HRH A&E/AVA

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January 2006
Edition

RISK SOLUTIONS

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Managing The Condo Craze

The following article is a re-print from an article that Dan Buelow, Managing Director at HRH A&E, recently wrote for an industry association publication.

As the condominium boom continues more and more design firms are faced with the difficult challenge of managing this hazardous exposure. The consensus among all professional liability carriers is that condo projects are the riskiest class of business resulting in claims against design professionals at a much greater frequency and severity level than any other project type. As a result, few carriers have an appetite for this business and it can be difficult and costly to find professional liability insurance. This article will explore the inherent risks and specific risk management measures that should be addressed when undertaking these types of projects.

Why are condominium projects inherently "hazardous"?

Claims against design firms doing condo projects can stem from a variety of reasons however, there a certain unique characteristics of this project type that make this a volatile risk that every design firm should be aware of. The following is a breakdown of some of these key risk factors:

Residential Exposure Multiplied by "X". Next to "condo" the next dirtiest word to most professional liability underwriters is "residential". The problem with residential projects is that the client is often unsophisticated and the design professional has the difficult task of dealing with these folks and interpreting their dreams. This often leads to unrealistic expectations that are difficult to establish and nearly impossible to meet resulting in an emotionally charged exposure. Now take all of this and multiply it, along with any given problem, by the number of units in your condominium and you begin to see the additional hazards of this project type. Further, take into consideration that many condo projects are now being developed as mixed-use which raises a myriad of additional design challenges the design professional must face along with the

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Managing The Condo Craze (cont'd.)

residential, multi unit and (often) high-rise design and construction challenges. Everything from acoustics to smoke ventilation to traffic flow must be contemplated and solved in order to balance the commercial, retail and consumer interests with those of all the good folks upstairs having their weekly association meeting.

Associations. If you made the mistake of designing a condominium with a common meeting area you may experience first hand how fast a group of strangers can whip together a lawsuit. Regardless, the Home Owners Association (HOA) is a major source of claims against design professionals. Often unsophisticated, HOA's often find themselves with problems that result from their own (and past HOA's) mismanagement of the building. HOA's are often reluctant and/or incompetent to set dues high enough to cover necessary maintenance of common areas and building exterior. Now enter the Plaintiff attorney that specializes in cold calling HOA's and offering creative litigious solutions for subsidizing those costly maintenance issues.

Third Party Exposure. Contracts are important on all projects and these agreements should be negotiated aggressively on condo projects in particular. However, it's important to note that these agreements often do little to mitigate third party claims from the HOA and individual condo owners which are your greatest exposure to claims. Indemnity wording, limitations of liability, waivers of consequential damages and other important clauses in your agreements do not bind the HOA or condo owners as they are not privy to these agreements.

The Developer. The highly leveraged developer with little care for quality, no ties to the community and even less experience doing a speculative condo project is not, unfortunately, terribly uncommon. Also not uncommon is the Joint Venture or shell corporation that was formed for a given project which dissolves soon after the project is completed leaving the design team holding the proverbial bag. It is very difficult for any design firm to pass up work especially a high profile project that has the potential of generating significant fees and prestige for your firm. In fact, the only thing probably more difficult is finding that you have jumped in bed with a bad client that views your professional liability policy as cost over run insurance, is way over their head and/or is nowhere to be found. The tangible and intangible costs of a claim on such a project can be devastating to a design firm. The distraction to your practice in spending countless hours in depositions and the financial costs – both in up front deductible expenses and future insurance premiums – is an unpleasant calculation.

What can the design firm do to manage condo projects?

When addressing condo exposures (or any exposures for that matter) it's important to understand the basics of risk management: you can transfer your risk in two ways: (1) by contract and (2) by insurance, however, it's impossible to transfer all your risk by insurance or by contract – especially on condo projects. Therefore, you must assume and control your exposures to loss. This begins with understanding what your risks are, where they come from and what steps you can take in managing these exposures. The following are important considerations and steps firms can take in managing condo exposures:

Client selection. It's very important with these types of projects that the design firm qualify their business partners. Do what you can to ensure your prospective client has the experience and financial backing to fully meet their end of the bargain. Do what you can to ensure your prospective client has ties to the community, is not a fly by night operation and has experience in doing these types of projects. The contract negotiation process provides an excellent opportunity to qualify your prospective clients, establish expectations and gauge how your prospective client will act during the course of your relationship. Remember, if they are unreasonable at this stage as a prospect, they will be a lot less reasonable a year or so down the road addressing problems when they are a client. Lastly, find out exactly how your prospective client intends on marketing the units to be sold. This will offer valuable insight into the prospective client's objectives, experience and views on quality.

Technical review. Third party exposures to negligence claims are a big concern on condo projects. The best way to manage this exposure is to

Managing The Condo Craze (cont'd.)

take extra care in the technical review of your work and to include peer review. This should be built into your cost and you should be comfortable that your client recognizes the importance of quality design and construction administration. If you have a design flaw in one unit most likely it will be present in every other unit and you may be subject to individual third party claims from each owner – none of whom are bound by your contract. Regarding construction administration, you should not undertake a project of this type where an owner wishes to remove or limit the design team's role in performing construction administration. There is strong actuarial data showing the real advantages of having the design team present to manage CA – to observe the project is being built in general conformance with their plans and specs. In addition, if you are not present you cannot defend yourself during the course of construction. Your contract should be clear as to what your responsibilities are – and what they are not. You should also require the use of a water penetration specialist (to be hired by the owner) to help mitigate water infiltration and mold claims which are a significant source of condo claims.

Documentation. Good, consistent documentation is a critical risk management practice for all design firms on all projects. This is especially true on condo projects. It starts with a fully executed agreement and amendments to address changes in scope, etc., and includes consistent and documented communication with the owner and all other members of the project i.e. field notes, site visits, meetings, etc. Keep in mind that your professional liability exposures are "long tail exposures". This means that a great deal of time can transpire between the time you initiate client negotiations to the time a given project is completed to finally finding yourself sitting in front of a jury of your so called peers to defend yourself against a lawsuit. Months, if not years, can pass and you will find yourself in a very vulnerable position if you have to rely on the anecdotal testimony of a current or (worse) formal employees of your firm. There is a great deal more that can and should be discussed on this topic of documentation in order to reduce your exposure to claims and enhance your firm's position to extricate yourself from a given dispute. When it comes to condo projects documentation concerning materials is critical. Consider your long term and third party exposures when specifying materials – keeping cost and maintenance in mind.

Contract negotiation. The design firm should be diligent and cautious when entering into contracts on condo projects given the poor historical claim experience and the severe constriction in viable insurance options for firms that generate much revenue, i.e. over 10% from condo projects. Firms should charge more for these projects because they will be paying more for their insurance and are assuming a great deal more risk than most any other project type. In short, there should be less give and more take and holding your position on specific "deal breakers" when negotiating these contracts. A contingency fund should be established and clearly defined that it is not for funding change orders. By negotiating and establishing a contingency fund you can address and define the standard of care for which you will be held and help ensure proper budgeting of the project. If you are the Prime of a given condo project, you also should consider requiring that certain subs contract directly with the Owner to reduce your vicarious exposure. One last point concerning contract negotiations: fully utilize outside resources to assist and advise you throughout this process. Consult an attorney that specializes in this area of law and the unique exposures of the design firm as well as a knowledgeable insurance broker. Most likely you will be faced with an owner drafted agreement or an altered AIA agreement. In any case, rest assured, your owner has lined up their representatives for this process.

"Key" contract clauses. The following is a list of key clauses that the design firm should strive for in every condo project:

Construction administration – the design firm should insist on defining and managing this process and not allow to be cut you out of this role.

Indemnity - fully insurable.

Waiver of consequential damages and limitation of liability.

Contingency fund

Definition of standard of care

Hazardous materials clause

Assignment by consent – if developer goes bust lender will most likely want to continue project. You want to be able to negotiate more fee because you will have to do more work to bring new client up to speed

Blueprint for Minimizing Employment Claims

HRH A&E recognizes the potential exposure some firms face as it relates to employment claims. As such, the following article is written by *Monitor Liability Managers, Inc. who writes Employment Practices Liability Insurance (EPLI) for a variety of different businesses such as A&E.*

An important way to look at your company's policies and procedures is how they can become an integral part of the defense of any employment claim. Think of your employment policies and procedures as the first line of defense in protecting your company. Employers also need to be aware that state employment laws often differ from federal employment laws, so don't assume that your company is exempt from having to worry about employment claims. Please note that it is always wise to consult with counsel specializing in employment law when making important decisions relating to personnel or employment practices.

Document, Document, Document (and then, document again)

The lack of objective, complete documentation supporting a company's actions is generally the number one issue with defending an employment claim. Judges and juries (as well as defense counsel) like to be able to see documents that are consistent, well drafted and support the action taken by a company. Credibility is gained when a company acts in a fair, objective manner with its employees and good documentation lends support to the verbal testimony provided by witnesses.

Performance Reviews

Very little is more difficult to overcome than years of good performance evaluations when 'poor performance' is the reason an employer takes an adverse employment action against an employee. This not only diminishes the credibility of the company in its decision to take the action at issue, it can taint all of the company's disclosures and testimony in the case. Juries may find it hard to believe that an employee with an excellent record turned bad in a short period of time. Often, they will believe 'poor performance' is a pretext for some other, impermissible reason for terminating or demoting an employee.

It's never easy to give an employee a critical review, especially someone who has worked with you for a long period of time. However, it is vital that reviews be honest, forthright and objective. This is not only a part of a defense to a possible claim, it is also a service to the employee who needs to know that their performance has been noticed by the company and needs to be rectified. While it may be hard to give an employee a poor review, it is much harder to explain in front of a jury that the supervisor didn't really mean it when she gave glowing reviews to someone who later had to be terminated for doing a poor job.

Discipline

Documentation of performance issues, behavior problems, absenteeism or other problematic conduct should be objective, supported and concise. The consequences of continuing the unacceptable behavior should be discussed and included in the documentation and the company should follow up with the employee to ensure compliance. If adverse action is warranted, it should be explained to the employee and followed up in writing.

People who have lost a job are generally sympathetic to a jury and corporate entities are usually viewed as the 'villain' in any employment case. Therefore, having good documentation to support your actions and to show that the employee was apprised of all actions being taken will go a long way to convincing a judge or jury that the company acted in accordance with the law and its own policies.

Any discipline should not come as a surprise to the employee. If an employee is given forthright, honest feedback about his/her performance, then any form of discipline (written warnings, demotion, suspension, termination, etc.) should be expected and understood. A court will look less favorably upon a plaintiff who received multiple warnings and was given the opportunity to correct the problem and failed to do so, prior to being terminated.

Have a progressive discipline policy and utilize it

A great defense to any employment case is the employee's own acknowledgement that he/she knew the policies, had been warned about performance issues and was later terminated for con-

Employee Benefits Update

Flexible Spending Accounts (FSAs) provide you with an important tax advantage that can help you pay health care and dependent care expenses on a pre-tax basis. By anticipating your family's health care and dependent care costs for the next plan year, you can actually lower your taxable income.

Essentially, the Internal Revenue Service set up FSAs as a means to provide a tax break to employees and their employers. As an employee, you agree to set aside a portion of your pre-tax salary in an account, and that money is deducted from your paycheck over the course of the year. The amount you contribute to the FSA is not subject to Social Security (FICA), federal, state, or local income taxes — effectively adjusting your annual taxable salary. The taxes you pay each paycheck and collectively each plan year can be reduced significantly, depending on your tax bracket. And, as a result of the personal tax savings you realize, your spendable income will increase.

Bob and Jane's combined gross income is $30,000. They have two children and file their income taxes jointly. Since Bob and Jane expect to spend $2,000 in adult orthodontia and $3,300 for daycare next plan year, they decide to direct a total of $5,300 into their FSAs.

	Without FSAs	With FSAs
Gross income:	$30,000	$30,000
FSA contributions:	0	-5,300
Gross income:	30,000	24,700
Estimated taxes:		
Federal	-2,550*	-1,755*
State	-900**	-741**
FICA	-2,295	-1,890
After-tax earnings:	24,255	20,314
Eligible out-of-pocket medical and dependent care expenses:	-5,300	0
Remaining spendable income:	$18,955	$20,314
Spendable income increase:		$1,359

*Assumes standard deductions and four exemptions.
** Varies, assume 3%.

The example above is for illustrative purposes only. Every situation varies and we recommend that you consult a tax advisor for all tax advice.

AVA Insurance Agency Flexible Spending Accounts

Health Care Reimbursement FSA

The Health Care Reimbursement FSA lets you pay for certain IRS-approved medical care expenses not covered by your insurance plan with pre-tax dollars. For example, cash that you now spend on deductibles, co-payments, or other out-of-pocket medical expenses can instead be placed in the Health Care Reimbursement FSA pre-tax, to pay for these expenses. The annual maximum contribution to the Health Care Reimbursement FSA is [$_Amt] (or [$_Amt] per month).

Eligible Expenses

Eligible health care expenses for the Health Care Reimbursement FSA include more than just your deductible and co-payments. Generally, any medically necessary health care expense that you can deduct on your tax return is considered an eligible expense. Some examples include:

- ✓ Hearing services, including hearing aids and batteries
- ✓ Vision services, including contact lenses, contact lens solution, eye examinations, and eyeglasses
- ✓ Dental services and orthodontia
- ✓ Chiropractic services
- ✓ Acupuncture
- ✓ Prescription contraceptives

For more information about eligible medical expenses, please refer to the attached list of example eligible and ineligible expenses, or refer to *IRS Publication 502, Medical and Dental Expenses* available at http://www.irs.gov/publications/p502/index.html

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Blueprint for Minimizing Employment Claims (cont'd.)

tinued performance issues. Juries can certainly understand a company's actions when it can be shown that an employee was given one or more chances to improve their performance before being terminated. Also, a progressive discipline policy shows inherent fairness on the part of the employer (note: such a policy should include the ability to terminate an employee for serious misconduct at the employer's discretion and maintain the at-will status of the employees).

Another policy worth considering is an internal alternative dispute resolution policy. Companies have been very successful in reducing claims by constructing a multi-tiered process to resolve disputes in the workplace. An example would be a process where an employee with a grievance must first submit the complaint in writing to a supervisor for resolution. This requirement alone often reduces the number of frivolous complaints being brought. If the issue isn't resolved, the issue is moved to the supervisor's manager. If this is not successful, a committee (often comprised of peers or a combination of peers and supervisors) will review the complaint and offer a solution. If this is unsuccessful, then the matter is escalated to an officer or HR manager for review. The idea is to allow for the resolution of disputes before they escalate into a lawsuit. Creating such a process not only allows for meaningful resolution, it also tends to cut down on frivolous matters (anecdotal evidence has revealed that co-workers reviewing complaints tend to be very critical of petty matters and peer pressure will often influence employees' decisions to complain about non-serious matters). This type of system is not right for every employer (size, nature of business and physical locations may impact such a system), and certainly some matters, such as sexual harassment or workplace violence, need to be brought to management's attention immediately. But overall, this is a creative solution to providing a responsive, interactive workplace for your employees while also reducing the amount of nuisance claims brought against an employer.

Enact, disseminate and enforce policies and procedures

Part of a company's defense should be that it enacts and enforces anti-discrimination and harassment policies. Being able to tell a judge or jury that the company takes such matters seriously, has mandatory training, and has set up a procedure for employees to make complaints, goes a long way toward minimizing exposure.

Policies and procedures should be clearly written and should contain, at a minimum, a statement explaining that the employer does not tolerate discrimination or harassment and should contain the steps an employee should take to make an internal complaint. These policies should be given to the employee upon their hire/orientation and they should be required to acknowledge, by signature, that they read and understand the policies and procedures. This should be continued on an annual basis for all employees and the HR department should maintain copies of the signed acknowledgements in each person's personnel records. The reality is that management can't be everywhere, and there will often be times when employees do things without the employer's knowledge. These policies and procedures are part of the recognition that employees who believe they've suffered harassment and discrimination know how to alert the company so that prompt, remedial action can be taken if warranted.

When defending an employment case, it's also helpful to be able to explore if an employee knew of the policies and procedures for reporting allegations of harassment or discrimination, understood them, but failed to utilize them. This goes a long way in winning the credibility battle. An employee who fails to take steps to bring an issue to management's attention may be an employee who is looking for a lottery ticket rather than a productive work environment.

Along the lines of policies and procedures, providing annual anti-harassment training is an excellent investment in maintaining a safe working environment as well as adding another layer of defense to any employment claims. Employers that provide such training to their supervisors and managers will be able to point to another factor to show that it takes steps to protect its employees and may even be able to counter a claim for punitive damages.

Blueprint for Minimizing Employment Claims (cont'd.)

3. Take all complaints seriously

Showing a judge or jury that a company took immediate, responsive action to a person's complaint, no matter how small it may seem, gains a company credibility and shows that policies and procedures are not just window dressing. Often, an employee will make a complaint about a co-worker and then ask the employer not to do anything about it. This usually occurs when the complaining employee feels there's a situation that needs attention, but they really don't want to get a co-worker in trouble. Regardless, the employer has to take action in order to make sure its employees are protected from harassment, discrimination or physical harm. Failing to take action is rarely a good idea.

The complaining employee should be advised of the outcome of the investigation and the action that will be taken by the employer (even if the action is to close the file after conducting the investigation and finding no evidence of harassment/discrimination). A consistent component in many cases is the allegation that the employer failed to take action (which is spun by plaintiffs as not caring). Often, however, the employer did take action, but failed to inform the complaining employee about the resolution. This lack of communication leaves employees often feeling dismissed or disregarded and can often lead to claims of harassment, discrimination or retaliation.

4. E-mails

E-mails have become the 'smoking gun' of employment claims – the one piece of evidence that employees will point to as hard proof that they were discriminated against, harassed or treated unfairly. It is not unusual to see employees who have been disciplined or warned for their behavior or performance start to create evidence to support a claim (the number of claims that are made immediately after a poor performance review are staggering). This can start with e-mails from the employee disputing the warning/discipline and (usually for the first time) alleging some form of wrongdoing by the employer. An employer needs to respond to such tactics in a calm, professional manner so as not to be accused of retaliating against the employee for making the allegations.

In addition to their evidentiary value, discovery (the process where each side is allowed to seek information about the case from the other side) costs increase significantly when a company is forced to have a computer forensic expert review multiple years of a company's hard drives for additional e-mail evidence being sought by the other side. Plaintiffs will often seek this information for three reasons: 1) to find additional evidence to support their case, 2) to find additional potential plaintiffs, and 3) to drive up the costs of the litigation (today, under many employment laws, plaintiff's attorneys are allowed to recover their fees, so it is in their interest to make the litigation expensive for all sides).

The golden rule of e-mails: **Don't write anything you wouldn't want your mother, spouse, boss or a jury to see!** A good rule of thumb is to take 24 hours to reply to an e-mail on an emotional issue (if an immediate response is needed, and if appropri-

"E-mails have become the 'smoking gun' of employment claims"

Blueprint for Minimizing Employment Claims(cont'd.)

ate, have someone uninvolved in the issue review your response prior to sending). Responding in anger is never a good idea.

Have an arbitration provision requiring arbitration of employment claims as a condition of employment

An arbitration clause is basically an agreement between an employer and employee that, as a condition of employment (or continued employment), the employee agrees to submit certain employment related claims to binding arbitration rather than a civil court for resolution. The arbitrator (or panel of arbitrators) will then act as the judge and jury for the case. Usually, the employer must agree to pay for the costs of the arbitrator. Overall, most arbitrations are quicker and less formal than the civil court process and usually cost less than taking a case through trial. Please note, an experienced employment attorney should draft any arbitration clause for a company and provide counsel on implementing the policy (the requirements are very technical and each venue may have difference rules for such a policy).

Arbitration clauses, like everything, have their benefits and detriments – on the down-side, an employer may lose the multiple avenues of appeal and reconsideration available in a court and arbitrators are usually fairly loathe to make a determination on the pleadings (dismissal, summary adjudication, etc.). However, on the plus side, the chances of a 'runaway' verdict are usually reduced. Overall, arbitrations tend to flatten out the extremes of a case.

Conclusion

Perhaps the most important thing an employer can do to reduce employment related claims is to have an experienced Human Resources professional on staff. A good HR person pays dividends to the company by working to prevent claims, reduce turnover and maintain a productive workforce, which benefits the employer and the employees. We would also strongly encourage every employer to have their policies and procedures reviewed regularly by their outside employment counsel. Finally, your company may benefit from having the protection of an Employment Practices Liability Insurance policy. Please speak to your agent about your company's specific needs and what type of coverage may best protect your corporate assets.

Jason Fogg is the Managing Claims Attorney for Monitor Liability Managers, Inc. and is responsible for managing Monitor's Employment Practices Liability claims, as well as Management Liability and Non-Profit Organization Liability claims. After graduating from DePaul University College of Law, Jason began his legal career specializing in employment law litigation before joining the insurance industry.

"A good HR person pays dividends to the company by working to prevent claims"

Call 877-474-2821 to obtain your Employment Practices Liability Insurance Quote!

HRH A&E/AVA 2006 Public Seminar Schedule

February 8, 2006

9am to 11am

AIA Conference Room,

Merchandise Mart Plaza

Chicago, IL

Risk Management for Sustainable Design

Sustainable design and building has rapidly emerged as an important new area of practice for design professionals. Chicago architects, engineers and city officials have taken up the promise of sustainable buildings with unusual vigor but this changing marketplace poses new, and often unforeseen, legal and business risks for design professionals. This seminar provides a thorough background to the sustainable building movement as well as an examination of the risks involved for design professionals and other stakeholders in the process.

February 16, 2006

AIA WI SW Chapter

Madison, WI

Ten Commandments of Loss Prevention

Professional Liability is a concern for architects. In today's world, it is essential that design professionals practice good risk management in their business. Please join representatives from HRH A&E/AVA Insurance Agency, an agency solely dedicated to design professionals, as they present the Ten Commandments of Loss Prevention. This interactive program will reinforce general risk management tactics and discuss new ideas to control risk in your practice. This program has been registered for 2.0 hours of CE credits.

February 23, 2006

University of St. Thomas

Opus Hall, 1000 LaSalle Avenue

Minneapolis, MN

8:00am to 12:30pm

The Ten Commandments of Loss Prevention

In today's world, it is essential that design professionals practice good risk management in their business. Please join representatives from the HRH A&E, an agency solely dedicated exclusively to design professionals, as they present the Ten Commandments for Risk Management. This interactive program will review critical risk management tactics and discuss new ideas to control risk in your practice. This program has been registered for 2.0 hours of CE credits.

Electronic Transfer and Ownership of Documents

As technology continues to grow, it is important for the design professional to understand the risks associated with the exchange of information through electronic mediums. Further, this type of exchange frequently raises questions regarding ownership. Please join representatives from HRH A&E in a discussion of the risks in the use of electronic delivery as well as how to protect your ownership rights in the projects you design This program has been registered for 2.0 hours of CE credits.

March 9&10, 2006

AIA Professional Development Conference

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Merchandise Mart Plaza

Chicago, IL

Mitigating Losses Through Forms and Checklists

In today's world, it is essential that design professionals practice good risk management in their business. Please join representatives from HRH A&E/AVA, an agency dedicated exclusively to design professionals, as they present various forms and checklists as an aid in risk management. This interactive program will review critical risk management tactics and discuss new ideas to control risk in your practice. This program has been registered for 2.0 hours of CE credits.

Managing The Condo Craze (cont'd.)

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Termination – allowing design firm an out in the event lender/new client and/or owner raises additional scope you can't agree to.

Ownership of docs – need to retain ownership for these projects! See Laura Guagliardo's recent ALA article on this subject.

Frivolous lawsuits - a clause to collect attorney fees from the owner in the event they bring suit and don't prevail.

The Maintenance Manual. In addition to all of the key clauses as noted above, you should include wording requiring the developer address in the HOA by-laws maintenance responsibilities. A maintenance manual should be developed as part of the consultant's scope of basic services. A maintenance service contract is highly recommended. Your client should agree to include in the by-laws of the HOA a requirement that the recommended maintenance be the responsibility of the HOA. The by-laws would require periodic inspection of each component by an outside inspector. Each purchaser would receive a copy of the maintenance manual at the time of purchase and would acknowledge understanding of the HOA's responsibility for maintenance. You should also push hard to have in the by-laws of the HOA a mandatory mediation clause allowing you the opportunity to resolve these disputes prior to litigation.

Transferring your exposures by insurance. Unfortunately, there are no commercially viable options in this day and age for insuring condo exposures. Project insurance capacity is severely constricted and virtually nonexistent for most condo projects. Most firms will be faced with assuming this exposure on their individual practice policies and are faced with higher future insurance costs and fewer carrier options. Beware of accepting contractual requirements that ask you to provide this type of insurance or even to increase your practice limits on these project types in the form of a Specific Job Excess (SJX). Also beware of the Owner Protective Policy or OPPI which is a policy for the owner which kicks in after the design team's PL policies have been exhausted. There is no real advantage for the design firm to have this product in place and before allowing it to be bound and hanging over their head, the design firm should have an opportunity to participate in negotiating the terms of this coverage. One insurance product the design firm would benefit from would be a policy that covers mold and water infiltration claims. This policy is purchased by the owner who agrees to build to certain specifications and coverage is for each unit and is transferable to future individual unit owners.

In closing, it's important to note that I have only scratched the service on many of these issues. It's also important to note that we have a lot of design firm clients that specialize in condo and residential work with excellent claim histories. However, they are still faced with fewer carrier options and greater insurance costs. Those firms that do much if any condo work and have poor claim histories are a lot worse off. Assuming and controlling this specific project type begins by recognizing that condo projects are in fact hazardous and the source of a disproportionate number of claims against design professionals. One also has to wonder what the impact will be if and when the condo boom goes bust. Design firms need to stand up for themselves and follow conservative risk management practices when it comes to selecting the right business partners and establishing reasonable expectations and fair contracts. By understanding your firm's risks and establishing specific "go – no go" procedures with the above measures in mind, your firm should have greater success in managing these project types.

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"faced with fewer carrier options and greater insurance costs"

Flexible Spending Accounts (Cont'd.)

DEPENDENT CARE FSA

The Dependent Care FSA lets you use pre-tax dollars towards qualified dependent care. The annual maximum amount you may contribute to the Dependent Care FSA is $5,000 (or $2,500 if married and filing separately) per calendar year.

If you elect to contribute to the Dependent Care FSA, you may be reimbursed for:

- The cost of child or adult dependent care
- The cost for an individual to provide care either in or out of your house
- Nursery schools and preschools (excluding kindergarten)

Eligible Expenses

In order for dependent care services to be eligible, they must be for the care of a tax dependent child under age 13 who lives with you, or a tax dependent parent, spouse, or child who lives with you and is incapable of caring for himself or herself. The care must be needed so that you and your spouse (if applicable) can go to work. Care must be given during normal working hours — Saturday night babysitting does not qualify — and cannot be provided by another of your dependents.

Is the FSA Program Right for Me?

AVA Insurance Agency's Flexible Spending Accounts are beneficial for anyone who has out-of-pocket medical, dental, vision, hearing, or dependent care expenses beyond what his or her insurance plan covers.

It's easy to determine if a FSA will save you money. At enrollment time, you will need to determine your annual election amount. Estimate the expenses that you know will occur during the year. These include out-of-pocket expenses for yourself and anyone claimed as a dependent on your taxes. If you had $100 or more in recurring or predictable expenses,

care expenses beyond what his or her insurance plan covers.

It's easy to determine if a FSA will save you money. At enrollment time, you will need to determine your annual election amount. Estimate the expenses that you know will occur during the year. These include out-of-pocket expenses for yourself and anyone claimed as a dependent on your taxes. If you had $100 or more in recurring or predictable expenses, the accounts can help you stretch your dollars.

How Do the Accounts Work?

If you decide to enroll in one or both of the accounts, your contributions are taken out of each paycheck — before taxes — in equal installments throughout the plan year. These dollars are then placed into your FSA. When you have an eligible health care or dependent care expense, you must submit a claim form along with an itemized receipt to be reimbursed from your account.

The Health Care Reimbursement FSA will reimburse you for the full amount of your annual election (less any reimbursement already received), at any time during the plan year, **regardless of the amount actually in your account**.

The Dependent Care FSA will only reimburse you for the amount that is in your account at the time you make a claim.

HRH A&E/AVA

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If you would like HRH A&E/AVA to address a specific topic in a future newsletter or seminar, please let us know!

FOR MORE INFORMATION, CALL US 877-474-2821

What Makes HRH A&E/AVA Different?

Specialized Personnel

We maintain a staff of professionals specifically trained in the unique insurance needs of the design professional. HRH A&E has more resources and in-house expertise dedicated specifically to servicing architects and engineers than any other broker.

Complete Insurance Service

We can fulfill all of your firms insurance needs including professional and general liability, property, workers compensation, health insurance, employee benefits and employment practices liability.

Contract Review Services

Design professionals are often asked to sign uninsurable client drafted contracts. HRH A&E has established a contract Hotline to assist our clients with the review and negotiation of these contracts.

Seminars

As the recognized leader in our industry, we are often asked to speak on various risk management topics to associations such as AIA, ALA, NSPE, ACEC, etc. In addition, we also provide custom in-house training and loss prevention seminars, which are tailored to meet the unique needs of each firm. As an AIA registered provider, all of our programs qualify for AIA continuing education credits.

Loss Prevention Assistance

Formal loss prevention programs benefit firms because they minimize risk and can positively influence premium pricing. We can assist your firm in the development of such programs and provide up-to-date information which will keep your programs current.

Member of Professional Organizations

Among others, we are an active member of AIA and ALA as well as ACEC, NCSEA, NSPE and others.

Carrier Relationships

Because HRH A&E/AVA Insurance Agency, a member of Hilb, Rogal & Hobbs (NYSE:HRH), is a recognized leader by the insurance community, we can access more carriers on a direct basis than any other broker. This guarantees your firm the best pricing and coverage options for our clients.

DIFFERENT BY DESIGN®