

Risky Business

Do you know that, when you are in private practice, you are personally liable for everything you do professionally? that every time you draw a line or write a word you put your house on the line? Sure: Your firm indemnifies you, and that's a good reason for the firm to have professional liability insurance (PLI). But recognize that PLI may not cover a given exposure, in full or at all. In other words, your best protection is provided by...you! Is that good reason to hone your technical skills? To some extent. However, if you believe that flawless engineering will save the day, you have another think coming. Speak with civil engineers who have had to pay hundreds of thousands of dollars to defend litigation. Ask them if they did something that was technically wrong. The vast majority will tell you they did not, but getting a judge or jury to believe that was difficult; so difficult that many, on advice of counsel, didn't even try.

When it comes to the practice of engineering, ignorance is not bliss. What you don't know *can* hurt you. But what don't you know? Try this little 12-question quiz, scoring eight points for each correct answer. If your point total is less than 64, you may be a lawsuit waiting to happen. Avoid that misery by improving your knowledge. Materials available at www.asfe.org can help.

1. Considering all projects civil engineers perform each year, including those that comprise construction materials engineering and testing (CoMET) services, the percentage performed without a contract is:
 - a. more than 25%.
 - b. more than 10%.
 - c. more than 5%.
 - d. less than 1%.

2. The best client/design professional contracts address:
 - a. four distinct elements.
 - b. five distinct elements.
 - c. six distinct elements.
 - d. seven distinct elements.

BONUS! Give yourself four extra points by naming what the four, five, six, or seven elements are. (Obviously, if the number is wrong, you get no bonus points.)

3. Generally speaking, those who file the most claims against design professionals are:
 - a. owners.
 - b. contractors.
 - c. contractors' employees.
 - d. members of the public not involved in the project.

4. The one party most likely to sue a civil engineer is:
 - a. an injured pedestrian.

- b. someone injured because of a vehicular accident.
 - c. a local government or local government agency.
 - d. a housing developer.
5. Experience shows that the single-most important factor for preventing negligence claims is:
- a. a signed agreement.
 - b. having the contract negotiated for you by an on-staff or retained attorney.
 - c. a good relationship between the project manager and the client representative.
 - d. not making errors or omissions.
6. As a general rule, civil engineers' liability risks increase:
- a. when fee decreases.
 - b. when fee increases.
 - c. when project complexity increases.
 - d. when bid-based procurement is used to retain professionals.
7. When a professional negligence claim is filed against you, the professional liability insurance policy that might protect you is the one that was in place at the time:
- a. you committed the allegedly negligent act.
 - b. you signed the contract to provide services for the project on which you performed the allegedly negligent act.
 - c. the allegedly negligent act was discovered.
 - d. the claim was filed against you.
8. Civil engineers are not negligent so long as they abide by the standard of care. The standard of care is most often identified by:
- a. professional peers in the same general geographic area practicing the same discipline about the same time.
 - b. generally accepted, widely used guidance documents (i.e., well-known textbooks used in ABET-accredited curricula).
 - c. a trier of fact (i.e., a judge or jury).
 - d. expert witnesses.
9. Your one act that's most likely to trigger a professional negligence claim against you is to:
- a. withhold final deliverables until you are paid.
 - b. sue the client for payment.
 - c. refuse to permit third-party reliance on your deliverables.
 - d. fail to have representatives on site during the construction phase of a project.

10. A contract provision requiring you to indemnify a client for damages the client experiences because of the client's own negligence or the negligence of some party other than yourself:
 - a. is unenforceable in all but four states.
 - b. is enforceable in all but four states.
 - c. is insurable providing that your firm's insurance policy is supplemented by a contractual liability rider (CLR).
 - d. is not covered by conventional liability insurance policies.

11. Contractual liability riders (CLRs) are:
 - a. usually added to homeowner's insurance policies.
 - b. usually added to professional liability insurance policies.
 - c. usually added to commercial general liability insurance policies.
 - d. a figment of the imagination.

12. When having services performed by a subconsultant, remember that:
 - a. the value of those services usually counts against values established in your own professional liability insurance policy.
 - b. the professional services performed by your subconsultants are not covered by your firm's professional liability insurance policy.
 - c. the subconsultant must name your firm and its principals as additional insureds on its professional liability insurance policy.
 - d. the insurance your client requires you to provide must be provided by your subconsultants, too.

ANSWERS

1.d (Virtually all projects proceed with a contract. When the contract is not written, it's oral. An oral agreement says whatever a judge thinks it says.) 2.c (A description of the project. Definitions of terms used. Scope of service. General conditions. Schedule. Fee.) 3.a 4.c 5.c 6.a (The ASFE dictum is, "The smaller the project, the bigger the risk.") 7.d ("Might" is the operative word. A PLI policy's ability to cover a claim is never "a sure thing.") 8.c 9.b 10.d 11.d 12.b