

CE News “Risky Business” No. 15

Owner/clients file about 60% of all claims design professionals must defend. Contractors file another 20%, and close to 10% are subrogated claims filed by insurance companies on behalf of owners and contractors. Stated another way, about nine of every ten claims design professionals must defend are filed by entities whose representatives they deal with daily, and with whom they should enjoy strong collegial relationships.

“But we’re powerless to do anything about it. It’s the way things are.” Wrong. You are not powerless and it sure isn’t the way things have to be. Disputes can be settled in any number of ways. While litigation may be better than pistols at 100 paces (some would disagree), it’s far worse for disputants than, say, an informal mediation that resolves the disagreement fairly and quickly, with few process costs. Informal mediation is how friends prefer to resolve disputes with one another, because it is a nonadversarial procedure. Unlike litigation or binding arbitration, nonadversarial procedures help preserve relationships, because they do not force friends to become enemies. Because design professionals are sued principally by those who should be their friends, effective litigation prevention (which is what “loss prevention” really means) starts with building relationships with colleagues.

“But building relationships requires time, and given my firm’s emphasis on utilization ratios and billable hours, I’m discouraged from spending the time that’s required.”

Not true. You have more than 1,000 opportunities a year to “break bread” with clients and colleagues during “nonbillable” hours, for breakfast, lunch, happy hour, or dinner, not to mention opportunities for golf, tennis, softball, basketball and other sports, interaction through volunteered efforts, and so forth. (As a side benefit, almost all the time involved should be enjoyable.)

“My nonbusiness time is important to me and my family. I need my own life, too.”

Of course you do. *However*, we are not talking about major sacrifices of personal time (especially when compared to the personal time (and sense of well-being) sacrifices that become necessary when a lawsuit erupts). Also realize that, in many cases, what begins as a business relationship develops into a true friendship, often because you and many of your colleagues have so much in common.

Consider this: A high level relationship-building program is likely to prevent at least one lawsuit during a 40-year career. (It will not prevent errors and omissions, but it should create the means for you to resolve a problem quickly and amicably.) By preventing that lawsuit, you won't have to pay your professional liability insurance (PLI) policy deductible. You and your colleagues would also be able to avoid having to spend time researching and defending the claim. Assuming that the time loss prevented is worth about \$50,000 (it's probably worth far more) and that your PLI deductible is \$50,000, preventing one lawsuit would save you \$100,000. As it so happens, \$100,000 is equal to the profit your firm would earn on \$1 million in fees. If your hourly rate is \$125, \$1 million is what you would bill for 8,000 hours, or 200 hours per year for 40 years. Assuming that spending just 100 otherwise-billable hours per year (two hours per week) on relationship-building would be sufficient to prevent one lawsuit, you'd get double your money back. By "chipping in" an additional two hours per week of otherwise nonbillable time, you'd have an outstanding relationship-building, litigation prevention program in effect. You'd also be implementing (almost despite yourself) an aggressive marketing program whose value could be far larger than, but still additive to the value of litigation prevention alone.

"The clients I work for discourage their representatives from accepting gifts of any type from providers; not even a beer." You don't need to treat to become a friend. Build relationships through professional societies, associations that client representatives belong to, community activities, and so on. People who build a mild difficulty into an insurmountable obstacle often do so because they'd rather not do what they know needs to be done. Consider, too, that gifts worth less than just one dollar can be priceless, simply because they demonstrate thoughtfulness.

“Decisions about suing a consultant are not made by the people I deal with in the client organization.” But certainly the people you deal with can influence such decisions. They can also help you change attitudes. Consider the most lawsuit-prone clients of all: local governments. Research shows that, in many instances, limited budgets create project problems that their staff attorneys use litigation to fix (when your only tool is a hammer, all problems are nails). By working with your contacts to meet with “the powers that be,” you may be able to change nonproductive attitudes.

“I didn’t become a civil engineer to get into all this business stuff.” True. But you are in business, and it’s because you haven’t been doing the “business stuff” that those who should be your biggest and best business allies are suing you.