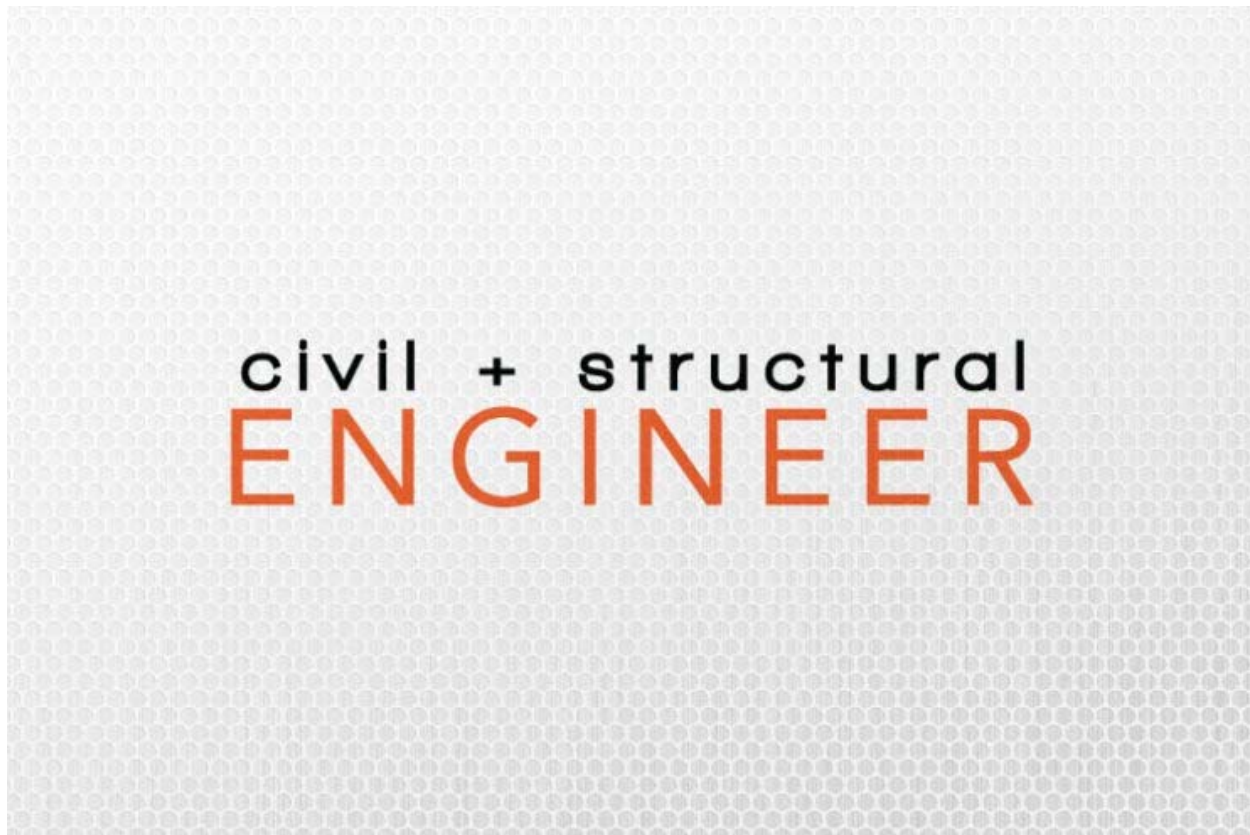




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RISK MANAGEMENT STRATEGIES

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ASFE was formed 40 years ago to provide loss-prevention guidance to its members. Today, ASFE's focus is risk management. The difference is significant.

"Loss prevention" is a euphemism for "litigation prevention." Risk management includes loss prevention plus myriad other professional practice risks. In terms of human resources, for example, loss prevention instructs us to hire only competent, honest people. Risk management advises us to keep those employees happy, especially to avoid turnover costs that can easily exceed \$100,000 to replace a seasoned project manager.

Of all risk-management tools, none is more important than effective relationships with client representatives. Consider this: Every client-for-life relationship is worth \$5 million to \$25 million, and each begins with the first project. As such, if a first-time client is dissatisfied and does not return, the firm loses millions, which is not to say that effective client relationships have no bearing on loss prevention. In fact, given that owners—firms' direct and indirect clients—file 60 percent to 70 percent of all claims faced by design and environmental professionals, effective client relationships may also be the most important loss-prevention tool.

The linchpin of effective relationships between design professionals and their clients' representatives is in-depth communication, where each side listens to what the other has to say, thereby building understanding and mutual trust in each other's integrity and desire to achieve a successful project outcome.

Emphasizing effective client relationships leads some to assume that I believe other risk management techniques are unimportant. In fact, that situation occurred about two months ago. I had drafted a column that referred to a 30-year-old case history involving a building that collapsed, killing 14 construction workers. The construction superintendent, a neophyte, unquestionably was at fault, but that didn't matter. The contractor's liability was limited to whatever workers' compensation paid. To secure additional compensation, the workers' survivors sued the architect and structural engineer of record (SoR), neither of whom had done anything wrong. They also sued the SoR's partner—a friend of mine—because the plaintiffs' attorneys discovered documents he signed on behalf of the SoR, who was on vacation, authorizing removal of concrete formwork. My friend volunteered his signature without visiting the work site "because everyone relies on the contractor's judgment for those things. And besides, formwork removal didn't cause the collapse." No matter. The SoR's partner lost everything, including his reputation.

An ASFE board member who reviewed my draft column commented that "the engineer's relationship with the owner wouldn't have prevented what happened." I didn't intend to imply it

would have, so I rewrote the piece to point out how doing the wrong thing (signing the stripping approvals) can lead to devastating losses, even though the wrong thing may be something "everyone" does.

But I got to thinking: Would more effective relationships with client representatives help prevent claims being filed by third parties such as insurance companies pursuing subrogated claims? In such an instance, an insurance company would sue you in the name of its insured, to recover from you (and possibly others) money it paid to its insured to cover damages its insured incurred because of your (feasibly among others') fault. The insured could be your client, and you could enjoy a marvelous relationship with the client's representative, but that wouldn't matter to the insurance company.

So, how could that great relationship have helped? Flashback to the onset of the project, when, because you understand the client representative's concerns, you consider the whole range of risks you might be able to help with. You discuss these risks and measures to moderate them. Because the client representative respects you and trusts you, your scope expands and inherent project risks—including the risk of a subrogated claim—diminish.

How about those situations where a contractor alleges that a design professional has been negligent because of errors or omissions? The risk of that occurring is almost eliminated when the client representative agrees to have you prequalify contractors, limiting the competition to those that are experienced, competent, and fair. You are far more likely to have better communication with such contractors' representatives, helping to minimize the risk of false claims and the real problems that, without early intervention, could lead to real claims.

And, because of your relationship with your client representative, you should be able to expand your scope to reduce your and your client's risk further by conducting a pre-bid conference (unless you're able to convince your client's representative that negotiated, contractor selection is far better than bidding), a preconstruction conference, and a kick-off meeting, and by providing full-time construction observation.

Third-party claims are also brought by contractors' injured employees. Convincing the client to rely on a safety-conscious contractor helps lower that risk. Provisions in your client-consultant agreement also help, specifically those that correspond with provisions in the owner-contractor agreement, requiring the contractor to name your firm and the owner as additional insureds on various policies, and to contribute to losses occasioned by lawsuits brought by their or a

subcontractor's employee or survivors.

Unauthorized, third-party reliance on reports and plans is another risk that can be moderated through effective communication and trust. Explain to your client representative why your contract should note that nothing related to the agreement inures to the benefit of any third party, and why, in a header or footer on every page of every deliverable, you will note that the document is for the exclusive use of the client, and any other party's reliance on the document is at that party's sole risk.

The bottom line: Establishing relationships with client representatives is the most important risk management/loss prevention strategy of all; in fact, the most important practice management strategy of all. While high-quality deliverables and services are important, they can also be provided by most of your competitors. The one thing your competitors cannot provide is you. Let your client representatives know how important that difference can be.

John P. Bachner is the executive vice president of ASFE, a not-for-profit association that provides programs, services, and materials to help geoprofessional, environmental, and civil engineering firms prosper through professionalism. Visit ASFE's website at www.asfe.org (<http://www.asfe.org>).

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