk.biz)

## Readers Notice

*This report is intended to provide information on the subject matter. It should not be regarded as providing legal opinion or advice for any individual situation facing a design firm. Firms are advised to consult with legal professionals or other experts regarding their individual circumstances.*