



# Constructive

## COMMENTS

Risk Management Perspectives for the Construction Community

## Covering Exposures as Integrated Practice Develops

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- Building Security Certifications
- Ranking States for Mold Claims

The production of cost-efficient, deadline-specific projects that meet regulatory requirements and expected quality levels has always been an aspiration of the construction industry. Now, because of technological advances, this goal may be more easily attained through an integrated practice methodology. Integrated practice, in which the bright line between design and construction is blurred, is facilitated through the use of building information modeling (BIM) technology. The use of BIM could mean fundamental changes in the project delivery process, opening up new opportunities for service and reducing exposure to communication and documentation problems that now lead to so many claims.

As the construction industry consolidates around the use of BIM, it is unclear who will take the lead as project information integrators. Licensed professionals may be in the best position to control the overall process.

As collaborative design efforts develop, parties ranging from client consultants to manufacturers to specialty contractors will provide design elements in the real-time database. The legal system requires that parties harming others because of their negligence rectify that harm, and any party providing negligent design input should be liable if that negligence causes harm to end users or other project stakeholders. Contractors and others with design responsibility can and should be insured for their negligence in creating or furnishing design information.

As firms explore new revenue and business opportunities, they may need other insurance coverages. As the present design and construction industry sectors evolve into new business models, the insurance industry, too, will change. Change comes slowly, however, in an industry where pricing models are based on established legal precedents and claims statistics developed over decades. "No-fault" policies covering design exposures and digital communication problems for all parties are unlikely to soon be offered because the probabilities of loss are so speculative.

During the transition of the design and construction industry, however, firms can count on Schinnerer's expertise and our readiness to respond to an evolving practice with clear policy language and coverage options, just as the program has for the last 50 years. ♦

# Study of the Worst States for Mold Claims Released

A report recently released by the GREENGUARD Environmental Institute, a non-profit organization that provides mold risk reduction certifications, ranks states for mold contamination on commercial and residential properties. The ranking of states, although based on property insurance claims, is similar to the list of states with high numbers of mold-related professional liability claims.

## Ranking Property Insurance Claims

The rankings are part of an effort to stimulate use of GREENGUARD's certification program for good property development and management practices. States are ranked using a "relative hazard ranking model" developed by American Risk Management Resources. It is based on a comparison of mold-related losses on property insurance claims with the total premiums paid for such coverage.

The ten worst states according to the "premiums in/payments out" ranking are: Texas, Florida, Oklahoma, South Carolina, Nevada, Arizona, California, South Dakota, Tennessee, and Kansas.

The rankings do not reflect the losses caused by the hurricanes in 2005.

## Tracking Professional Liability Claims

Professional liability claims are ranked by frequency (the number of design liability claims related to the cause of loss) and severity (the total amount of insurance company money used to satisfy claims). The frequency measurement may be the most important to firms since any claim forces a policyholder to

commit time and financial resources to its defense. Severity affects insurance rates as it reflects all defense expenses and payments made because of a settlement or adjudicated responsibility.

The states with the most professional liability claims alleging damage from mold caused by design errors or omissions are the same as those that show up in the GREENGUARD ranking. Ordered by frequency of claims, the ten worst states are: California, Texas, Florida, Arizona, Nevada, Oklahoma, Tennessee, South Carolina, Kansas, and South Dakota. The same states have the greatest indemnity payments for mold-related claims. South Carolina, however, moves up to fifth on the list of total severity.

## Looking Behind Claims

According to the GREENGUARD Environmental Institute, the major factors contributing to mold contamination of commercial and residential real estate are the use of inferior building materials and poor construction techniques. Construction defects, improperly specified materials and the failure to recognize deficiencies during construction are the source of many design liability claims.

High on each list are states with dry climates. While counterintuitive to the assumption that states with high humidity levels have higher damage from mold, moisture within buildings in high-temperature states with low outdoor humidity tends to condense within structures creating a nurturing environment for the growth of mold and the growth of mold-related claims. ♦

## ASTM Publishes Mold Assessment Standards

While project owners increasingly have attempted to establish baseline mold measurements, a standard for the conduct of mold assessments has been lacking up until now. The American Society for Testing and Materials (ASTM) has released a new standard intended to establish a shared understanding of the conduct and results of mold assessments. ASTM's International Committee on Environmental Assessment, Risk Management and Corrective Action recently announced the development of ASTM E 2418-06, "Guide for Readily Observable Mold and Conditions Conducive to Mold in Commercial Buildings: Baseline Survey Protocol."

The purpose of the protocol is to standardize the conduct of a mold assessment prepared for the transfer of commercial property. The presence or prospect of mold creates a level of concern—and often misperceptions—that can have a negative impact on the real estate market. ASTM's standard recognizes that the goal of an assessment is an appropriate inquiry rather than an exhaustive assessment of the property. There is a four-part approach to be followed by consultants with the requisite qualifications to analyze mold-related issues: a documentation review, an interview, a walk-through, and the preparation of a report.

ASTM E 2418-06 can be purchased from the American Society for Testing and Materials website, [www.astm.org](http://www.astm.org), for \$40. The 15-page standard can be downloaded as a PDF or ordered for mail delivery.

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## AGC and AIA Meet with Client Group on Project Delivery Systems

In May, the Associated General Contractors of America (AGC), The American Institute of Architects (AIA), and the Construction Users Roundtable (CURT)—a research program sponsored by large clients—conducted a construction industry summit to, as stated in a news release, “address and solve problems caused by industry fragmentation, lack of clear communications across professions, and old business models.” The event brought in other stakeholders, including engineers, insurers, and construction-industry attorneys. Lorna Parsons, managing director of Schinnerer’s construction industry group insurance programs, participated.

The summit and subsequent meetings were planned to look at the reorganization of the design and construction process. The focus of the continuing effort was described as, “tackling the theoretical and

strategic challenges to design and construction industry transformation by working across traditional stakeholder boundaries.” It is clear that the effort is client-driven, targeting inefficiencies that exist in the traditional design-bid-build system. Although the effort will look at changing current behaviors through the reorganization of projects and teams, it is focused on client expectations that project teams will use new technologies, such as building information modeling, to the fullest.

The organizations confirmed that two existing CURT productivity studies would form the basis for future industry changes. The studies can be downloaded from the AIA website at [www.aia.org/SiteObjects/files/ip\\_optimizingconstructionprocess.pdf](http://www.aia.org/SiteObjects/files/ip_optimizingconstructionprocess.pdf) and [www.aia.org/SiteObjects/files/ip\\_%20productivity.pdf](http://www.aia.org/SiteObjects/files/ip_%20productivity.pdf). ♦

## Building Security Certification Now Available

Firms looking to differentiate their services and increase their opportunities can now provide building security design evaluations through a new certification program for licensed design professionals and individuals credentialed by ASIS International, an association for security professionals.

The Building Security Council is focused on raising the overall security of the built environment. Initiated in 2005 by the Architectural Engineering Institute of the American Society of Civil Engineers, this independent organization has been working on a building design evaluation system and a certification program for professionals. It will introduce its Building Security Certified Professional (BSCP) certification in late November following a two-day seminar covering key building security knowledge areas.

The seminar also will explain the Building Security Council rating system, intended to become an industry-wide tool for evaluating specific building designs against standardized criteria. It is anticipated that project owners will use such an evaluation to address specific threats, increase project value, or qualify projects for insurance coverage.

The certification recognizes licensed design professionals, physical security professionals, and certified protection professionals as having an understanding of multidisciplinary security concerns.

Information on the certification and the seminar can be found at [www.buildingsecuritycouncil.org/certification.html](http://www.buildingsecuritycouncil.org/certification.html). ♦

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## Census Bureau Indicates Construction Slowdown

The U.S. Census Bureau of the Department of Commerce reports that construction spending during July 2006 was estimated at a seasonally adjusted annual rate of \$1.2 trillion. While the new figure reflects an increase of more than five percent from the July 2005 figure, it also shows a decline from the June 2006 estimated level of annual construction by more than one percent.

The July 2006 statistics indicate that even though the commercial market is still strong, the residential construction market

has brought down the seasonally adjusted rate. In the public construction sector, only the rate for educational construction has shown an increase.

While it appears that construction levels are in decline, it takes at least two months to establish an underlying trend for total construction. Changes in specific categories of construction often take as long as eight months to indicate a clear trend. The national figures for August, to be released in October, may confirm an overall construction decline. ♦

# Anticipate a Pandemic's Effects on Contractual Commitments

Many have dismissed warnings that avian flu could result in a pandemic, but construction industry firms should take notice. If an outbreak occurs, firms will have to take special precautions to protect employees and react to critical delays caused by diminished staffing. Worker absenteeism would soar, and public health measures could effectively quarantine the afflicted or prohibit routine business activities. Project completion could be delayed by a lack of skilled workers, specialty contractors, and even general laborers.

## Review Contingency Plans, Insurance Coverages, and Procedures

Many firms are currently

working at capacity. In the event of a pandemic, employees may be unable to work and replacements impossible to find. Prudent firms will focus on reducing the potential exposure of employees and lining up alternative workforces. Procedures should be developed to meet OSHA and other government regulations including those requiring temporary restrictions, disability benefits, and medical treatment for workers who become sick because of their employment activities.

## Include Mass Illness as a "Force Majeure" in Contracts

The spread of any highly contagious disease on construction sites could hinder or halt

construction. Project owners should be made aware that a disruption in the construction workforce could severely affect the timing and quality of projects and could have a significant impact on the ability of the construction industry to meet project deadlines and cost constraints. A pandemic should be recognized as creating an impossibility of performance. Firms should not be held responsible for delays caused by circumstances outside of their control.

All firms providing design and construction services should consider the possible effect of pandemics on their internal operations and their abilities to meet contractual requirements. ♦

**Constructive Comments**  
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