



CLAIM is a Five Letter Word— What Happens When It Happens to You?

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DIFFERENT WORKS

RLI Design Professionals
DPLE 310
September 2, 2020

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Course Description



It's been said that there are two types of design professionals—those that have been sued and those that will be sued.

- What are some common sources of claims against design professionals?
- What can you do to try to prevent them from affecting your firm?
- What happens and where do you turn when you have a claim?

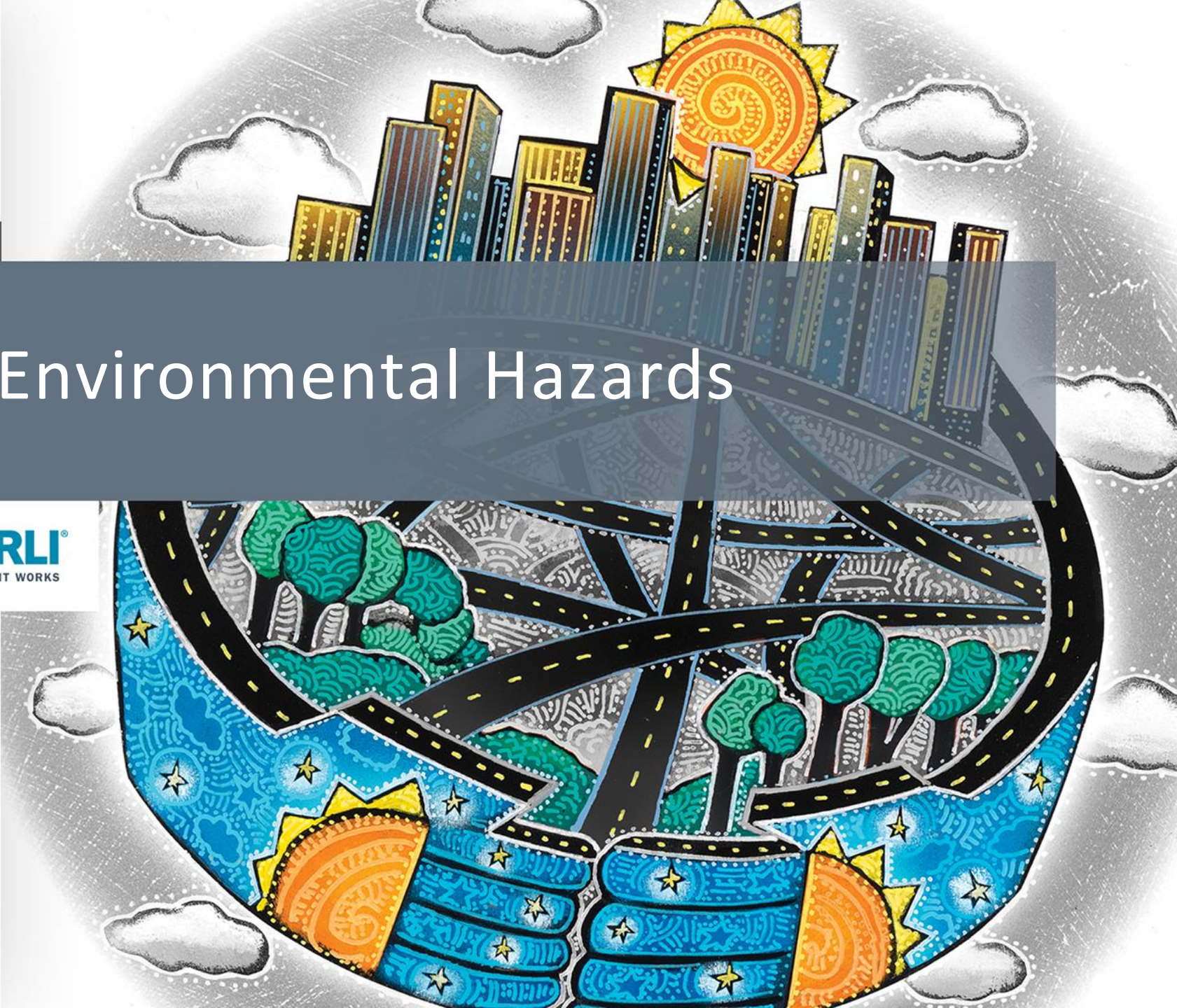
Learning Objectives

Participants will:

- 1** Learn how it can be alleged that a design professional created or perpetuated an environmental hazard that impacts the public;
- 2** Consider what happens when unsafe conditions are allowed to continue on a construction site;
- 3** Hear about ongoing and emerging concerns related to security awareness in the built environment; and
- 4** Take away tips for preserving your business relationships, even in the face of a claim.

Environmental Hazards

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What do your contracts say?

EJCDC Document E-500 2020, §6.09.D

It is acknowledged by both parties that Engineer's scope of services does not include any services related to undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an undisclosed Constituent of Concern... Owner shall promptly determine whether to retain a qualified expert to evaluate such condition or take any necessary corrective action.



But do you have coverage?

Well, yes...

"Pollution Incident" means the discharge, dispersal, release, escape, migration, or seepage of any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, soot, vapors, fumes, acids, alkalis, chemicals, hazardous substances, hazardous materials, or waste materials, on, in, into, or upon land and structures thereupon, the atmosphere, surface water, or groundwater, caused by the acts of an **Insured** in his or her capacity as such, or by any other person for whom the **Insured** is legally liable, and which results in **Bodily Injury** or **Property Damage**.

Do you have coverage?

And no...

This Policy does not apply to any **Claim(s)**:

...alleging, based upon, arising out of, or attributable to a nuclear reaction, radiation, or contamination within or originating from a **Nuclear Facility**, under any circumstances and regardless of cause.



So how does a design professional become responsible for an environmental hazard that impacts the public?

Subconsultant's insurance requirement from a non-standard contract:

When working at sites where **exposure to hazardous substances or materials** (as those terms are defined in federal and state environmental laws) **is possible**, Subconsultant shall maintain in force for the full period of this Agreement and for three (3) years thereafter, **Contractors Pollution Liability Insurance** covering losses arising from bodily injury, property damage or cleanup costs that are caused by pollution conditions that arise from the operations of the Subconsultant with a minimum limit of \$1,000,000 per occurrence and in the aggregate.

The policy shall: (1) **name Prime Consultant and its Client as Additional Insureds**; (2) be **primary and noncontributory to any other insurance maintained by Prime Consultant or Client...**

Safety on a Construction Site

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General Statistics

Workplace Fatalities:

The number of workers killed in 2018

5,250

Number of fatalities in private construction

1,008

Fatalities per week

~19

in private construction alone

Fatalities per day

~3-4

in private construction alone

OSHA Standards Most Frequently Violated

#1 - Fall Protection

6,010 Violations

#3 - Scaffolding

2,813 Violations

#6 - Ladders

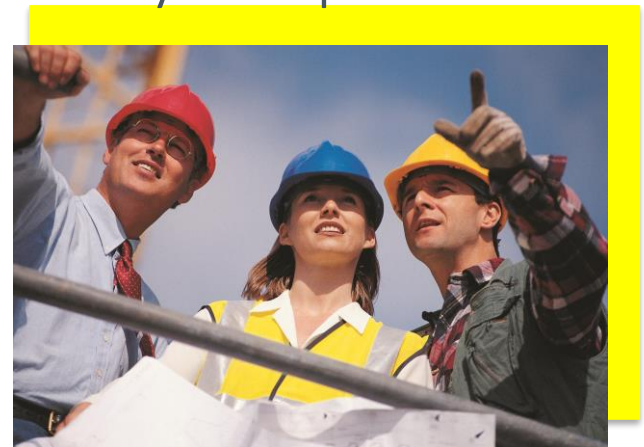
2,345 Violations



What do your contracts say?

AIA B101 - 2017, §3.6.1.2

...The Architect shall **not have control over, charge of, or responsibility for** the construction means, methods, techniques, sequences or procedures, or for **safety precautions in connection with the Work**, nor shall Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.



EJCDC – Safety Disclaimer

EJCDC E500-2020, §6.01.I

Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a Constructor to comply with Laws and Regulations applicable to that Constructor's furnishing and performing of its work.

Then do you have a responsibility for safety?


Code of Ethics for Professional Land Surveyors of Colorado

Surveyors shall be unbiased in performing services for the client, maintaining the highest standards of honesty and integrity; and offer impartial advice based on their accurate and conscientious measurements, data review, and legal principles while protecting the safety and welfare of the public at all times.

But do you have coverage?

Supplementary Payments

If as a result of a **Wrongful Act** or a **Pollution Incident**, a regulatory or administrative action under the Americans with Disabilities Act (ADA), the Federal Fair Housing Act (FFHA) or the Occupational Safety and Health Act (OSHA) is commenced directly against the **Insured** and results from the performance of the **Insured's Professional Services**...the Insurer will reimburse the **Insured** for its reasonable legal fees and expenses incurred, with the prior written approval of the Insurer, in responding to such actions. The maximum the Insurer will pay pursuant to this Supplementary Payment shall be \$10,000 per action or related actions, subject to a maximum of \$30,000 per **Policy Year**.



What happens when unsafe conditions are allowed to continue on a construction site?

Case Study

If you see something that poses an imminent danger, you may have a duty to act.



“

Engineer has a legal duty to exercise reasonable care for the safety of workers on a construction site when the engineer has a contractual responsibility for the progress of the work, but not for safety conditions, yet is aware of working conditions on the construction site that create a risk of serious injury to workers.

”

Case Study

Actual knowledge of a dangerous condition is not determinative of whether or not a duty exists.

“

We reject any notion that a duty arises **solely** upon an engineer's actual knowledge of dangerous conditions...

If someone is under **no legal duty to act**, it matters not whether the person is actually aware of a dangerous condition.

Conversely, if someone by contract or course of conduct has undertaken the responsibility for worker safety, that person may still be liable even in the absence of actual knowledge of the dangerous condition if they should have known of the condition.

”



Case Study

Right to interfere and stop work may create a contractual duty to ensure safety.



“

If the architect knew, or in the exercise of reasonable care should have known, that the shoring was unsafe, they had the contractual right and corresponding duty to stop work until the unsafe condition was remedied.

”

Case Study

Responsibility for site safety can be assumed expressly or impliedly by conduct.



“

[F]or a [Design Professional] not otherwise obligated by contract to provide jobsite safety to assume a legal duty to care for jobsite-employee safety, the [Design Professional] must undertake specific supervisory responsibilities beyond those set forth in the original contract documents.

”

Tips for Carrying Out Your Duties

Things to Consider...

- ✓ Designate a point person.
- ✓ Participate in safety training.
- ✓ Use clear contract language.
- ✓ Recognize the duty to protect the public in “imminent danger.”

More specifically...

Contracts

- Clear scope of services
- No responsibility to inspect work for safety concerns or control/authority to direct the means and methods
- No right or duty to stop work

On Site Actions

- Selectively choose meetings
- Don't direct contractor on how to do their job
- Report safety concerns to party in charge and follow-up with documentation

Documentation & Records

- Keep and maintain detailed records
- Contract, notes, correspondence, field logs, etc.

Safety and Security Awareness in the Built Environment

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Security Awareness—Protective Design

Design strategies can make projects less vulnerable to blast, vehicles, firearms and other threats

Risk Assessment

Perimeter Protection and Site Security

Blast Analysis

Façade Hardening

Controlled Collapse

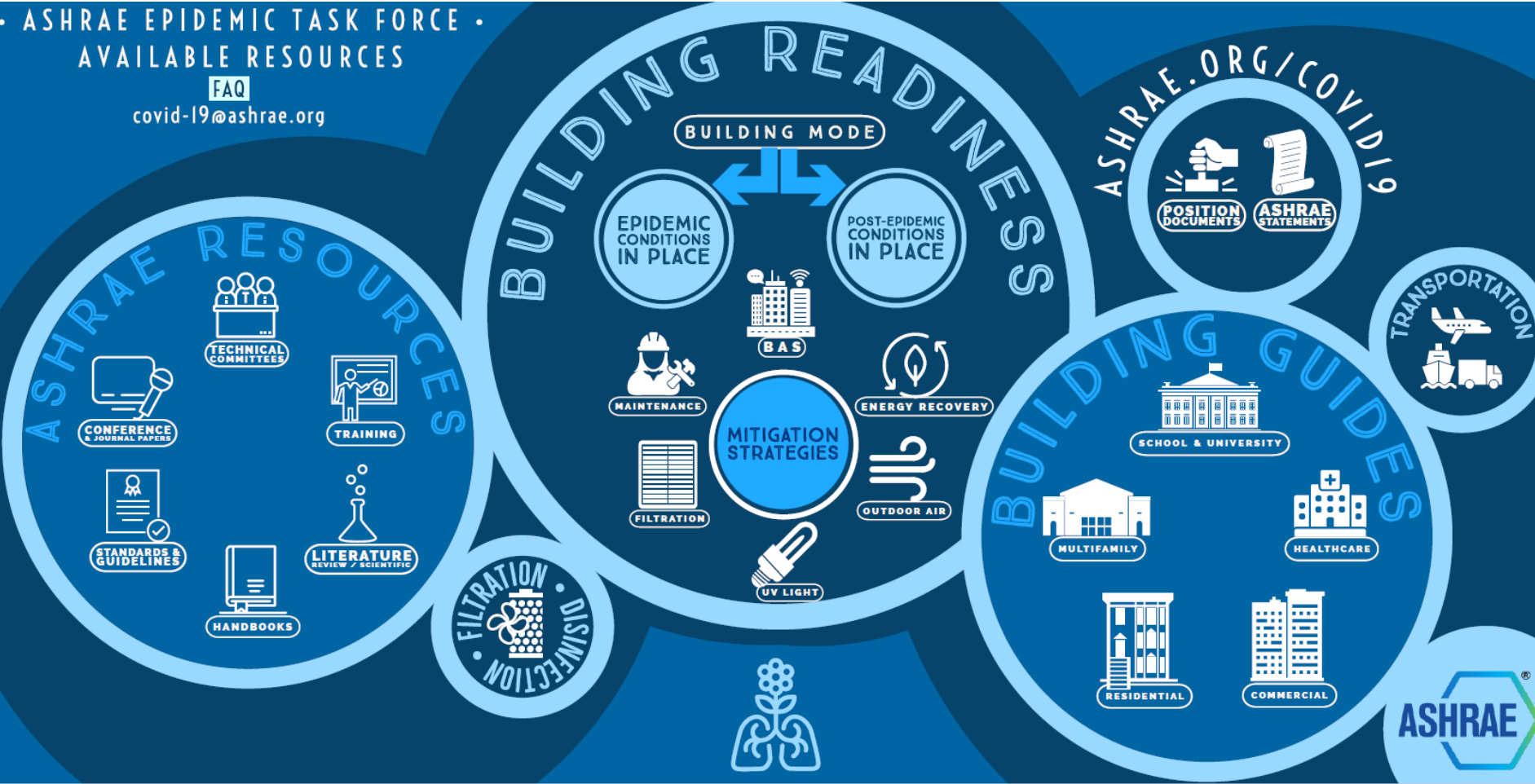
Security Design and Consulting

Security Awareness—Virus Spread

ASHRAE EPIDEMIC TASK FORCE • AVAILABLE RESOURCES

FAQ

covid-19@ashrae.org



Resources and Tips

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Building Blocks

Quality-minded Culture

Risk management

Quality management

Environmental
health & safety



Circumstance

An event or occurrence from which an Insured reasonably expects that a Claim could be made.

When in doubt, report it!

Loss Prevention Assistance

If the **Insured** reports a **Circumstance** during the **Policy Period**,...until such time a **Claim(s)** is made, any costs or expenses the Insurer incurs as a result of investigating or monitoring such **Circumstance** will be paid for by the Insurer.

The decision to incur any costs or expenses to monitor or investigate a **Circumstance** shall be at the sole discretion of the Insurer.

Definition of Claim

Claim

- A written demand for monetary, non-monetary or injunctive relief against any **Insured**;
- A civil proceeding against any **Insured**;
- A formal administrative or regulatory proceeding or investigation against any **Insured**...

Claims must be made and reported during the same policy period!

How to Report a Claim or Circumstance

Email: New.Claim@rlicorp.com

Fax: 866-692-6796

Phone: 800-444-0406

Street Address: 9025 N. Lindbergh Dr.
Peoria, IL 61615

Mailing Address: P.O. Box 3961
Peoria, IL 61612-3961



Details to Capture

Date, time, name, and location
of the project or claim

Brief description of potential
allegations

Name of entity(ies) making the
claim

Other party(ies) involved

Insured's contact person and
contact information

More Details

Amount of legal demands,
if known

Legal documents

Professional Services
Agreement for the project

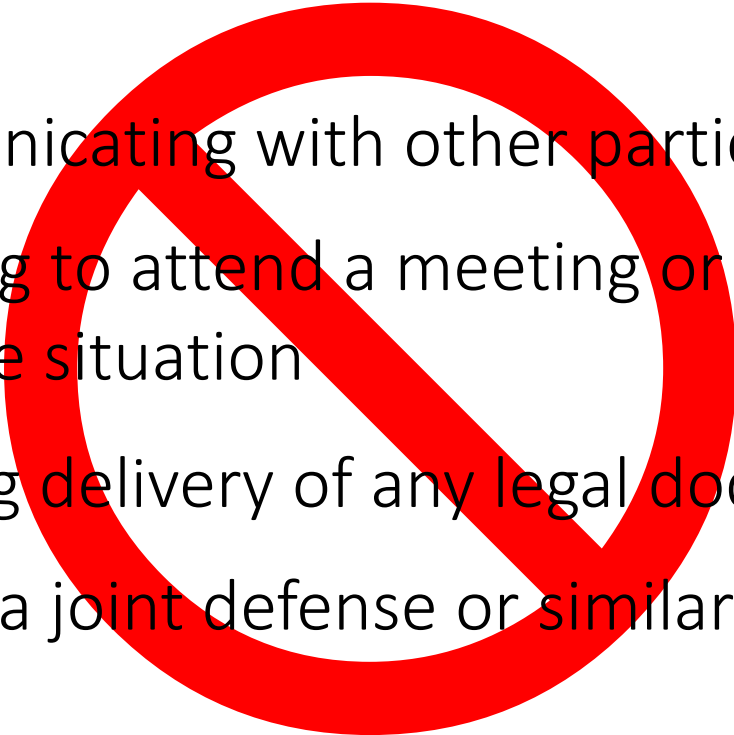
Certificates of insurance

Other pertinent documents
and/or correspondence

What should you NOT do in
the event of a claim?

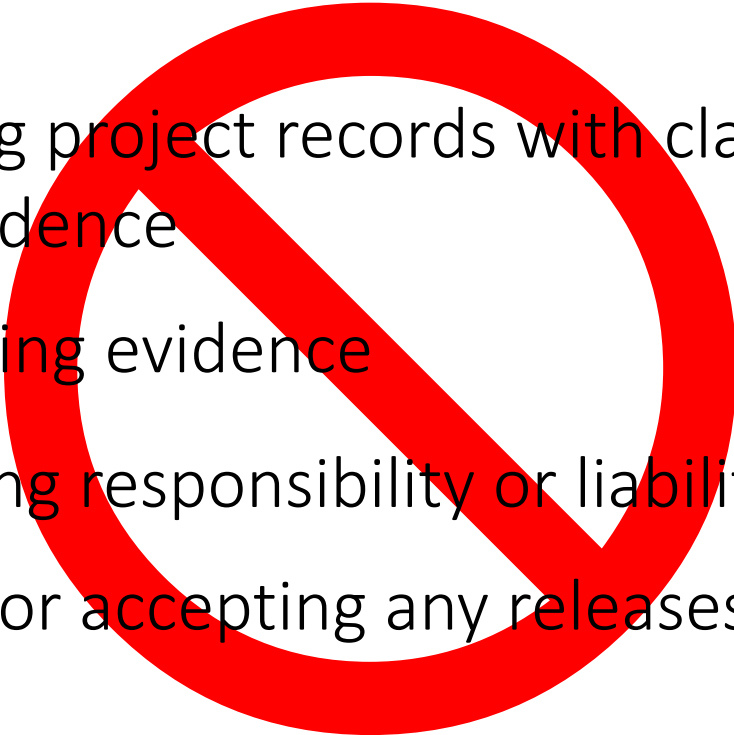
A List of Don'ts

These may jeopardize your defense or compromise your coverage unless permitted in advance by RLI.

- 
1. Communicating with other parties
 2. Agreeing to attend a meeting or conference to resolve the situation
 3. Refusing delivery of any legal documents
 4. Signing a joint defense or similar agreement

More Don'ts

These may jeopardize your defense or compromise your coverage unless permitted in advance by RLI.

- 
5. Blending project records with claim-related correspondence
 6. Destroying evidence
 7. Admitting responsibility or liability
 8. Signing or accepting any releases related to the issue(s)

Sometimes the best
defense is a good offense

Sun Tzu, The Art of War

Thank you for your time!

Questions?

**This concludes The American Institute of Architects
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