




**Risk Management:
5 Key Tools for Office Administrators**

SDA St. Louis
Bob Staed
Ames & Gough
November 19, 2008



Agenda

- Introduction
- 5 Key Tools for Office Administrators
 1. Managing the Prospecting and Marketing Processes
 2. Doing Your Homework
 3. Dealing with Insurance Issues
 4. Structuring the Project Team
 5. Coping with the ADA Amendment Act
- Questions



Managing the Prospecting & Marketing Processes

- Communication with a new client begins the minute you become aware of one another.
- It is easy to promise too much!
- Promises create expectations. When expectations exceed what you can deliver, problems arise.
- How A/E services are marketed bears directly on exposure to professional liability claims.
- Elevating expectations beyond the ability to perform, is a quick route to dissatisfied clients, uncollectable fees, and unnecessary disputes.



Standard of Care

Safety for Design Administration

AMES & GOUGH 4

The Standard of Care

- Duty to exercise ordinary, reasonable technical skill, ability, and competence required of an architect or engineer in a similar situation
- Ordinary and reasonable skill usually exercised by one in that profession

Safety for Design Administration

AMES & GOUGH 5

The Standard of Care

Safety for Design Administration

AMES & GOUGH 6

The Standard of Care

At or above the standard is acceptable conduct

The diagram features a blue rectangular box positioned above a horizontal line. A vertical arrow points upwards from the line to the top of the box. The text "At or above the standard is acceptable conduct" is written inside the blue box.

Safety for Design Administration AMES & GOUGH 7

The Standard of Care

BELOW the standard is negligence

The diagram shows a blue rectangular box on top and a yellow rectangular box on the bottom. A horizontal line is drawn between the two boxes. A vertical arrow points downwards from the line to the bottom of the yellow box. The text "BELOW the standard is negligence" is written inside the yellow box.

Safety for Design Administration AMES & GOUGH 8

Managing the Prospecting & Marketing Processes

- A New Prospective on Websites & Brochures
- Regulatory and Licensing Issues
- Stationary and Business Cards
- Authority to Bind the Firm

Safety for Design Administration AMES & GOUGH 9

Managing the Prospecting & Marketing Processes

- A New Perspective on Websites & Brochures
 - Does your brochure set the stage for expectations of performance which may be difficult to meet?
 - Do you represent that you will exceed the “usual and customary” standard of care?
 - How will you respond in cross-examination by an attorney?
 - Solution: The artful use of superlatives DOES NOT have to set performance standards!

Society for Design Administration AMES & GOUGH 10

Managing the Prospecting & Marketing Processes

- A New Perspective on Websites & Brochures
 - Identify and modify superlatives.
 - “Largest; Only; and Most Experienced”
 - Use “One of the largest; One of the few; Extensively experienced”
 - Identify and modify warranties
 - “Our field procedures assure compliance by contractors”
 - Use “Our procedures are designed to bring a high level of quality control to field operations”

Society for Design Administration AMES & GOUGH 11

Managing the Prospecting & Marketing Processes

- Websites & Brochures of SDA Members
 - We view architecture as the precise cooperation of art and science profiled by the applied collaboration of design and solution. [We] design diverse projects representative of our clients, our expertise and the firm's ability with precision and value.
 - Our core strength is listening to clients about their functional, aesthetic and budgetary requirements and satisfying those needs from conception to completion.
 - While other firms are still in a learning curve, we are perfecting our sustainable design skills...
 - The firm has maintained the policy of providing the highest quality of professional engineering and design services to our clients for more than three-quarters of a century.
 - [We are] experienced in every aspect of structural engineering and in every building material.

Society for Design Administration AMES & GOUGH 12

Managing the Prospecting & Marketing Processes

- Regulatory and Licensing Issues
 - Understand liability arising from corporate structure (Corporation; Partnership; LLP; etc.)
 - Be sure company has proper state and local registrations, authorized to do business in locale (registered agents)
 - A/E licensing requirements met for company and individual?
 - Are fictitious entities required to be registered?
 - D/B/A; Trade names; Joint venture names
 - “Certificate of Operation Under an Assumed Name”
 - Have all state and local tax obligations been met?

Safety for Design Administration AMES & GOUGH 13

Managing the Prospecting & Marketing Processes

- Stationary and Business Cards
 - Be sure the company name on the letterhead and business cards is a licensed or registered entity
 - If a marketing person is not an employee but is allowed to use a company business card, he/she has authority to create responsibility/liability for the company
- Authority to Bind the Firm
 - By-laws and contract authority matrix define who can sign letters, proposals, and contracts which bind the firm

Safety for Design Administration AMES & GOUGH 14

Managing the Prospecting & Marketing Processes

When responding to an RFP should we:

- Agree to Onerous Contract Terms & Conditions?
 - No. Either note unacceptable provisions or note “Certain provisions affect the viability of our insurance coverage and the client’s ability to recover its losses. If selected, we would like to discuss those provisions with you.”
- Agree to Disclose ALL Claims & Litigation?
 - Yes, but not in the Response and not in writing. Offer to do so in person, especially if the client is a public entity. Note that it is almost impossible to practice architecture and engineering without litigation but that you are proud of your record of dispute avoidance.
- Agree to Keep ALL Information Confidential?
 - Have any confidentiality provision reviewed by a lawyer if it does not make exceptions to disclosure (required by project or by law, etc.)

Safety for Design Administration AMES & GOUGH 15

Managing the Prospecting & Marketing Processes

Managing Client's Expectations

- Perfection
 - Errors and omissions
 - Compliance with all laws
- Fast track projects
- Scope of Services
- Schedule
 - Delays beyond your control

Safety for Design Administration AMES & GOUGH 16

Doing Your Homework

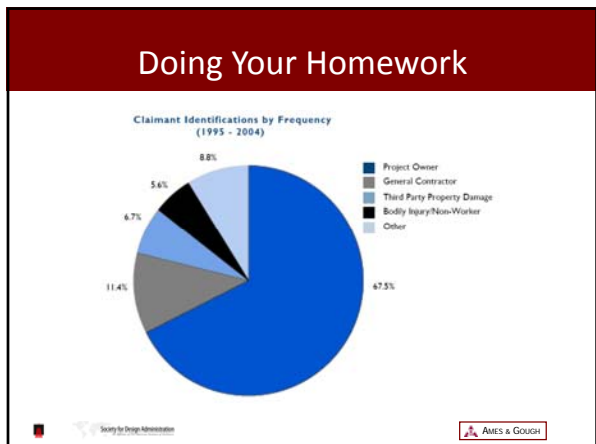
- Client Selection
 - Is it the “right” owner/developer?
 - Have your law firm do a background check
 - Financial
 - Lead principals
 - Litigation search on previous projects
 - Contact residents and contractors on previous projects
 - Ask owner/developer about financing plans for post completion
 - Will LLC be used and folded?
 - Will escrow of correction funds be maintained?

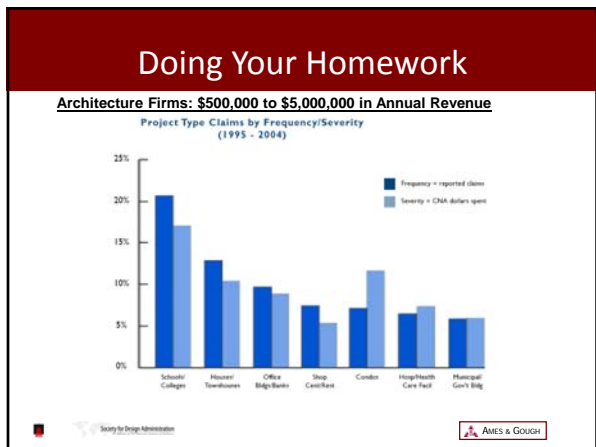
Safety for Design Administration AMES & GOUGH 17

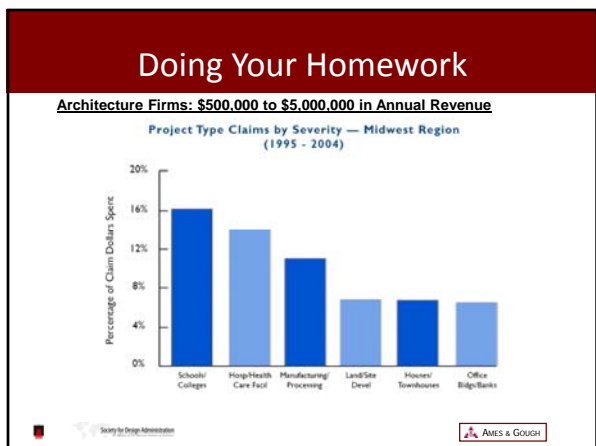
Doing Your Homework

- Risk factors
 - Project structure
 - Delivery method
 - Is the construction schedule flexible?
 - Will the project be fast tracked?
 - Is the scope likely to change?
 - Owner/developer staff qualified?
 - How will owner/developer make decisions?
 - Other stakeholders

Safety for Design Administration AMES & GOUGH

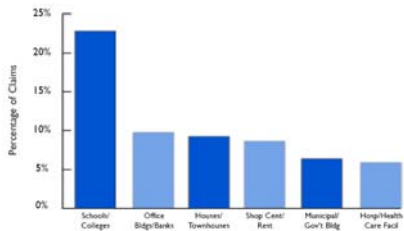






Doing Your Homework

Architecture Firms: \$500,000 to \$5,000,000 in Annual Revenue
 Project Type Claims by Frequency — Midwest Region
 (1995 - 2004)

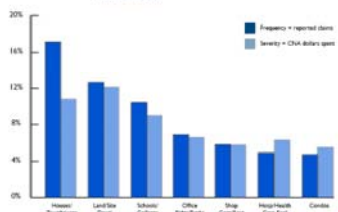


Safety for Design Administration

AMES & GOUGH

Doing Your Homework

Engineering Firms: \$500,000 to \$5,000,000 in Annual Revenue
 Project Type Claims by Frequency/Severity (1995 - 2004)

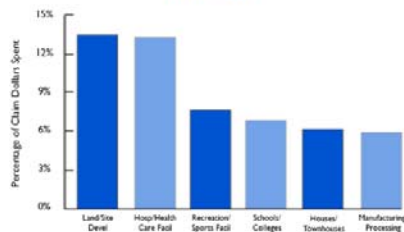


Safety for Design Administration

AMES & GOUGH

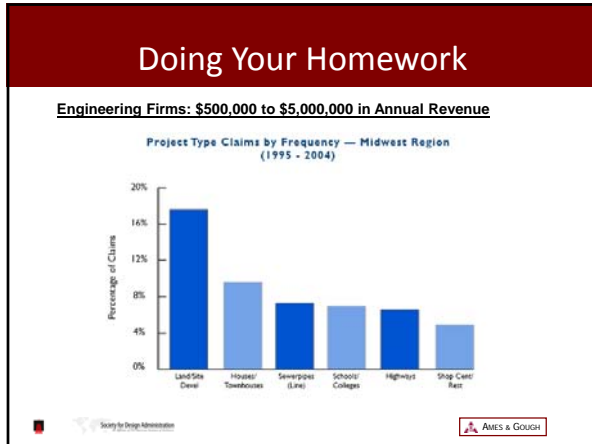
Doing Your Homework

Engineering Firms: \$500,000 to \$5,000,000 in Annual Revenue
 Project Type Claims by Severity — Midwest Region
 (1995 - 2004)

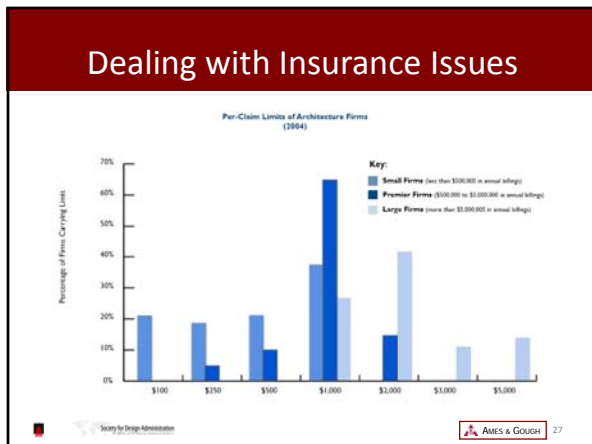


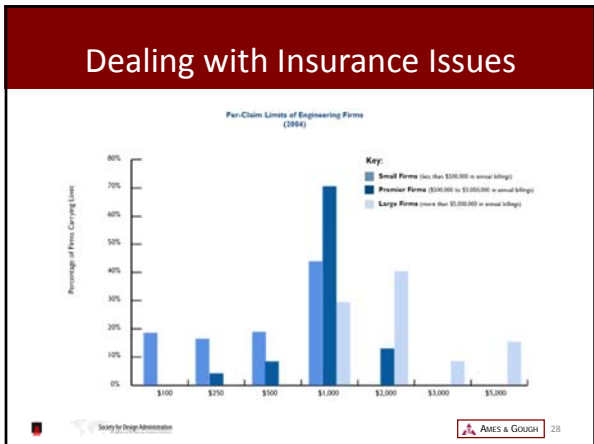
Safety for Design Administration

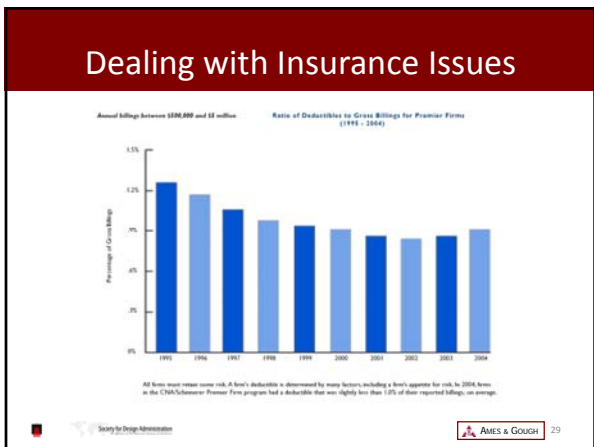
AMES & GOUGH



- ### Doing Your Homework
- Contract terms
 - Clear scope
 - Degree of involvement in construction administration
 - Adequate fee?
 - Adequate time to design and construct?
 - Go/No Go Decisions
 - Is more than one person involved?
 - What is long-term risk (i.e. condos)
 - Does fee justify risk?
- AMES & GOUGH









- ### Dealing with Insurance Issues
- What if the limits requested are too high?
 - What about project-specific insurance?
 - What about new risks like IPD, BIM, Info Theft?
- AMES & GOUGH 30

Structuring the Project Team


- Risk and insurance implications of joint ventures
 - Coverage for your liability
- Risk and insurance implications of consultants
 - Adequacy and availability of insurance (acoustics, kitchen consultants, MWBEs)
- Risk and insurance implications of geotech, environmental services

  31



Coping with the ADA Amendment Act

Signed into law September 25, 2008

The ADA Amendment Act broadens the meaning of a disability.




Takes effect January 1, 2009

  32



Coping with the ADA Amendment Act

Rejected the notion that a physical or mental impairment must prevent or severely restrict a person from doing normal daily activities to be a disability.




A disability exists without any severe restriction on routine daily activities.

Directs the EEOC to issue regulations interpreting the meaning of "substantially limits" less restrictively than the Supreme Court had done. EEOC has not yet published these regulations.

  33

Coping with the ADA Amendment Act

Court decisions interpreted disability to exclude conditions managed or neutralized by mitigating measures such as medications or hearing aids.




Employers must generally ignore the effects of mitigating measures on physical or mental conditions.

This amendment means that a person successfully treated for cancer five years ago with no active cancer symptoms still has a disability.

Safety for Design Administration AMES & GOUGH 34

Coping with the ADA Amendment Act

Afflictions that affect major bodily functions for **six months or more** will become disabilities.




The amendments also define major life activities to include major bodily functions

For example, employers will now face reasonable accommodation and discrimination issues when an employee requests additional break time to use the restroom because of a bowel or bladder condition.

Safety for Design Administration AMES & GOUGH 35

Coping with the ADA Amendment Act

The bottom line



Employers need to expand their concept of persons with disabilities.

Safety for Design Administration AMES & GOUGH 36

Questions

Robert E. Staed, Jr.
(bstaed@amesgough.com)
Ames & Gough
1400 Kendon Dr.
St. Louis, MO 63131
314.835.0026
