

May 16, 2024

# The Value of Risk Management for --- Project Success

Presented by Chad R. Brown, CLO



thompson  
ENGINEERING

# INTRODUCTION

---

- Risk Management – Best Practices to Avoid Claims
  - Types of Claims & Lawsuit Challenges

# Preventing Claims: 5 Key Ways to Reduce Risk

---

- Client Selection
- Project Selection
- Contracting
- Execution
- Close-out

## A. Client Selection

---

- Payment History
- Reputation
- Scope of work- services to be performed
  - Risk v. Reward
  - Expectation (clearly defined scope, etc.)
  - Go/No Go Tools for Client/Project Evaluation

slido



**Does your company use a go/no go process for project pursuits?**

## B. Project Selection

---

- Location
- Type of Work
- Staff & Capabilities
- Claim Frequency Analysis
- Other Considerations – Client, Political, Conflicts of Interest
- Insurance to protect project – Insurance provided by Owner, Prime, Contractor, Others
- Liability Considerations

slido



**Do you require executed contracts for all projects?**

ⓘ Start presenting to display the poll results on this slide.

## C. Contracting

---

- Reduces risk
  - Limitation of liability
  - Defining scope is key
  - Payment terms, interest, attorney fees
  - Indemnity
  - Waiver of consequential damages
  - Forum selection
  - Dispute resolution
  - Force Majeure
  - Document control- re-use of documents



# Contracting (Continued)

---

- Types of Contracts
  - **Thompson Contract Forms-** CMT, Geotechnical, Investigative, Basic Phase Engineering, Survey
  - **EJCDC-** RPR, Multi-phase, construction costs, intrinsic scope, cost estimates, owner responsibilities
  - **AIA-** Architecture- short v. long form
  - **Custom** – In-House – Contract
- **Scope of Work-** Limiting vs. Expansive - be specific
- **Signed Copy-** Follow through prior to commencement!

## D. Execution of Project

---

- Communication- Owner, Subcontractor, municipalities
- Documentation
  - Reports – construction progress/observation reports
  - Report and document problems and include all interested parties in correspondence
  - Feedback to client

## E. Close-Out

---

- Payment
- Final Report – Be Specific of Client Deviations, etc.
- Client Satisfaction

slido



**What do you think is the most important risk management tool?**

# TYPES OF CLAIMS & LAWSUITS

---

**HOW IS IT INITIATED  
AND WHAT IS IT ALL ABOUT?**


slido



**Has your company ever been named in lawsuit?**

# Pre-Lawsuit Subpoena

---

- May be filed before lawsuit to gather information by Plaintiff.
- Subpoena served on Company
- Subpoena may request project documents, including emails, text messages, correspondence, etc.
- Subpoena served on Company
- Remember  All forms of communication are discoverable

# Summons & Complaint Served – The Lawsuit



ELECTRONICALLY FILED  
 2/21/2011 4:01 PM  
 CV-2010-900578.00  
 CIRCUIT COURT OF  
 MOBILE COUNTY, ALABAMA  
 JOJO SCHWARZAUER, CLERK

IN THE CIRCUIT COURT OF MOBILE COUNTY, ALABAMA

ST. CATHERINE OF SIENA PARISH, a  
 Catholic Church Parish established under  
 the canon law of the Catholic Church and  
 also an entity of the Archdiocese of Mobile,  
 by and through the Most Rev. Thomas J.  
 Rodi, Archbishop of Mobile, a corporation  
 sole,

Plaintiff,

vs.

THOMPSON ENGINEERING, INC.;  
 THOMPSON ENGINEERING TESTING,  
 INC. and KIKER CORPORATION,

Defendants.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

NO. 2010-900578

**AMENDED COMPLAINT**

COMES NOW plaintiff, St. Catherine of Siena Parish, a Catholic Church Parish established under the canon law of the Catholic Church and also an entity of the Archdiocese of Mobile, by and through the Most Rev. Thomas J. Rodi, Archbishop of Mobile, a corporation sole, hereinafter “St. Catherine”, and pursuant to Alabama Rules of Civil Procedure 15(a), file this amended complaint against defendants, Kiker Corporation and Thompson Engineering, Inc. Plaintiff amends the original complaint to assert the following additional factual allegations and claims against defendants.

**Incorporation of Original Complaint**

1. Plaintiff expressly adopts and realleges each and every factual allegation and cause of action asserted in the original complaint as set forth fully herein.



# Important Considerations

---

- Employee may be individually named in a lawsuit
- Corporate insurance coverage for individual

# Discovery Phase

---

- Significant Investment of Time
- Interrogatories
- Request for Admission
- Requests for Production (Electronic information Text, Email, etc.)
- Depositions – Party, Non-Party
- Expert Consultation & Depositions
- Pre-Trial Motions

# Trial Phase

---

- Preparation time
- Time for trial
- Cost of expert
- Cost of outside counsel
- Court preparation costs, exhibits, etc.

slido



**Have you personally been involved in defending your company in a lawsuit?**

ⓘ Start presenting to display the poll results on this slide.

# Employee Involvement

- Big part of defense team
- Extensive time commitment
- Distraction inside and outside of the office

# Impact of Claims

---

- Deductible
- Loss of productive time by employee witnesses
- Business and reputation – press, etc.

# Top Impacts of Claims - (ACEC Survey)

## Threat of Claims Hurting Ability to:

- Try innovative approaches
- Hold down costs / remain profitable
- Maintain good relations with other constructions team members
- Hold down fees
- Build good relations with clients

*Source: ACEC 2020 Professional Liability Survey of Member Firms for Fiscal Year 2019*

# Claims < Loss History Impact on Insurance Premiums

## Contributory Causes of Claims – Large Loss Drivers

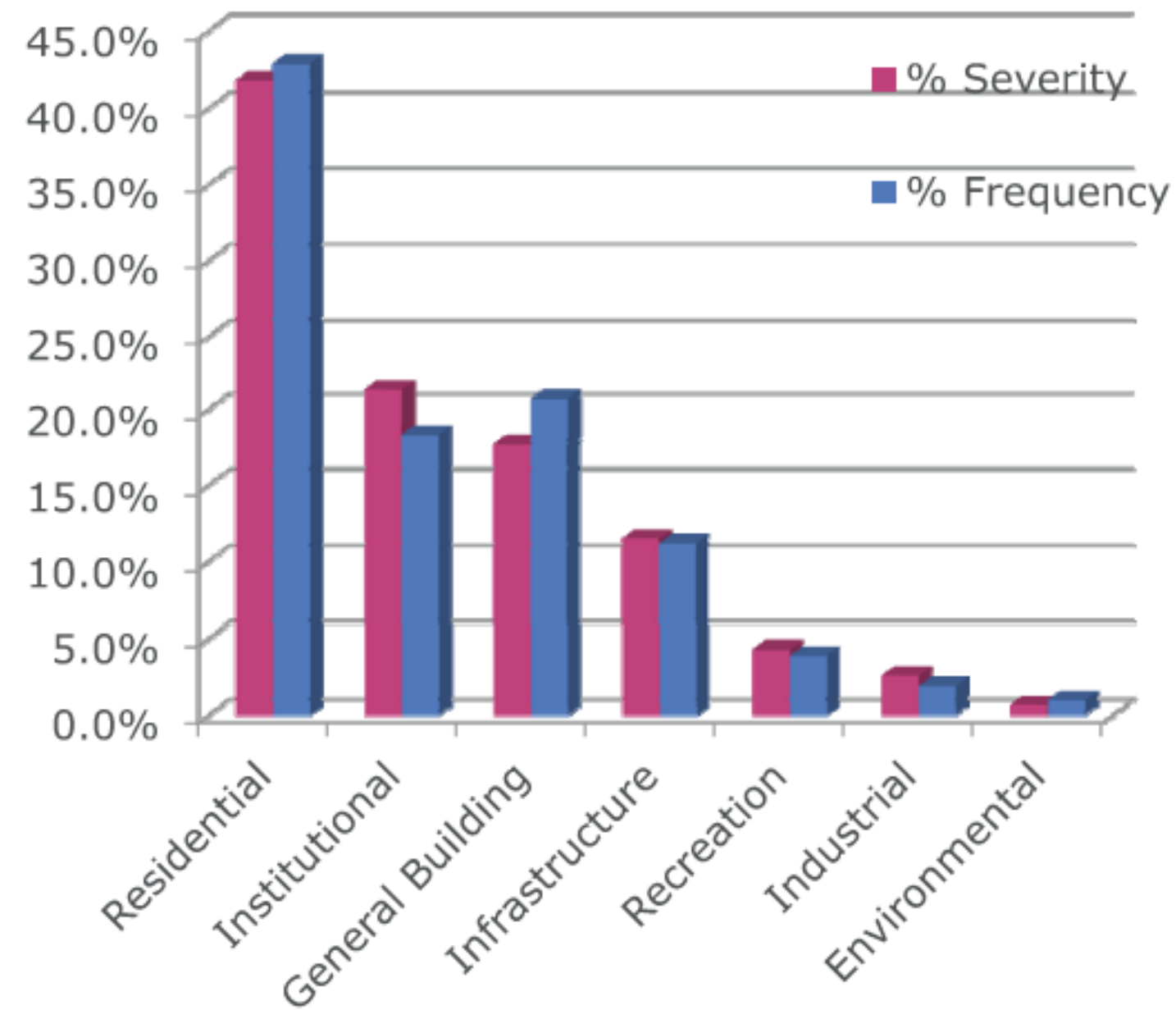
	Issue	% Severity	% Frequency		Issue	% Severity	% Frequency
<b>1</b>	Negligent Design/ Technical Error	36.3%	36.6%	<b>9</b>	Financial – Bankrupt Parties	3.4%	2.2%
<b>2</b>	Communication Issues	8.2%	6.1%	<b>10</b>	Scope Creep / Misinterpretation	3.0%	1.7%
<b>3</b>	Negligent Supervision/ Management	6.9%	7.8%	<b>11</b>	Negligent Advice	2.9%	3.0%
<b>4</b>	Financial – Other	6.4%	3.0%	<b>12</b>	Maintenance Issues	2.3%	2.2%
<b>5</b>	Contractor /Developer Issues	6.2%	11.4%	<b>13</b>	Joint / Several Liability	2.0%	1.2%
<b>6</b>	Documentation Issues	4.7%	3.4%	<b>14</b>	Project Selection – Other	1.7%	1.3%
<b>7</b>	Vicarious Liability	4.6%	5.1%	<b>15</b>	Financial – Invalid Payments	1.5%	1.1%
<b>8</b>	Contract Issues	3.6%	4.2%		<b>Totals</b>	93.4%	90.1%

Source: Beazley



# Claims < Loss History Impact on Insurance Premiums

## Project Types – Large Losses



Project Type	% Severity	% Frequency	% Reported Fees
Residential	41.8%	42.9%	14.9%
Institutional	21.3%	18.3%	16.5%
General Building	17.7%	20.7%	39.8%
Infrastructure	11.5%	11.2%	23.0%
Recreation	4.3%	3.9%	1.8%
Industrial	2.6%	1.9%	3.4%
Environmental	0.7%	1.0%	0.6%

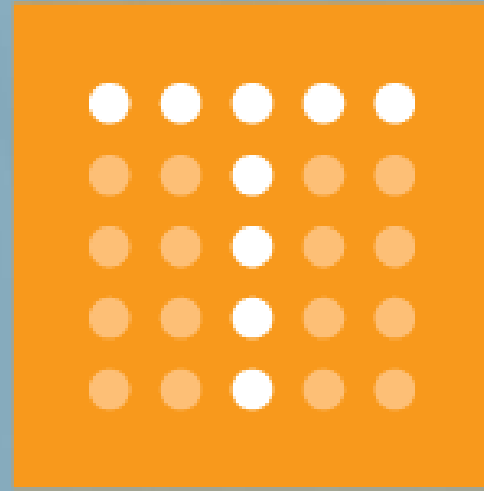
Source: Beazley

# Take Away

- A risk management program from project conception to completion is a powerful tool to prevent claims.
- Commitment to quality and project execution is **KEY**.
- Be aware of trending claims when performing a go/no go analysis.

# QUESTIONS?





thompson  
ENGINEERING