



10 WAYS TO MANAGE RISK

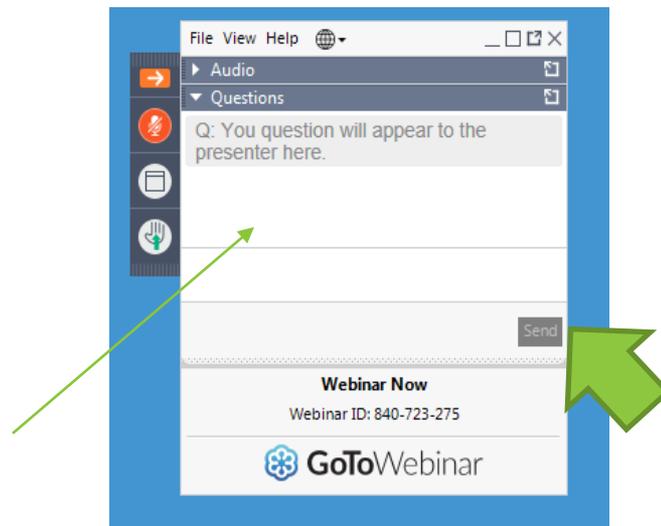
(BETTER THAN WE ARE ALREADY)



HAVE A QUESTION???

PLEASE SUBMIT YOUR QUESTIONS IN WRITING VIA THE QUESTION PANEL

WRITE YOUR QUESTION AND CLICK SEND:



TODAY'S SPEAKER

NICK MALETTA

ACCOUNT EXECUTIVE/SHAREHOLDER

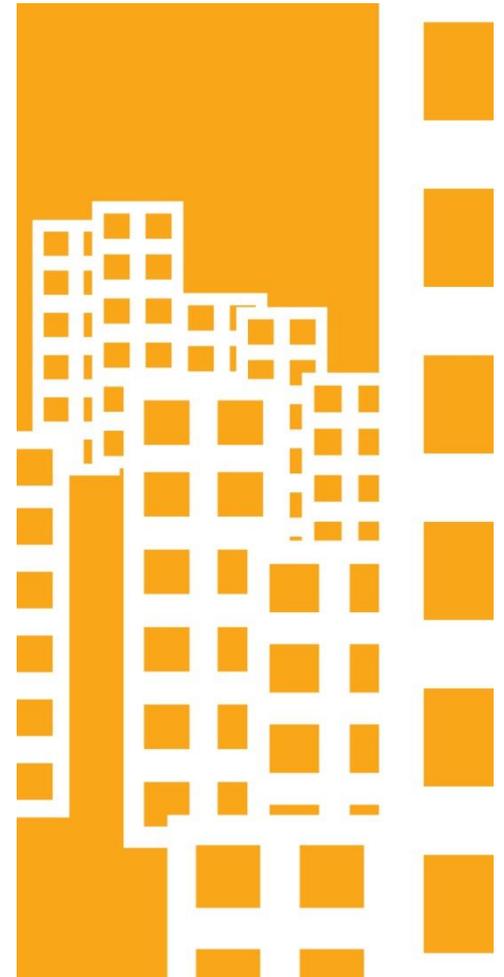
HOLMES MURPHY & ASSOCIATES





Learning Objectives

- Understanding Risk Management Basics
- Identify Drivers and Non-technical causes of claims
- Identify warning signs of claims and proactive approaches to avoid the same
- Learn solutions to curb exposures in all disciplines





Risk Management Fundamentals

Avoid

- Project evaluation
- Client selection
- Go/No-Go decision

Transfer

- Insurance
- Contract

Assume

- Deductible
- Self-insurance

Control

- Loss prevention
- Risk management

#1 Eliminate Liability Illiteracy

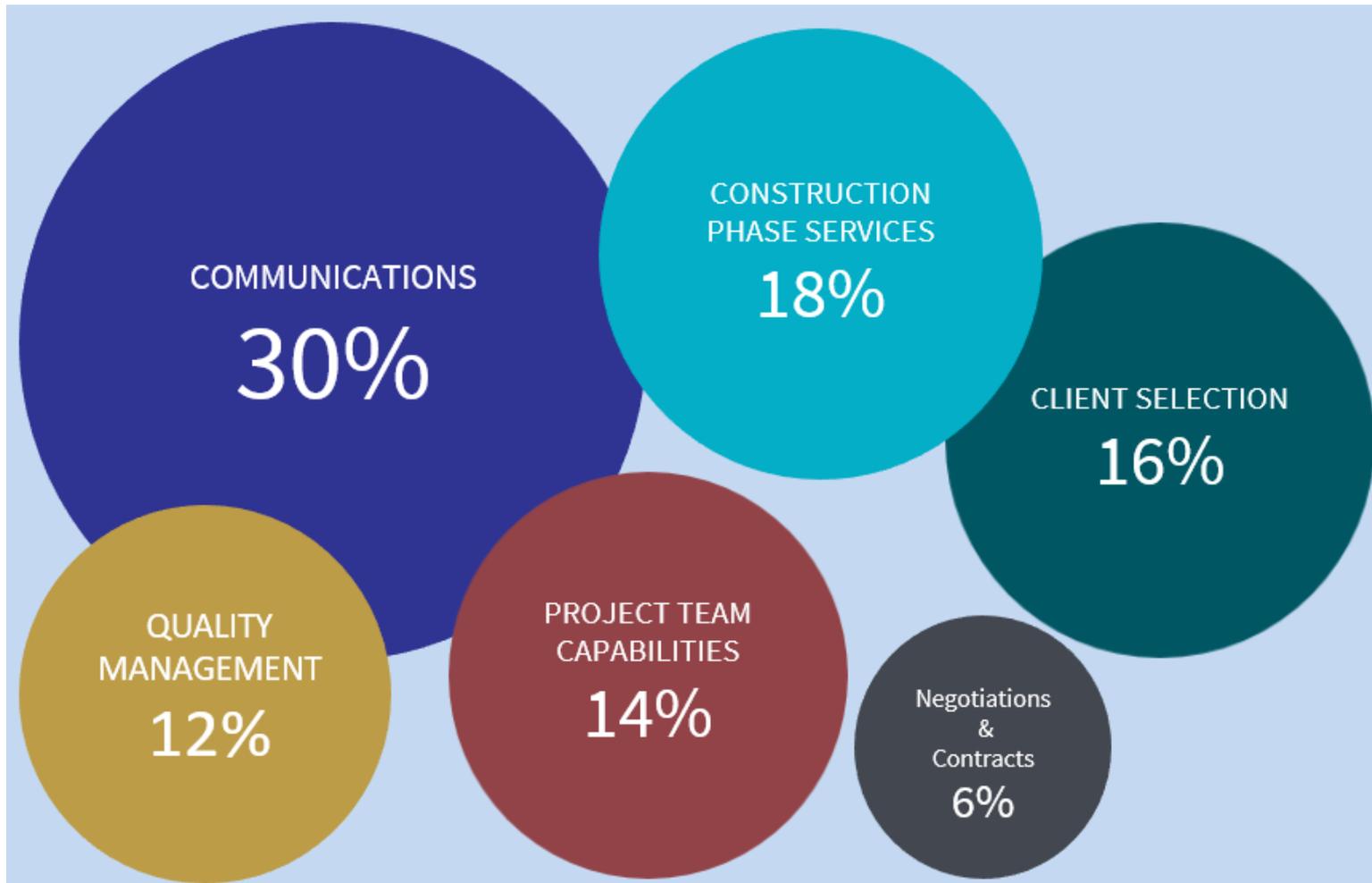


- Know how claims arise and where they come from
- Technical quality and non technical risk factors





Top 6 Non-Technical Risk Drivers



Risk Drivers by mean cost

COMMUN-
ICATIONS
\$59K

CONSTRUCTION
PHASE SERVICES
\$61K

CLIENT
SELECTION
\$65K

QUALITY
MANAGEMENT
\$47K

PROJECT TEAM
CAPABILITIES
\$110K

NEGOTIATION &
CONTRACTS
\$118K

Risk Drivers (No. 1 by claims count)

Communications

55%

Lack of procedures to identify conflicts, errors and omissions

13%

Project issues/ disputes not handled well

30%

of non-technical Risk Drivers

13%

Scope of services not clearly explained to client

19%

Multiple/ Other issues

Risk Drivers (No. 2 by claims count)

Construction Phase Services

64%

Inappropriate
construction observation

16%

Inappropriate/ inconsistent shop
drawing/ review procedure

18%

of non-technical
Risk Drivers

14%

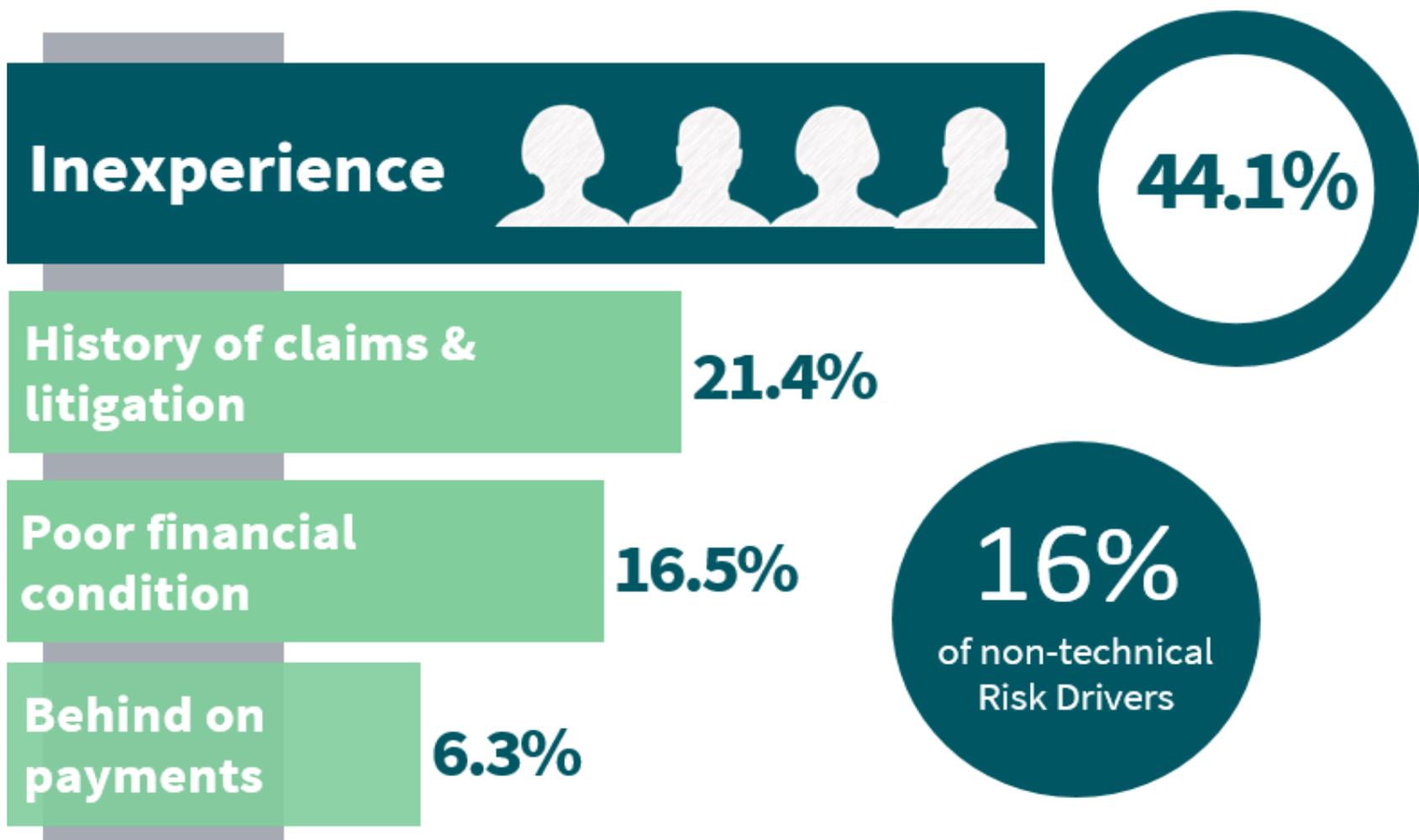
Issue with contractor

6%

Other issues

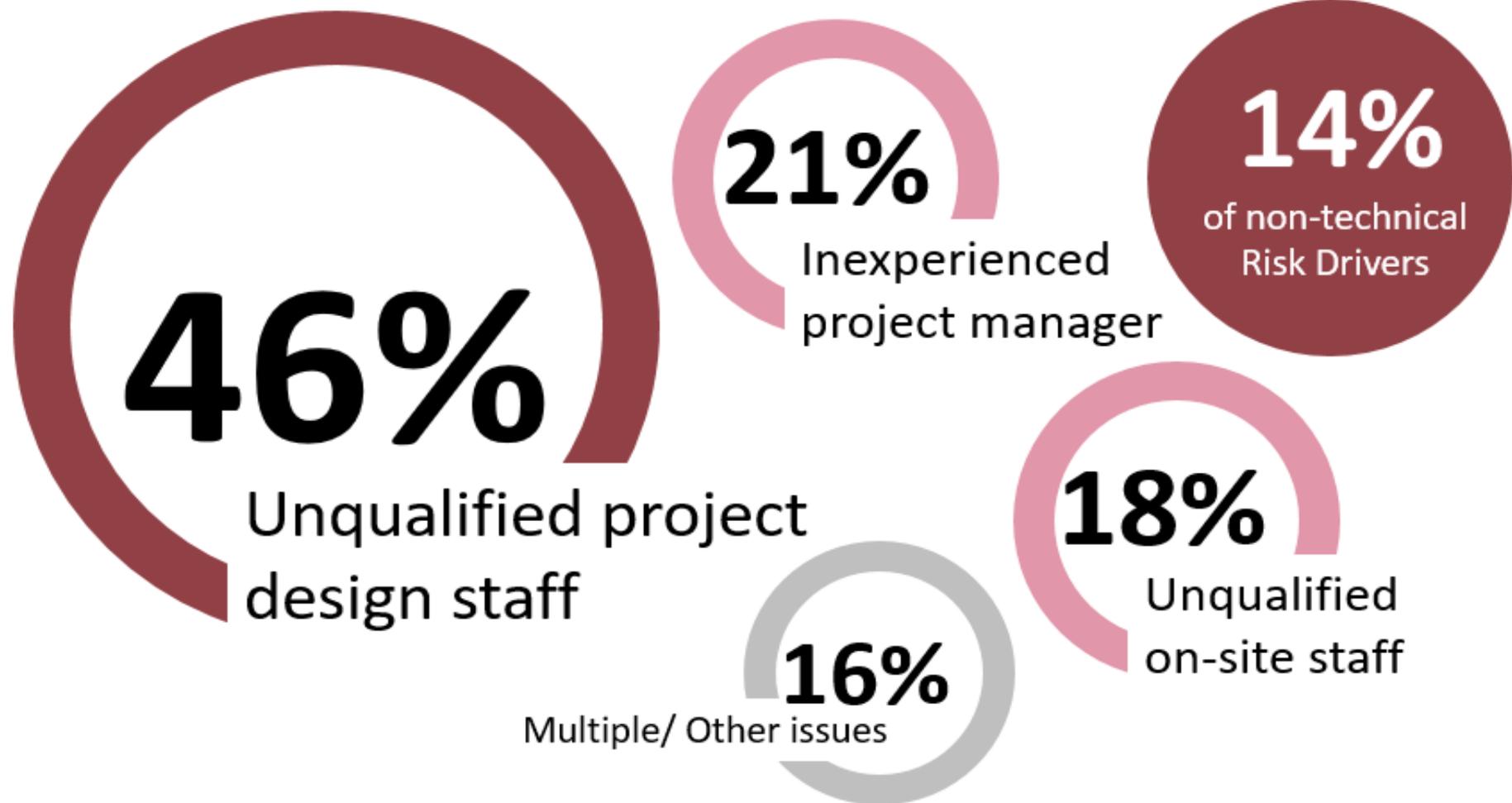
Risk Drivers (No. 3 by claims count)

Client Selection



Risk Drivers (No. 4 by claims count)

Project Team Capabilities



Risk Drivers (No. 5 by claims count)

Quality Management

Lack of QA/QC procedures
to reduce errors

63%

No proactive plan to
handle project issues/
disputes

33%

Other

4%

12%

of non-technical
Risk Drivers

Risk Drivers (No. 6 by claims count)

Negotiations & Contracts

Unclear/
inappropriate
scope of services

45%

6%

of non-technical
Risk Drivers

Contract not in-place
before work began

12%

Didn't formally evaluate
client & project risks

12%

Multiple/ Other

31%

#2 Select Projects and Clients Carefully

- Beware of higher risk projects
- Ensure projects align with your firm values/expertise
- Beware of higher risk clients

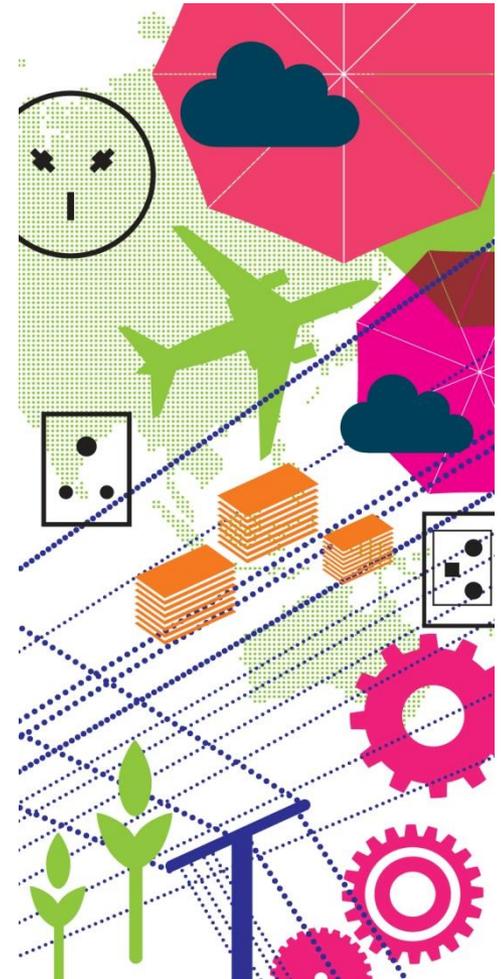




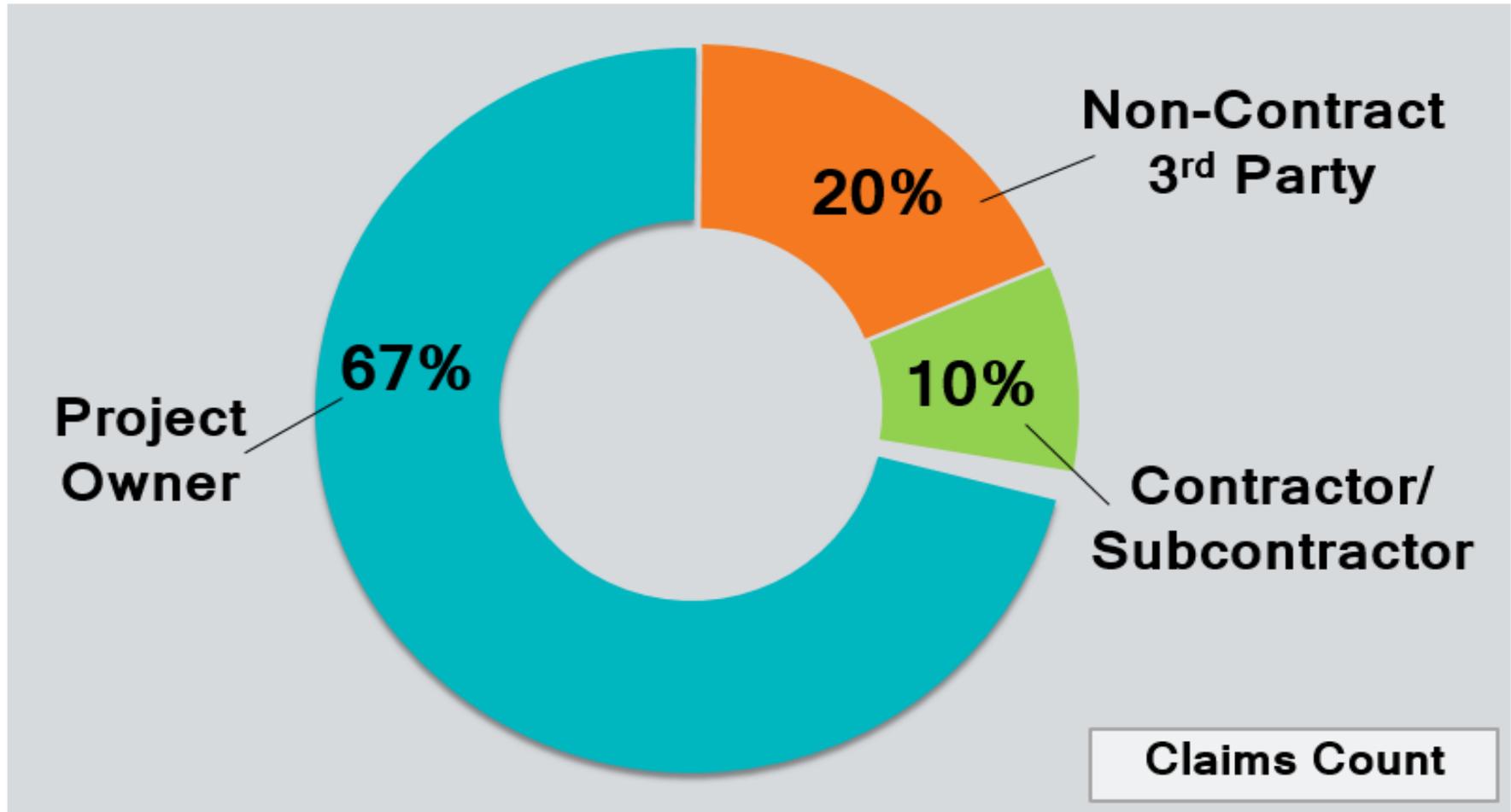
EXHIBIT 9: EVALUATION OF RISK – RED FLAG CHECKLIST

Prepared by _____ Date: _____
 Project: _____
 Location: _____
 Client: _____ Owner: _____
 Type of Contract: _____ Estimated Fee: _____

PROJECT TEAM MEMBERS	OWNER		ARCHITECT		C/M	
	Yes	No or Don't Know	Yes	No or Don't Know	Yes	No or Don't Know
1. Does this project team have experience with this type of project?						
2. Is this party financially stable and/or do they have a good credit rating?						
3. Does this party have a claims-free history?						
4. Does this party have a good reputation in the community?						
PROJECT CONSIDERATIONS	YES		NO			
5. Are we experienced with this type of project?						
6. Is the fee determined by qualification rather than price?						
7. Do we have adequate staff for the project?						
8. Is the scope of services adequate? Well-defined?						
9. Are construction phase services included?						
10. Is the project free of unfamiliar code requirements?						
11. Is the project located in a geographic area where we have experience?						
12. Is the schedule realistic?						
13. Is this a fast track or accelerated schedule project?						

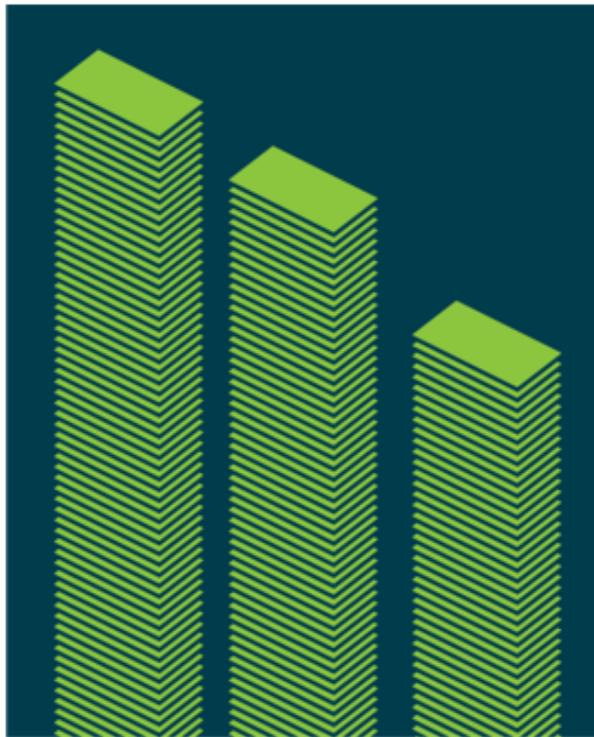
Who sues?

Architects/Engineers



Types of damages

Architects/Engineers



Economic Loss

49%

42%



Property damages

39%

44%

Claims Count
Claims Dollars \$

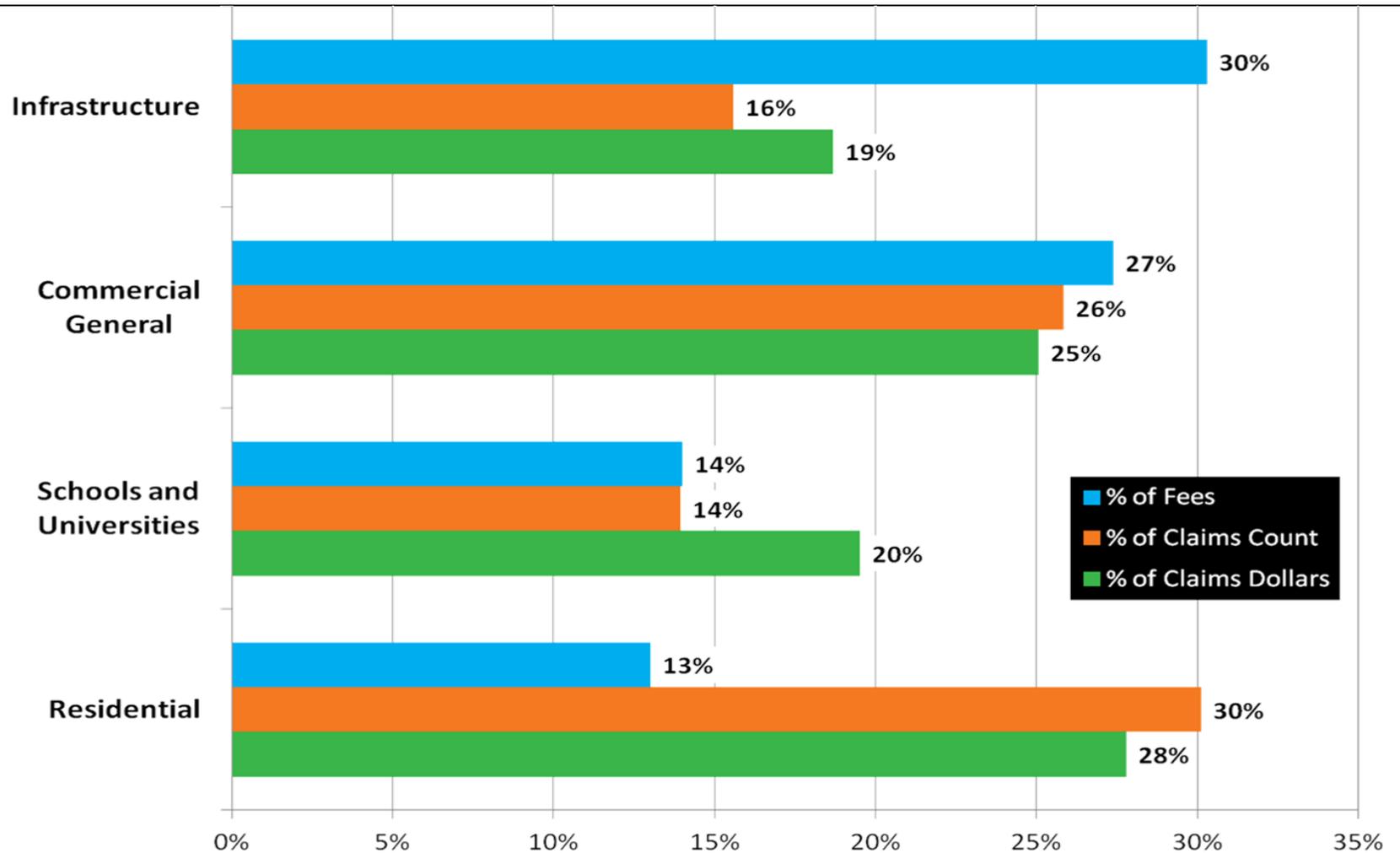


Bodily Injury-Other

6%

9%

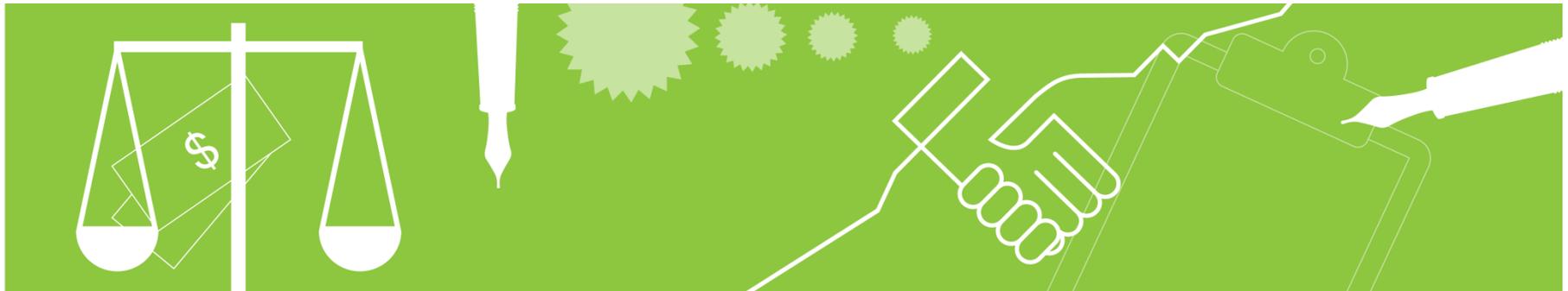
Frequency & Severity (By Major Category)



Extra Challenges To Selecting Projects & Clients Carefully In A Recession



- Increased pressure on construction budgets/estimates [avoiding cost recovery]
- Fees are reduced or at risk (suspended, shelved projects)
- Fast Track and Design-Build more prevalent
- Increased third party liability exposure
- Relaxed client intake criteria and contract terms





#3 Set Realistic Expectations

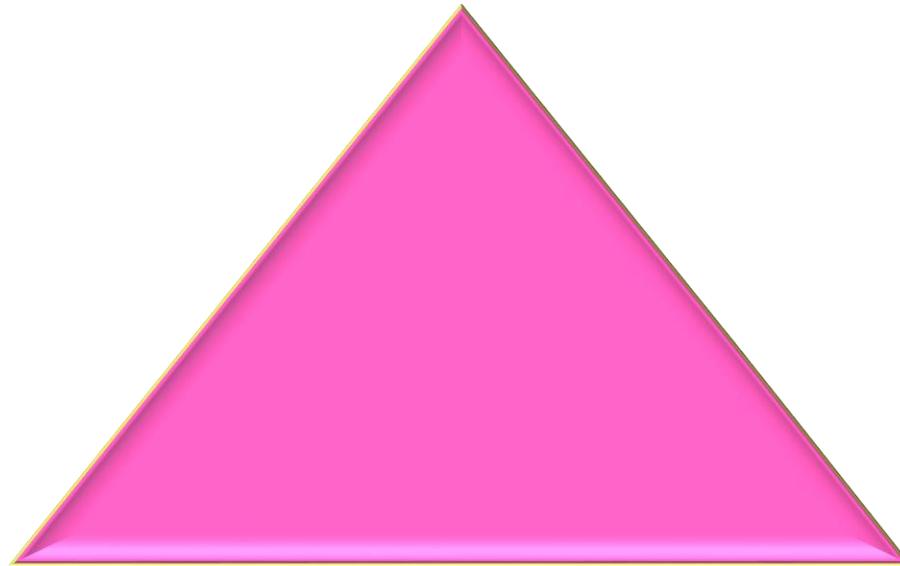
- Educate client
 - Meeting the Standard of Care
 - Perfection is impossible
 - Address scope and “anti-scope”
- Strive to predefine the problem resolution process
- Discuss potential problem areas
 - Explain quality-price-schedule trade-offs





The Project Triangle

Scope/Quality



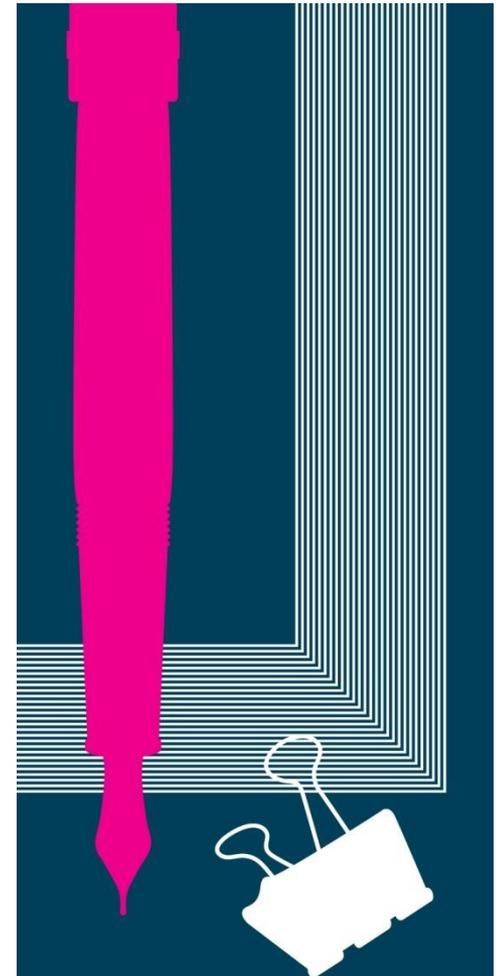
Schedule

Cost

#4 Draft A Comprehensive Written Contract

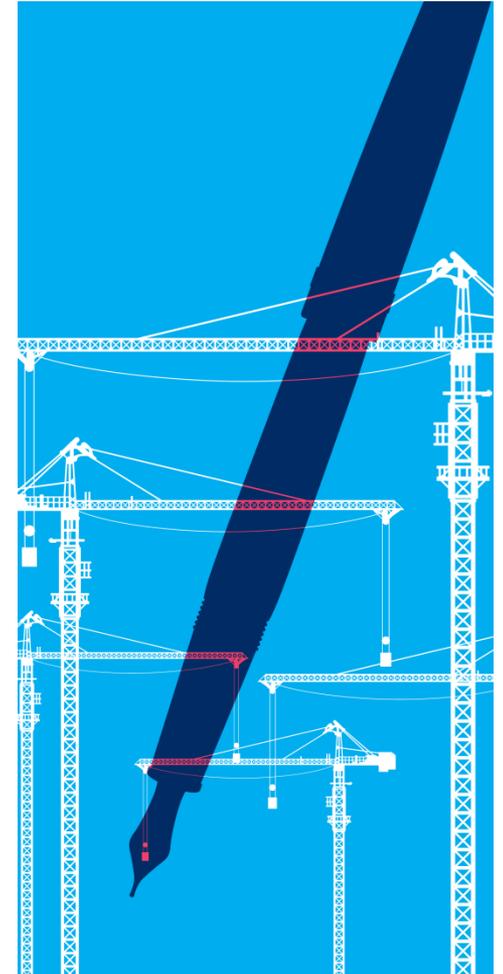


- Include stated intent of both parties
- Ensure well understood terms, eliminate “patent ambiguities”
- Be very clear as to what services you are providing, what services are additional and what you will not be performing
- Applies to both clients and sub-consultants



#5 Offer Comprehensive Design Services

- Include construction observation services
- Determine purpose and frequency of visits, no “periodic visits”
- Be wary of clients who want limited services in order to save money
- Excluded services - document
- Define roles of other parties involved in the job
- “Green” options
- Alternative delivery / technology methods





#6 Implement Dispute Resolution Provisions In Contracts

- Make every effort to avoid a claim
- Eliminate obligation to go to “binding arbitration” in all contracts
- Mediation works:

“Any claim or dispute between the Client and the Design Professional shall be submitted to non-binding mediation, subject to the parties agreeing to a mediator (s).”



#7 Refuse To Accept Unlimited Liability For Your Services



- Allocate risk fairly

“In recognition of the relative risks and benefits of the project to both the Client and A/E, the client agrees, to the fullest extent permitted by law, to limit the Design Professional’s total liability to the Client, for any and all damages or claim expenses arising out the this agreement, from any and all causes, to the total amount of \$100,000, or the amount of the A/E’s fees (whichever is greater).”



#8 Identify Deal Breakers

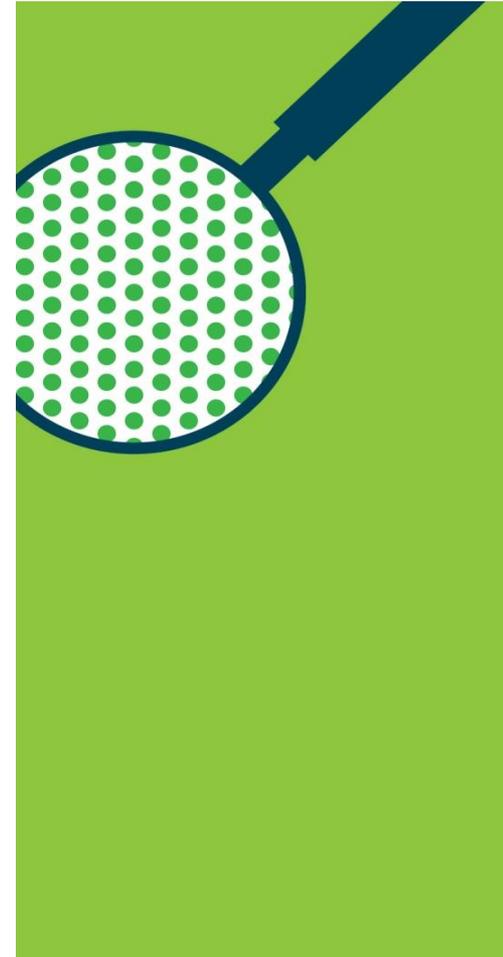
- Unlimited Liability
- Certifications/Warrantees/Guarantees
- Jobsite Safety/Construction Means & Methods
- Ownership of Documents
- Liquidated Damages
- One-sided Indemnifications...



Indemnifications

In particular, watch out for indemnities that would have you:

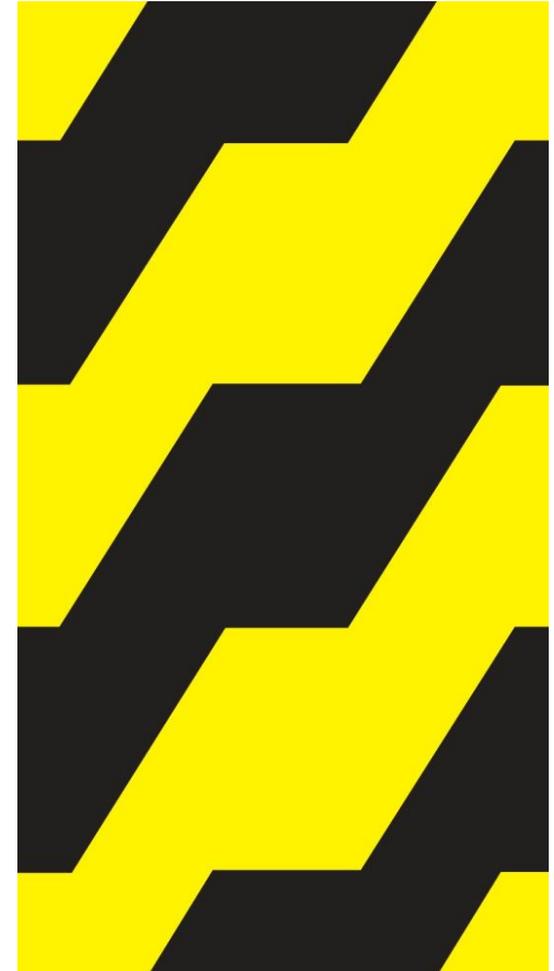
- Indemnify the client for the client's own negligence or that of the contractor or subcontractor
- Indemnify the client totally for claims caused only in part by you
- Defend the client
- Indemnify other inappropriate parties such as client's agents or lawyers





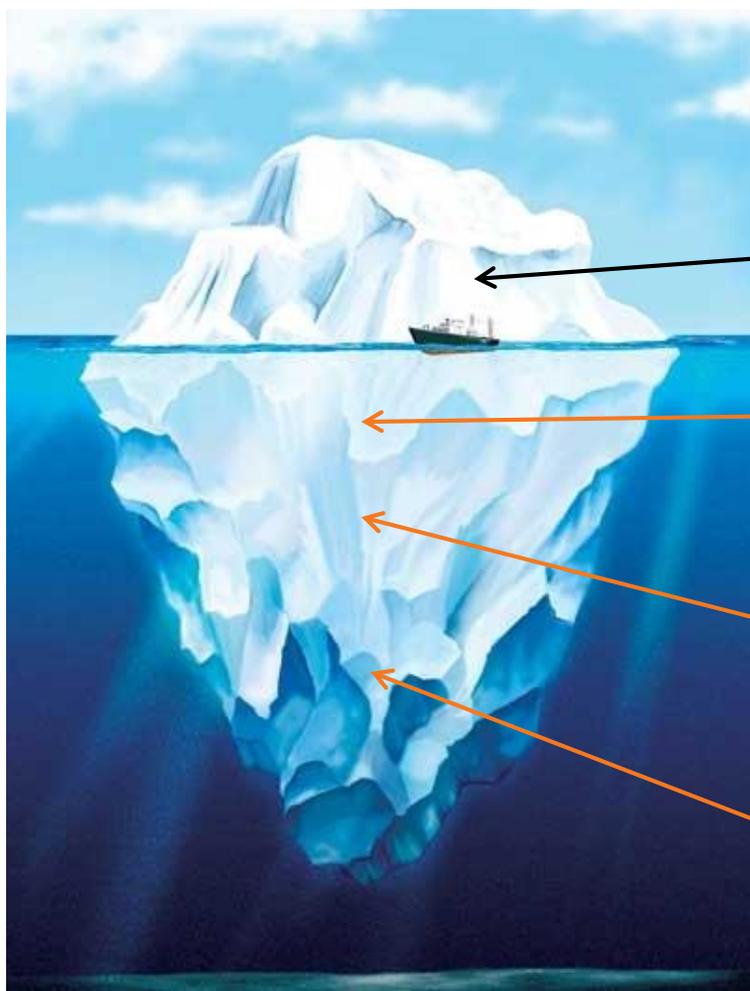
#9 Know the warning signs

- Communication breakdowns
- Significant overruns on budget or costs
- Work stoppage, jobsite injury
- Behind schedule
- Exclusion from important meetings
- Not getting paid in a timely manner or at all





The Cost of a Claim is Like an Iceberg



Direct costs to your firm

Revenue required to offset losses
= 10 x amount of loss

Principals' time in dealing with the
problem

Other problems resulting from
lack of attention by principals



Real Costs of Suing for Fees

- Costs associated with litigation
- Time of key management
- Lost productivity/staff billable time
- Loss of client relationship
- Damage to reputation
- Imminent counterclaim for professional negligence



10:1 RULE

Countersuits resulting from a demand for unpaid fees are 10 times higher in claimed amounts than the outstanding fee amount.





Billing 101



- Bill promptly and in accordance with contract
- Review bills for accuracy
- Provide all supporting documentation with invoice
- Understand how to bill your client to obtain payment
- Be diligent about following up on outstanding invoices



AVOID

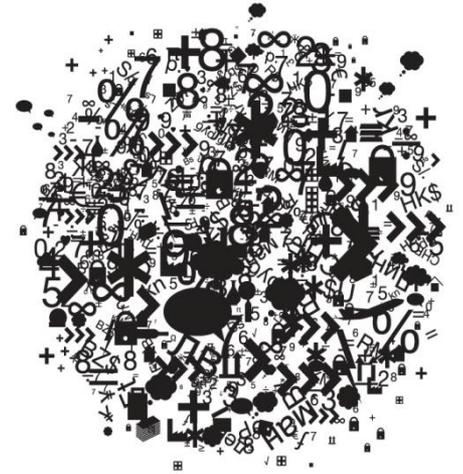
Any provisions that allow client to withhold fees or to make unilateral determinations on fault or responsibility for damages.





#10 Select The Right Insurance Program

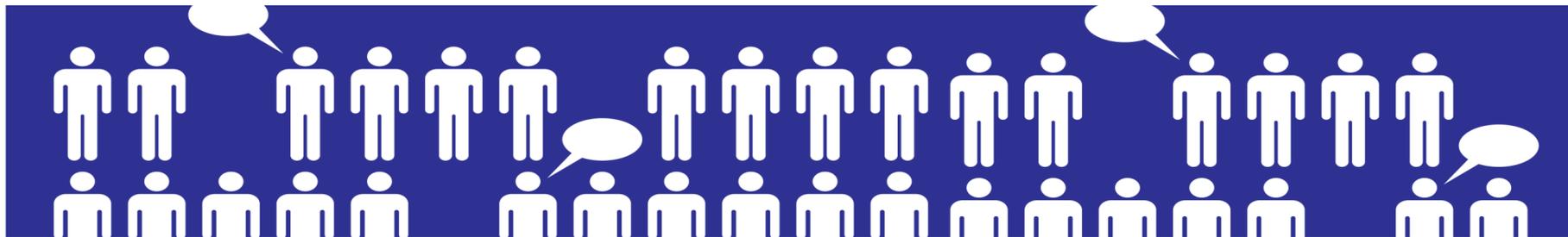
- Insurance carrier with a strong financial rating: at least an A rating by A.M. Best
- Broad Coverage
- Relevant education program
- Pre-claims loss prevention assistance
- Knowledgeable broker



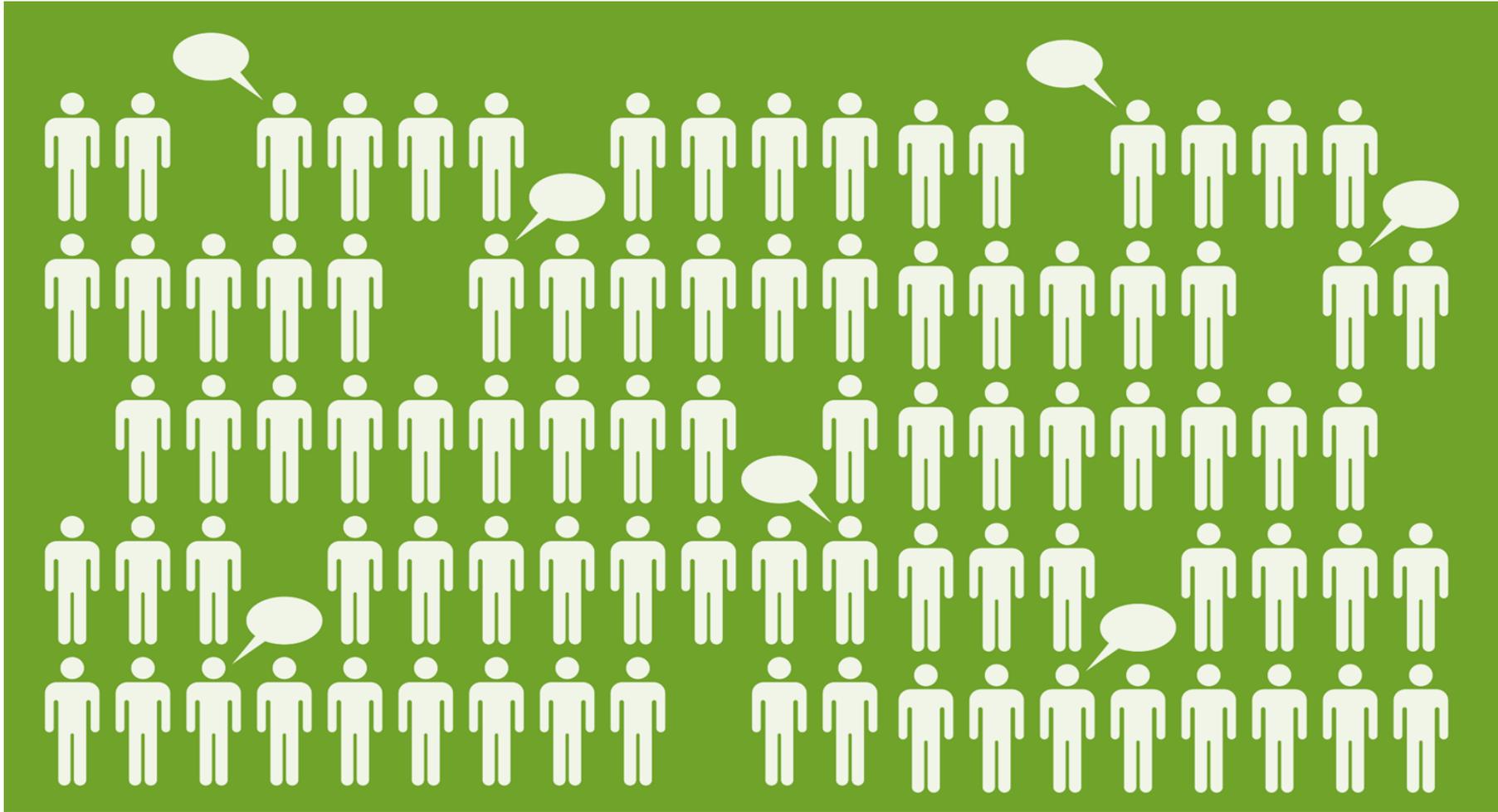


Questions about the Top 10 Ways...

1. Eliminate liability illiteracy
2. Select projects and clients carefully
3. Set realistic expectations
4. Draft a comprehensive written contract
5. Offer comprehensive design services
6. Implement ADR in contracts
7. Refuse to accept unlimited liability
8. Identify deal breakers
9. Know the warning signs
10. Select the right insurance program



QUESTIONS??



ADDITIONAL ASSISTANCE



PAULA DIXON



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WILL LEAF



LESLIE BABCOCK



REID JUST



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