

The Risk Management Plan: A Fundamental for Business Success

Establish a Risk Management Policy and Plan for Your Construction Firm

A Risk Management Policy and Plan for your company is an essential element of loss prevention and a key ingredient of financial success. When your Risk Management Plan is embraced by leadership and integrated your company's

**Risk Management +
Business Management +
Project Management =
Company Success**

culture, it will have a significant positive impact on business performance.

At Berkley Construction Professional, we view risk management as an integral component of business, project and financial management.

Risk Management Approach for the Construction Professional:

We recommend the development of supportive project and business management policies appropriately scaled for the character and size of your company.

For larger companies, a Risk Management Team can be an effective way to create and implement policy, share knowledge across the company, and advocate for proper risk management principles and procedures. A cross-functional team can collaborate to develop the plan and policy that is tailored to your company. For smaller firms, these key roles may reside in one or only a few individuals internally but can also be fulfilled by the services of the company's insurance broker, carrier, and outside legal counsel.

The engagement and leadership of a committed group of individuals to the key issues and principles of risk and business management provides untold synergies to enable firm success. Key aspects of the RM approach for construction companies include:

- Understand the sources of Construction Professional Liability Risk (see sidebar)
- Identify and anticipate potential risk factors for each project (see sidebar on page 2)
- Avoid or mitigate risk through advance planning
- Senior management leadership of RM policy, protocol, and effort for company
- Project executive, engineer, superintendent understanding, leadership, and proactive implementation of RM strategies for each project

Why a Contractor Needs E&O Insurance

While most General Contractors are not directly involved with design, their Professional Liability exposure can come from several areas:

- Design-Build
- At-risk construction management
- Agency construction management
- Contracted subs performing their own design (e.g., electrical, HVAC)
- Final design delegated from A/E (e.g. steel detailing, handrail systems)
- Scheduling and sequencing of subcontractors and trades
- Pre-constructability reviews
- Value engineering
- Use of Building Information Modeling

Why General Liability Policies Don't Work

- Typical GL policies exclude coverage for professional services
- Even when endorsed for professional services, a GL policy's coverage is limited to bodily injury and property damage
- Professional liability claims tend to arise out of economic loss

The Risk Management Plan: A Fundamental for Business Success

Goals of Risk Management

- Protect the assets and financial well-being of the company
- Minimize the impact and cost of risk through active project management, training, and organizational accountability
- Maintain appropriate levels of PL insurance

Components of the Risk Management Plan for Construction Professionals

There are seven components of a comprehensive Risk Management Plan:

1. Understanding PL Risk (Standard of Care) and the Contractor's Role
2. Risk Analysis of the Client/Project/Team (Go/No-Go Process)
3. Contract Review and Negotiation
4. Contract Education for the Construction Team
5. Communication, Decision-Making, and Documentation
6. Business Management (including project delivery and quality)
7. Staff Training and Development

Professional Liability Risk and Contractor/CM Role in Risk Management

- Understand risk allocation (duties and obligations) between the parties
 - Contractor's Risk
 - Construction Manager's Risk
 - Project Owner's Risk (including risk acceptance, reward/long term benefit of investment)
 - Design Professional's Risk
- Recognize that construction and design professionals are part of the owner's risk management team, providing services under a professional Standard of Care; fees for design services are a small percentage of project cost
- Establish and maintain sufficient contingency throughout all phases of the project
- Understand CGL and PL insurance coverage and claims

Standard of Care

Performance of services consistent with the professional skill and care ordinarily provided by others practicing in the same or similar locality under the same or similar circumstances

Not a promise of perfection or a guarantee of a satisfactory result

Loss Prevention Top 10

1. Stay focused be aware of your *professional* responsibilities
2. Define your scope of services
3. Control your contracting and project approval process— stay within protocols
4. Work with design firms you know or check references
5. Think globally act regionally— know your markets and legal environment
6. Make certain your subs live by the same rules that you do
7. Never begin complex services until your contract is fully executed (then adhere to its terms and modify them only by written agreement)
8. Carefully manage your fast-track or hard-bid construction work such as untested technologies or cutting-edge design
9. Maintain continuity of management at the project level
10. Perform peer review within your firm and foster an environment of sharing best practices (second set of eyes)

Risk Analysis: Client, Project, Team

- Go/No-Go process: Go/No Go form, internal review
- Client selection: reputation, experience in project type, financial solvency, litigation history
- Client goals and expectations: well defined and realistic in program, project objectives, schedule
- Construction project team qualifications: expertise to win/succeed; key staff availability—leadership and support

The Risk Management Plan: A Fundamental for Business Success

Risk Analysis: Client, Project, Team (cont'd.)

- Design team and other consultants: qualifications, skills in project type; prior successful working relationship; collaborative approach (IPD-LEAN concepts)
- Design and construction technology: pre-construction project delivery process alignment; early engagement and communication; use of BIM and other design/construction technology
- Financial analysis: ability to analyze work effort, negotiate fee, and meet reasonable profit target
- Quality and strategic goal alignment: current and future benefit to company



Contract Review and Negotiation

- Goal: establish fair and balanced terms and conditions
 - Thorough, accurate reflection of your services and obligations
 - Proper allocation of risk to other project participants
 - Consistency of project contract documents
- Internal process for review: risk manager, project executive, project manager
- External process: outside counsel, insurance broker
- Subcontractor agreements: align with prime, ensure proper levels of insurance for scope
- Negotiation strategies: charge appropriately, educate client about insurability issues, strive for fairness, require mediation as the first step in dispute resolution

Contract Education for the Construction Team

- Understanding of responsibilities, scope of services, schedule, budget
- Know responsibilities of design team, consultants, owner, other parties
- Change and issue awareness, identification, communication, response

Communication, Decision-Making and Documentation

- Communication plan: align owner and project team requirements for meetings, milestones, decision points
- Authorship, filing and management of project communications: including document management system, software, and records access/preservation
- Owner's decision-making process: level of review and authority, lead time
- Change management process: identification, notification, authorization, documentation
- Key meetings and presentations: document options considered, recommendations made, decisions reached
- Email protocol: caution, email lives forever

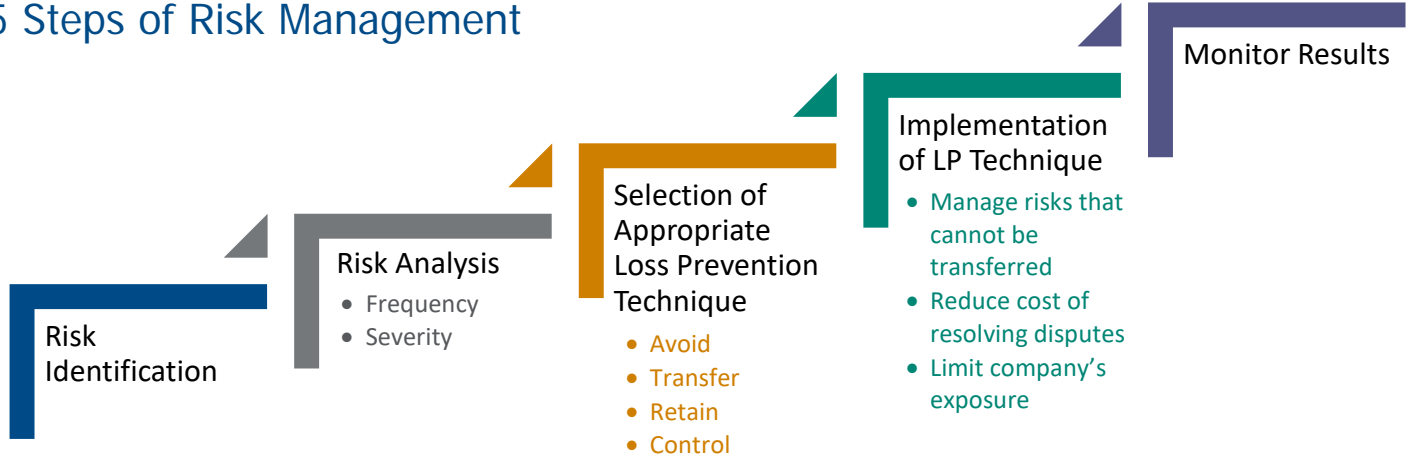
Business Management – Project Delivery

- Team capabilities, organization, leadership
- Project delivery process: baseline of key activities for the construction professional on every project:
 - Standards, guidelines, procedures, protocols, checklists
 - Quality management plan: continuous, phase milestones
 - Project Planning: Alignment of scope, staffing, financial goals
- Risk management plan for the project (see Figure 1 on page 4)
- Early construction risk issue identification, response, solutions
- Proactive loss prevention strategies
- BIM execution plan—integrated approach with design professionals and key trades

The Risk Management Plan: A Fundamental for Business Success

Figure 1

5 Steps of Risk Management



Business Management – Project Delivery (cont'd.)

- Sustainability, building performance plan, understand/meet owner's project requirements
- IT and design technology systems and support: in office, on the jobsite
- Financial performance: tracking and sharing of key data regularly (on a need-to-know basis)
- Accountability and responsibility of all other parties of project team
- Completed project review and lessons learned



Maintaining Client Satisfaction

- Carefully assess the client's needs
- Discuss liability concerns with the client
- Don't make unrealistic promises
- Determine how to resolve problems when they arise

Staff Training and Development

- Mentor and invest for long term retention
- Recruit and foster strong project leaders
- Develop staff at all levels: executive, project management, field-based resources
- Include training on leadership, communication, team management skills
- Offer opportunities for growth

Quality, Risk Management, and Client Satisfaction – Imbue in Your Company's Culture

Once the Risk Management Plan becomes ingrained in the culture of the firm and integrated with project management and business management tools and techniques, the results will be tangible.

About Berkley Construction Professional

Berkley Construction Professional is dedicated to serving the professional and pollution liability insurance needs of the construction industry and has the authority to quickly provide solutions that best serve clients' needs. Berkley Construction Professional is a division of Berkley Alliance Managers which is a member company of Berkley whose rated insurance company members are assigned an A+ (Superior) rating by A.M. Best Company. W. R. Berkley Corporation is an insurance holding company that is among the largest commercial lines writers in the United States and operates worldwide in two segments of the property casualty insurance business: Insurance and Reinsurance & Monoline Excess.

For more information, contact:

Ray Bustamante

Managing Director
rbustamante@berkleycp.com
973.600.0926

David Pacifici

Senior Vice President
dpacifici@berkleycp.com
818.291.6231

Annie Buelow

Underwriter
abuelow@berkleycp.com
312.705.1128

Lauren Taylor

Underwriter
lataylor@berkleycp.com
212.822.3396

Ed Sheffele

Executive Vice President
esheffele@berkleycp.com
973.775.7492

Eric Smentowski

Senior Vice President
esmentowski@berkleycp.com
312.705.1122

Courtney Fowler

Underwriter
cfowler@berkleycp.com
770.910.1020

Rahsaan Nurullah

Executive Underwriter
W/R/B Underwriting
rnurullah@wrbunderwriting.com
+44.0.207.337.9120

Peter Brooks

Senior Vice President
pbrooks@berkleycp.com
720.360.7500

John Witkiewicz

Senior Underwriter
jwitkiewicz@berkleycp.com
770.910.1016

Ashley Harrell

Underwriter
aharrell@berkleycp.com
312.368.3458

Peter Clarke

Underwriter
W/R/B Underwriting
peclarke@wrbunderwriting.com
+44.0.207.280.9062

Chris McQueen

Senior Vice President
cmcqueen@berkleycp.com
770.910.1015

Sean Brown

Underwriter
sebrown@berkleycp.com
973.775.3368

Joe Rosario

Underwriter
jrosario@berkleycp.com
312.368.1141



412 Mt. Kemble Avenue, Suite G50
Morristown, NJ 07960

In California:
a division of Berkley Managers Insurance Services, LLC
CA License #0H05115

berkleycp.com | 973.775.7492

Information provided by Berkley Construction Professional is for general interest and risk management purposes only and should not be construed as legal advice nor a confirmation of insurance coverage. As laws regarding the use and enforceability of the information contained herein will vary depending upon jurisdiction, the user of the information should consult with an attorney experienced in the laws and regulations of the appropriate jurisdiction for the full legal implications of the information.

Practice management recommendations should be carefully reviewed and adapted for the particular project requirements, company standards and protocols established by the construction professional.

Products and services described above are provided through various surplus lines insurance company subsidiaries of W. R. Berkley Corporation and offered through licensed surplus lines brokers. Not all products and services may be available in all jurisdictions, and the coverage provided by any insurer is subject to the actual terms and conditions of the policies issued. Surplus lines insurance carriers do not generally participate in state guaranty funds and insureds are therefore not protected by such funds.

BCP Form #: PERFORM-53002-0121