My Two Bits

When ASFE began almost 40 years ago, its focus was loss prevention. About 15 years later, it began a transition to risk management, today's focus.

The somewhat amazing results ASFE member firms have achieved over the years show that loss prevention and risk management work. That being the case, you'd think just about all design professional and environmental consulting firms would make applying one or the other an organizational imperative. That's not the case. In fact, many of the nonmember design and environmental professionals I meet don't even know what loss prevention and risk management really are. They seem to believe that "risk management" is actually what loss prevention is all about, and that "loss prevention" is a term connoting "insurance management." Let's set the record straight.

"Loss prevention" is a euphemism for litigation prevention. The original programs and techniques – all introduced by ASFE – were based principally on case histories of "train wrecks"; projects that led to lawsuits and claim expenses far, far greater than whatever fee was involved. By examining these with 20/20 hindsight, ASFE's committees were able to develop an array of techniques for preventing the worst – litigation – from happening.

"What do you do for loss prevention?" is a question I often ask individuals associated with nonmember firms. I'm no longer surprised when the response is something like, "We've got that covered," followed by an enthusiastic description of the firm's professional liability insurance (PLI) coverage.

While PLI is an essential tool for managing risk, it is not a loss preventive, because it does not discourage litigation. In fact the opposite is true: PLI actually encourages litigation because it creates the "deep pockets" that are magnets for litigation.

At best, PLI is a risk-transfer device; something policy-owners use to transfer some of their own financial risks to another party. The insurance is hardly free, of course, and, when you look closely, you realize that the premiums you pay actually comprise a prefunding of the insurer's cost of losses that members of the insured group are likely to incur. The insurer does not cover all losses, however. In fact, the insurance "kicks in" only after the covered firm pays the deductible or self-insured retention, and at no time does PLI cover a firm's so-called "soft costs" – time values, for the most part – that can easily exceed $50,000 even for "nothing" cases. If the matter actually gets to a courtroom – about nine of every ten do not – soft costs of $300,000 or more can be expected. And that sum does not consider the costs a firm incurs by losing a real or potential client-for-life and gaining negative word-of-mouth "advertising," nor does it consider the personal cost of having one's reputation diminished if not maligned. And that's the good news. Any number of claims – e.g., breach of warranty claims – are not covered by PLI, commercial general liability (CGL) insurance, or, in fact, by any other policy a firm may possess.

In 1968, when ASFE's founders held their first, preformative get-together, their firms were uninsurable. By 1985, an independent survey showed, ASFE member firms were able to obtain insurance from most professional liability insurers, and they paid less for it than mechanical and electrical engineers were paying for theirs. The difference was loss prevention. But loss prevention was limited. While early ASFE loss prevention concepts like limitation of liability helped firms rein in losses, they treated symptoms, not the cause.

We learned more as we progressed. Research showed clearly that litigation stemmed more from attitudes than errors. By creating better lines of communication with client representatives, we reasoned, firm representatives should be able to engage in far more effective contract formation practices and establish bonds of trust that would lead to more cooperation and coordination. It worked, but on more than loss prevention. Thanks to better relationships with contractors, suppliers, and colleagues, in addition to clients, litigation became a last resort, repeat business and referrals increased, and profitability rose.

As it steadily developed more loss prevention concepts, ASFE realized that just about any kind of business management deficit could lead to litigation, as when poor hiring practices put the wrong person on staff, resulting in errors, omissions, and an angry client representative. As such, human resources (HR) management – effective hiring techniques, in particular – became a legitimate subject for loss prevention guidance; i.e., take the following steps to prevent inadequate HR from resulting in a lawsuit and loss of a good client.

But wait a minute!

While improving various aspects of one's hiring procedures can prevent certain types of losses, optimizing hiring procedures can contribute significantly to the long-term health and prosperity of a firm, by helping to ensure it has the best and the brightest aboard. It contributes, also, to lower turnover, a particularly weighty issue given that it costs about $100,000 to replace a somewhat seasoned project manager. And it also contributes to a variety of lower "soft costs," such as preventing the loss of a client, just as it contributes to increased profitability, by enhancing client satisfaction, increasing the number of projects obtained firm the client, and obtaining a variety of referrals from clients' representatives.

In essence, loss prevention comprises improvements to prevent a given activity from being performed so poorly it results in losses, claims, and litigation. Risk management looks at all types of negative outcomes and causes, and provides guidance on steps to take in order to optimize results, not just prevent bad ones. And risk management really works, which is why ASFE has developed so many risk management programs, services, and materials to help members avoid the downside – disputes and litigation – while contributing significantly to the upside. While the results have had a highly positive impact on member firms' bottom lines, personal benefits are also achieved: the ability to practice one's discipline with far fewer dispute-based distractions, and the establishment of relationships that make work – and play – far more pleasurable. And the personal benefits are precisely the risk management results that many member firm representatives find to be the most important of all. And that, too, seems to be a result of the progression from loss prevention to risk management: Because of its loss-focused genesis, loss prevention encourages design and environmental professionals to regard other project participants as potential enemies. Risk management encourages them to regard other project participants as potential friends, and gives them the tools to make that happen.

While effective risk management includes loss prevention techniques and helps reduce losses, there is a big difference between the two approaches. As ASFE and its members have learned, *vive la difference*!