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## 2008 Marketing Checklist

By Leslie Kusek, Marketing Consultant

By now many of our firms have survived their annual budgeting process and they are wrapping up their 2008 business plan, which is an important tool to keep us fo-

*(Continued on page 5)*

## The Taxability of Disability Benefits

By Debra Gervase, PCIA Executive VP  
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Many employers provide disability benefits to their employees and/or allow employees to purchase disability benefits. Following are answers to three common questions regarding taxability.

*(Continued on page 3)*

## Teens Behind the Wheel

By Tony Preston, PCIA VP Personal Lines  
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As parents, we all face "milestone" moments in the task of raising our

*(Continued on page 7)*

## Top 10 Risk Management Questions Facing Design Firms Today

*The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.*

With a nod to TV's late-night host David Letterman, here are the top ten professional liability concerns we have been hearing from our A/E clients and prospects. It's not a scientific poll, mind you, but a fair reflection of what's on the mind of many of today's design firms when considering their professional risks. In no particular order:

### **#10. Should I consider expanding the scope of services my firm offers to increase our annual revenues, or is this risky business?**

As a rule, expanding your scope of services on each project is an excellent way to increase revenues. What effect such a move will have on your risks depends largely on what types of new services your firm offers to your clients.

*(Continued on page 2)*



## Top 10 Questions

*(Continued from page 1)*

Some new services may actually lower your risk. For example, expanded jobsite observation services can help spot potential problems in the early stages and avoid project upsets. Where you might increase your risks is expanding into services in which your firm has limited experience – branching into designing complex medical facilities, for instance.

Realize that any increase in revenues may result in an increase in the size of your premiums, since annual fees are a key component in determining the cost of your PL insurance. This, however, does not necessarily reflect an increase in your risks.

### **#9. Is mold covered on my professional liability policy?**

Generally, yes. While specific mold exclusions have shown up on homeowners' policies and other types of personal and commercial property insurance, they are not typically found on professional liability policies. This doesn't mean, however, that mold is not a significant risk factor for design professionals.

A mold exclusion could be added to a professional liability policy if an insurer feels your work presents a particularly high mold exposure due to factors such as geographic location or project type. And even without an exclusion, mold could present exposures outside of your professional liability policy. For example, you could be brought into a construction defect claim that triggers a class-action lawsuit alleging bodily injury due to long-term exposure to toxic mold.

Your best advice is to design with mold in mind. Be aware of mold risks in your locale and with your pro-

ject types. Don't skimp on mold-control measures. Pay close attention to plumbing, HVAC equipment and humidity-control systems, ventilation and filtration, window and door installations, drainage and runoff controls, and roofing and envelope systems.

### **#8. Should I sign my client's take-it-or-leave-it contract?**



This is a very difficult question to answer. First, the fact that a client would take such a stance should send up a red flag. Is this the type of entity or individual you want to do business with? But if it's a project or client that is attractive to you from a business standpoint, a client-drafted contract is not necessarily a bad thing. The key is to ensure the contract

does not contain onerous language you simply can't accept.

First of all, **READ** the contract – or have legal counsel do so. Highlight any language that you feel presents risks to your firm. Look for language that asks you to indemnify the client from risks that might otherwise

*(Continued on page 3)*



**PROFESSIONAL CONCEPTS  
INSURANCE AGENCY**

## Top 10 Questions

*(Continued from page 2)*

logically belong with the client. For example, does it ask you to take responsibility for the client's negligence or actions? Once you've reviewed it, send it to us with your comments. We can focus on your areas of concern and review it for insurability issues. Keep in mind, if you agree to accept liabilities that would not be yours absent the contractual obligation, those liabilities will most likely NOT be insured!

In the end, it comes down to a risk-versus-reward business decision. We'll be happy to provide advice, but only you know whether you can live with the contract conditions.

### #7. Whatever happened to project insurance?

Long ago and far, far away, most professional liability insurers offered a product called project-specific insurance. Generally, this type of insurance covered all of the design firms working on a single project up to the policy's dedicated limits. It was typically paid for by the project owner and the fees earned by the design firms did not count in the calculation of their practice policies.

Sounds great, right? Who could lose when project owners had guaranteed coverage up to their desired limits and the design firms avoided most if not all the cost? The insurance company, that's who! These policies, for a variety of reasons, resulted in monumental losses for insurers. As claims and loss ratios hit the stratosphere, insurance companies pulled their products off the market and project policies went the way of the dinosaur.

Actually, there are still a few insurers who may offer project policies under the right conditions, but prices are extremely high and policy conditions are not as attractive as before. If you or a client think a project policy may make sense, we'll be happy to investigate options. However, don't expect us to be able to find the same type of attractive product offered back in 1990's.

*(Continued on page 4)*

## Disability Benefits

*(Continued from page 1)*

### **Are disability benefits paid to an individual included in gross income?**

Yes. Benefits paid under a disability policy are included in the recipient's gross income to the extent benefits are attributable to employer contributions.

### **Are disability benefits paid to an individual included in gross income where the individual has purchased the policy with his own funds?**

No. Disability benefits are not included in the recipient's gross income where the individual purchases a policy with his own funds. Payments which an employer withholds from an employee's check on an after tax basis are considered made from an individual's own funds.

### **May an employer allow its employees to choose between taxable and non-taxable disability benefits?**

Yes. The guidelines set forth in IRS Revenue Ruling 2004-55 explain how an employer that currently offers a contributory plan may amend its plan to provide employees with a choice.

*For more information, contact Debra Gervase, PCIA Executive VP Group Benefits 810.224.5278 or [dgervase@pciaonline.com](mailto:dgervase@pciaonline.com)*



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## Top 10 Questions

(Continued from page 3)

### # 6. Are condos still no-no's?

Condos remain one of the riskiest types of projects in the eyes of insurance underwriters. They have a horrific claims history due to a number of factors: fly-by-night developers, low fees for design professionals, poor maintenance, and sue-happy lawyers who petition homeowners' associations.

That said, not all condo projects are bad. The name of the game is designer beware. Check the history of the developer and the litigious environment surrounding condos in your area. Do expect, however, that as your book of condo projects grow, you may find professional liability insurance more expensive and perhaps harder to get. Take these factors into consideration when deciding whether to design condos and what to charge for such services.

### #5. Will my clients really accept a limitation of liability (LoL) contract provision?



You'll never know until you try! The fact is, many clients accept LoL contract provisions once the reasoning behind them is explained.

The primary line of reasoning goes something like this: The client has the most to gain from a successfully completed project. The designer's gain is limited to

project fees minus expenses. So if the owner has the bulk of the reward, shouldn't it also be willing to accept its fair share of risk?

The best negotiating stance is to avoid a yes/no decision. Provide your client an option – you can either perform your services with unlimited liability for one fee, or you can lower that fee if the client is willing to accept the LoL. We'll be happy to help you in your negotiations of this important contract clause.

### #4. What's up with BIM – will it lower or increase my risks?

Building Information Modeling (BIM) has great promise in reducing professional liability risks. By having all project information contained in a single, continuously updated database, it should be easier to manage the accuracy of data and integrate all aspects of the project during the design stage. This leads to better specifications, estimations, budgets, schedules and compliance.

However, most in the insurance and design industry agree that BIM may actually *increase* a design firm's liabilities in the short term. New processes are rarely adopted without trial and error. Since the prime designer now compiles and manages virtually all project information, contractors and others who rely on the prime for complete and accurate project information will likely point fingers when any project error occurs. There are also liability issues regarding ownership of that information.

(Continued on page 5)



PROFESSIONAL CONCEPTS  
INSURANCE AGENCY

## Top 10 Questions

*(Continued from page 4)*

The insurance and legal fields will be challenged to adapt to BIM and establish new standards regarding the allocation of liabilities. So, short-term, be prepared for new liability challenges; long-term, you should reap benefits with time and experience.

### **#3. Should my firm be going “green,” and what are the liability issues?**

Like BIM, green design represents a significant portion of future design work. Every design firm needs to investigate the skills needed to design green buildings and move forward boldly with education and training if it decides to go in that direction.

As with BIM, however, new processes invite errors. Liabilities may increase initially. Plus, green design has an added danger – unrealistic client expectations. Building owners will be expecting significant savings in operating costs as the result of increased energy efficiency. If these savings aren't immediately achieved, they'll likely consider it the designer's fault. So, managing client expectations will be a significant risk management tool for those going green.

### **#2. How much will my PL insurance cost next year?**

That's going to depend on a whole slew of factors. Your premiums will be based on your annual fees, your claims history, the types of projects you've worked on and whether you take advantage of cost-saving opportunities offered by your insurance company – such as completing loss prevention education programs or including prescribed risk management practices.

All things being even, insurance premiums are currently pretty stable. The market is fairly soft and rates may even decrease if it remains soft in the future. However, be sure you consider the entire cost of professional liability protection, not just your annual policy premium. You

*(Continued on page 6)*

## Marketing...

*(Continued from page 1)*

cused on implementing our long term goals. Typically, these business plans include a marketing component, which discusses firm communications and business development support.

This checklist may help you to finalize your thoughts for your 2008 marketing plan:

- √ Areas targeted for growth are outlined according to client type, service and geographic region.
- √ Revenue and profit goals are defined.
- √ Anticipated return on investment is associated with marketing (and business development) initiatives.
- √ A system is in place to track investment and return.
- √ Budget has been set aside to continually refresh the collateral, website and photography.
- √ A research component is included to help better understand existing and targeted client needs and expectations.
- √ Marketing and BD are aligned.

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**PROFESSIONAL CONCEPTS  
INSURANCE AGENCY**

## Top 10 Questions

*(Continued from page 5)*

might find an insurance agent or broker offering significantly reduced premiums. But if you end up with inferior policy coverage or inadequate support and advice in the event of a project upset or claim, buying that cheap policy may turn out to be the most expensive decision you've ever made.

**And the #1 professional liability concern of design firms is:  
What is the best thing I can do to reduce my PL risks?**



That one is pretty easy – manage your client relations. Claims studies show that non-technical factors are the leading cause of claims, and topping the list are communication problems between designers and their clients.

Stress within your firm the need to have open, honest and clear communications with your clients. Good communications go a long way to uncovering misunderstandings, omissions and errors at the earliest stage possible, before they require an expensive fix.

Equally important, if you have a solid, open and trusting relationship with your clients, they are more willing to seek amicable solutions to any project upsets that arise, rather than immediately calling in their lawyers and threatening you with claims. When your client's attitude is one of "how can *we* fix it?" rather than "how are *you* gonna fix it?" you've won half the battle.

### ***Can We Be of Assistance?***

***We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. 1.800.969.4041.***



## Teens Behind the Wheel

*(Continued from page 1)*

children--some good, some happy, some not-so-happy, some scary. One of the happiest yet scariest moments is when our kids get their drivers licenses.

We'd like to highlight a few things that parents can do to help keep their teenagers safe behind the wheel.

**Coach your Son or Daughter.** You should "coach" your teenage driver. Talk openly and frankly with him or her to determine his or her attitude about being behind the wheel. Work with your teen to set ground rules, such as the number of people allowed in the car, where the car may be taken, and curfew.



*Parents can help to keep their teens safe behind the wheel!*

**Utilize Emergency Road Service.** If you do not belong to a motor club, you should consider joining one that provides 24-hour emergency road service. That way, your teenager may call for help at any time if they need gas, need a jump-start, are locked out, or need a tire changed. You can also arrange with the motor club to provide service for your teen if they are in a friend's car.

**Have an Open Discussion about Driving under the Influence.** While no one wants to think about the possibility of their teenager drinking and driving--or being in a car with an impaired friend at the wheel--we need to be realistic. History has shown that teenagers will experiment with alcohol. You should make it clear to your teen that driving after drinking is not acceptable. However, if they ever do drink, or are in a car with someone else who is impaired, make it clear to your teen that he or she can call you at any time of the day or night and that you will come to get them--no questions asked.

When your son or daughter gets a driver's license, come into our office so we can discuss this new responsibility with both of you. It is important for you--and your son or daughter--to remember that, yes, your auto insurance rates will go up, but they will come down after a couple years of driving experience. However, the rates will really go up if your teenager has tickets or gets into accidents. We can work together to prevent that!



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