

DPRCG 2024 CONVOCATION

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# Risk Management Basics: Blocking and Tackling

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THE VALUE OF  
**TRUST**

# Carl Munkel



- Bradley University - BS Construction Management
- University of Dallas MBA Engineering Management
- Contractor's License
- Employers
  - H.C. Beck (now The Beck Group) 5.5 years
  - Boyken & Associates - 2 years
  - Gresham Smith - 34 years
    - Director of Risk Management – 20 years
    - Board of Directors – 8 years
    - Governance Chair – 6 years
- ACEC Risk Mgmt Chair; LFRT Legal, DPRCG Board

# Learning Objectives

- Learn the areas of risk in your firm
- Recognize the importance of risk awareness preceding risk mitigation
- Learn how to apply a formal risk assessment process to your firm's risks
- Understand the importance of a culture of risk management and the importance of relationships

# Overview

- This session is structured to provide pro tips for both seasoned risk managers and new DPRCG Convocation attendees to take back to their firms.
- The Risk Management professional is typically not the first one in the firm to know of a project issue. What should be done at the multiple phases of a project to promote risk awareness and influence the project design team about risk management topics?
- While some risks are project specific, there are many fundamental risks common to all projects. This breakout session is intended to present these risk management fundamentals that can be applied to any project.

# Risk Basics

**Risk:** a chance of loss

**Risk Awareness / Identification:** determine which risks affect a project

**Risk Mitigation:** a technique to reduce identified project risks

Ways to deal with project risk:

1. Accept: identify risk but take no action
2. Avoid: change your plans completely to avoid the risk
3. Transfer: shift to another party (e.g. professional liability insurance)

# Risk Basics



# Areas of Risk for Design Firms

- Business or economic
- Legal and insurance
- Performance
- Financial
- Schedule
- Contractual

# Sources of Project Risk:

- **Project type:** complexity, multiple phases or clients, location, tight schedule or budget
- **Clients:** inexperienced, demanding, litigious, unrealistic, public vs private
- **Project delivery method:** design-build, construction-manager at risk, design-bid-build
- **Design services:** structural engineering vs interior design
- **Project team:** experience level & availability, prior relationships vs forced marriage



# Deal Makers: Contract Terms

Consider certain clauses that must be in the professional services agreement and if client won't agree to add them seriously consider declining project. Risk tolerance varies by firm.

## **These include:**

- Standard of care definition and dispute resolution and termination rights
- Limitation of liability and consequential damages waiver
- Hazardous materials and jobsite safety waivers
- No responsibility for construction means & methods
- Ownership of Instruments of Service - reuse hold harmless
- Detailed scope of services (detailing responsibilities of all parties)

# Deal Breakers: Contract Terms

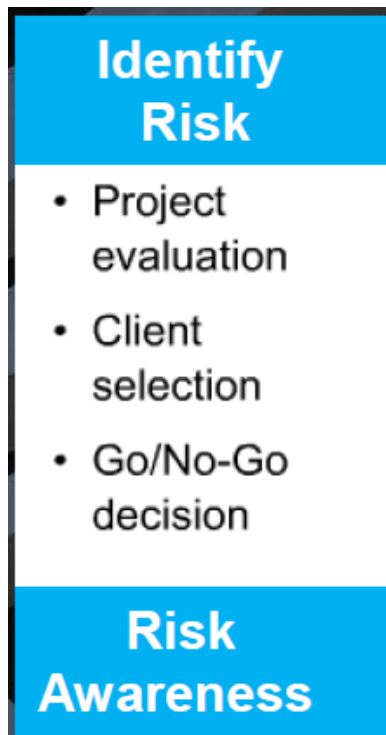
Consider certain clauses are so onerous and risk laden that they must be deleted from any agreement. Typically, a client-written clause and if client refuses to delete or substantially modify, seriously consider refusing the project. Consider obtaining the advice of your legal counsel.

## **These include:**

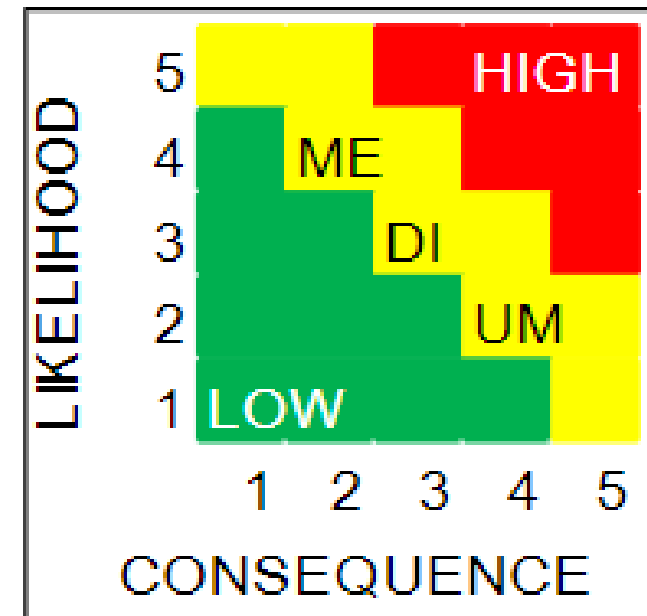
- Assignments, certifications, guarantees and warranties
- Indemnities not limited to negligence or require defense of client
- Insurance with unattainable or unreasonable requirements
- Jobsite safety or means and methods responsibility
- Liquidated damages in excess of actual damages or penalties
- Language that elevates the standard of care
- Stop work authority beyond the right to reject portions of work

# Risk Assessment Tools

Consider how projects are selected



A project risk matrix is a logical way to assess risk



Standard 5X5 Project Risk Matrix

# Using the Project Risk Matrix

Ranking Consequence or Severity ----->

Ranking Likelihood or Probability

Rating	Probability of Occurrence	Likelihood
5	81 – 99 %	Near Certainty
4	61 – 80 %	Highly Likely
3	41 – 60 %	Likely
2	21 – 40 %	Low Likelihood
1	5 – 20 %	Not Likely

Level	Consequence Criteria – Cost (Impact as a % of our Revenue. To Be Adjusted Per Project)
5	More than 15% increase from approved budget
4	12% to 15% increase from approved budget
3	8% to 11% increase from approved budget
2	3% to 7% increase from approved budget
1	Up to 3% increase from approved budget

Table 2: Consequence Criteria – Cost

Level	Consequence Criteria – Schedule
5	Cannot meet key project milestones
4	Changes required to the project critical path
3	Schedule slip; impacts the ability to meet key interim milestone dates
2	Schedule slip; does not impact the ability to meet key dates
1	Negligible schedule slip

Table 3: Consequence Criteria – Schedule

Level	Consequence Criteria – Quality of Performance
5	Severe degradation in technical performance; Will jeopardize project success; or will cause performance metrics not to be met
4	Significant degradation in technical performance with a moderate impact on project success
3	Moderate shortfall in technical performance with limited impact on project success.
2	Minor reduction in technical performance with little impact on project success
1	Minimal reduction in technical performance but no overall impact to the project success

# Causes of Claims

A claim is a written or spoken demand for free services or money

## Non-Technical Risk Drivers:

- Communications
- Construction Phase Services
- Client Selection
- Project Team Capabilities
- QA/QC Procedures
- Contracts Terms & Negotiations
- Project Selection

## Technical vs. Non-technical

**NON-TECHNICAL**

*Breakdown in  
project or practice  
management  
processes*



**TECHNICAL**

*Error and/or  
omission of a  
technical nature*

**CONTRIBUTES TO**



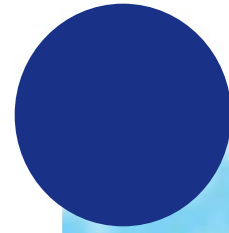
**RESULTS IN**



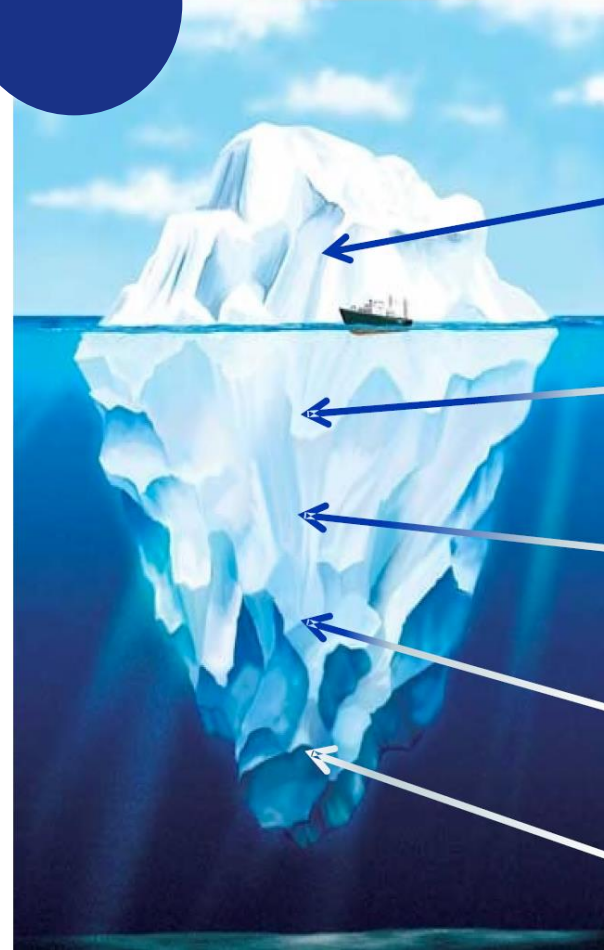
**Loss Prevention File or Claim**

# Cost of Risk

- In the event of a claim not all costs of risk are apparent
- Loss of reputation is likely immeasurable for a firm



## Hidden costs of risk



**Direct costs to your firm**

Revenue required to offset losses =  
10 x amount of loss

Principals' time in dealing with the  
problem

Other problems resulting from  
lack of attention by principals

Loss of reputation

# A Risk Manager's Characteristics and Skills

Characteristics	Skills
➤ Sense of humor	➤ Knowledgeable about: practices
➤ Risk aware	➤ Professional liability / insurances
➤ Self-motivated	➤ Contract terms
➤ Persistent	➤ Industry resources / contacts
➤ Understanding / Flexible	➤ People skills / consensus builder
➤ Direct / Candid	➤ Work with legal counsel
➤ Process-oriented	➤ Work with senior management
➤ Didactic	➤ Understand risks can be mitigated
➤ Persuasive	➤ Negotiation skills / willing to lose
➤ Trustworthy / courageous	➤ Educator / facilitator
➤ Protective	➤ Strong communicator
➤ Responsive	➤ Ability to simplify complex issues

# Awareness of AEC Industry Issues and Trends

- Environmental, Social and Governance (ESG)
- Construction material shortages (supply/demand)
- Continued labor shortages (construction & design)
- Increasing offsite (prefab) & modular construction
- Cyber: breach / extortion, interruption, social engineering, AI
- Ever changing standard of care, resiliency, sustainability, carbon neutral
- Variations in project delivery methods
- Greater involvement of contractor and specialty subcontractors in design
- The model as a deliverable



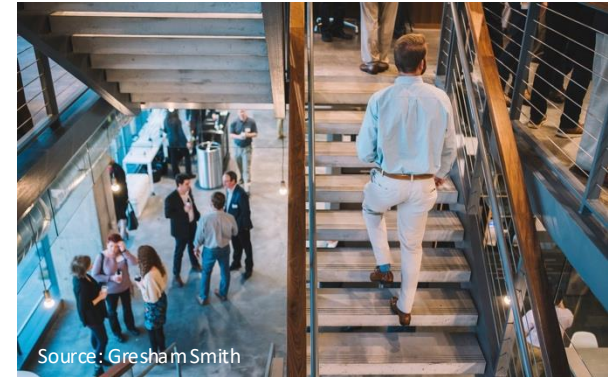
# Practical Ways Culture Supports Risk Management

- Develop buy-in to a risk management culture
- Reputation supersedes profit
- Start at the top with clear and consistent governance
- Questions about risks or pursuits are accepted
- Contracts are read and obligations fulfilled
- Unreasonable terms may be cause to reject a project
- Risk management does not equal zero risk
- Rewards are considered against possible risks



# Practical Ways Culture Supports Risk Management

- Provide training / education to employees at all levels
- Utilize education courses offered by AXA XL and your broker
- Subconsultants who understand your culture and adopt it
- Offer mentoring
  - Access to a well-qualified individual who is the designated go-to for questions about agreements (the risk manager)
- Cover risk management in each employee's performance review
  - If you can't change the people, then you might have to change the people



**How do you promote risk management training in your firm?**

# Practical Ways Culture Supports Risk Management

Progress will show itself as:

- Incremental reductions in the number of claims
- Reduced spend on lawyers
- Reduced “rate” and premium for professional liability insurance
- Increasing reputation for being intentional about risk management

# Relationships are Crucial to Success!

## Relationships matter

- No matter how the industry has changed that's the one constant.....
- We're all people and our clients want to work with people they:
  - Trust can deliver and address their needs and
  - Like.....same for retaining employees



# Risk Management Pro Tips

- **Stand up for yourself. Be confident in your firm's design.**
  - Don't be willing to diminish design for last minute changes
  - Avoid liability with no reward so others can save money or time with lesser quality material or systems
- **Schedules must be met by all parties**
  - When client fails to select the equipment by due date or out of sequence send a letter to document and be prepared to stop work.
- **Increased construction costs due to tight market or supply & demand**
  - Not your responsibility
  - Beware of substitutions

# Risk Management Pro Tips

- **Using new material, system, product or software**
  - Take time to research or defer to the tried-and-true method that is just as good
  - Go to school on someone else's learning curve
- **Inexperienced staff or team**
  - Budget extra time for mentoring and for review time by senior off-team staff
- **A difficult issue will not be forgotten**
  - Confront / Resolve quickly to save time, money, and guilt
- **What letter do you want in the file now?**
  - You may need it as explanation two years from now or in litigation
- **The client has not paid in 60 days**
  - Stop work and document

# Risk management pro tips

## Stop emailing - pick up the phone and call

- Communicate frequently and document



# Risk Management Pro Tips

- **No good deed goes unpunished**
- **No project is perfect - ever**
- **No design professional is perfect - ever**
  - The person is more important than the issue
  - Teaching moments build experience



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