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Design Firm Risk & Insurance

21 PREDICTIONS FOR 2021

Design Firm Risk & Insurance: 21 Predictions for 2021

Making predictions is a tricky business at the best of times, but especially so after a year of upheaval. If anything, the uncertainty creates a stronger temptation for us to try to forecast the year ahead. We are, of course, in the risk and insurance business--so here goes!

2021 will mark a turning point. The business landscape has fundamentally shifted and so has the playing field for developers, architects, engineers and contractors. Success will depend on design firms' ability and willingness to adapt to the disruption and to effectively manage the risks that come with that opportunity.

Here then are our 21 best design firm risk and insurance predictions for 2021 provided by our team of AEC experts.

Design & Construction Market Changes

1. **Interdisciplinary Approaches.** As the economy resumes, developers take on the built environment will be different as a result of the pandemic. Interdisciplinary approaches will bring new expertise and views to architecture to integrate notions of public and personal health, mobility and transportation, environmental psychology, and biophilia. Architects will be confronted with a decision about whether to integrate and take responsibility for this new team of experts.

   Mark Baum & Gregg Bundschuh

2. **Global Space Economy.** The $350b global space industry will grow to a $1.1 trillion space economy by 2040.The sector breadth for design firms is quite large, led by Aerospace & Defense, IT Hardware, Telecom Services, and Media. Insurance plays an important role, from facility development to launch, to orbit, to third-party liabilities. More civil engineering firms will be attracted to this market and all design firms will need to approach the market from a different risk perspective.

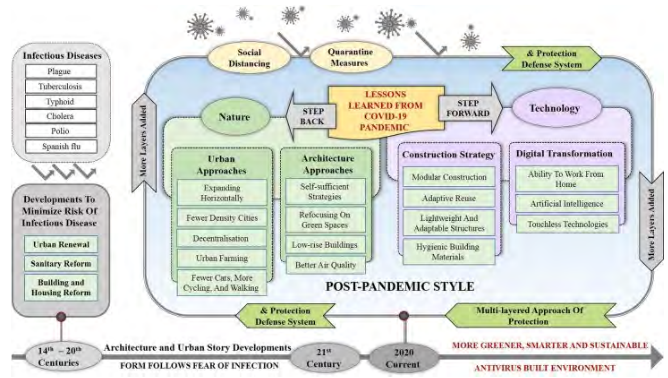
   Gregg Bundschuh & Charlie Geer

3. **Drone Usage Takes Off.** With A/E firms decreasing the number of employees performing field operations, firms will increase utilization of drone technology, particularly for inspection and survey work. While the burdens of flying drones have lessened with respect to licensure and costs, insurance and liability concerns (related mainly to privacy and trespass) remain, requiring a specific risk management approach.

   Erin Maurer & Lorrie Osterhage

Risk Exposure Changes

4. **The Standard of Care Will Change Whether or Not Codes and Regulations Do Too:** Focusing on health-oriented issues, new design and construction standards will be established. While modular design, prefabricated elements, flexible partitions, and lightweight structures will increase in use, architects will start planning new configurations with social distancing measures in mind.



Sports architecture will incorporate industrial hygiene standards. Surfaces will be covered with materials that prevent the proliferation of diseases; the design will be oriented towards eliminating risks of transmission; and facilities will incorporate modernized disinfection protocols.

Gregg Bundschuh & Cooper Smith

5. **First COVID-19 Related Professional Liability Claims.** 2021 will bring the first noticeable wave of COVID-19 claims against A/E firms but we expect these claims to truly be based on factors outside the control of A/E firms, such as project delays due to government shutdowns and equipment/material availability or owner/developers pursing recoveries anywhere they can as office space is jettisoned to work from home. These claims will masquerade as A/E professional liability claims but have much more defense exposure than indemnity.

Kent Collier & Cooper Smith

6. **Private Equity Influences Acquisition Considerations.** 2021 will see a continued flurry of activity with A/E firms and acquisitions by private equity firms. These prospective transactions emphasize bottom line over top line, so EBITDA preservation is key. This means A/E firms will pay closer attention to structure of professional liability insurance, spend on insurance deductibles/retentions, and higher limits. The transactions will also incorporate Representations & Warranty insurance, which has been less common in the A/E space.

Mark Baum, Gregg Bundschuh & Kent Collier

7. **Cyber Claims Continue to Rise.** 2020's sudden shift to remote working facilitated cyber threat vectors, resulting in frequent cyber extortion, business interruption, and social engineering events. Roughly 1 in 4 A/E firms experienced a cyber breach in 2020, and more midsize firms ($50M to $250M gross revenue) will see such claims in 2021. Insurers will react with higher premiums (averaging 15% rate increases) and more underwriting questions. Some insurers will offer better rates after performing a threat assessment. Design firms will seek increased limits, especially social engineering coverage.

Alan Bressler, Melissa Del Rio & Josh Truex

8. **Force Majeure Clauses Considered in Contracts.** Historically, A/E firms have tended to not include specific Force Majeure clauses in professional services contracts. COVID-19 has shown that contractual relief resulting from epidemic is appropriate, and since March 2020, more owners have accepted A/E firms negotiating FM clauses, including allowances for virus, climate emergency, social unrest, civil authority and cyber-attacks. In 2021, owners (and their counsel) will increasingly ignore reasonable requests for FM clauses by adopting a "deal with it" posture and refusing to incorporate such relief clauses. As mitigation, firms will need to develop price and schedule proposals that incorporate assumptions about known and probable impacts and be diligent in exercising notice and claim rights available under contracts, including invoking impossibility where appropriate.

   Mark Baum & Kelly Jackson

9. **Project- Specific Professional Liability Capacity Crunch.** Savvy A/E firms pursuing work under alternate project delivery methods like design-build and public-private partnerships already know to demand project specific professional liability to protect against commonplace attempts by prime contractors to shift risk to A/E subconsultants. Unfortunately 2021 will see a continued reduction in overall market capacity for these placements, leaving firms without project insurance or underinsured compared to the exposure.

   Kent Collier & Kristen Walker

10. **Collaboration, Technology and Quality Control Will Mitigate Professional Liability Claims.** A/E firms that successfully navigate the economic pressures of 2021 will do so by mastering remote collaboration, technology, quality control, and employee mentorship. Otherwise, firms will see an alarming growth in claims, client dissatisfaction, and employee turnover in 2021 and beyond. Moreover, advancements to BuildTech, 3D printing and fabrication, virtual and augmented reality as well as generative design, will accelerate new ways of working to create value. This acceleration will directly relate to hiring for new skills and to managing teams and how they are staffed to leverage individual talent.

    Charlie Geer & Suzannah Gill

Insurance Changes

11. **Business Interruption.** Insurers will react to the thousands of lawsuits filed seeking coverage under property policies by…..continuing to not offer business interruption coverage for virus exposure.

    Gregg Bundschuh & Kent Collier

12. **Continued Professional Liability Hardening.** 2020 saw an acceleration of A/E professional liability hardening, particularly in the London market. This trend to continue throughout 2021, with U.S. domestic insurers firming pricing and unusual risks more difficult to place. Many firms will be faced with cost/benefit analysis of increased deductibles/retentions in order to keep professional liability premiums in check.

    Jackie Chambers & Bob Staed

13. **Auto Liability.** For design firms, fleet miles and rental car use also dropped significantly in 2020. More auto insurers will move to mileage-based insurance to differentiate exposures for insureds. Technology (telematics) will hasten the decline of the risk pool.

    Gregg Bundschuh & Kristen Walker

14. **Excess/Umbrella Insurance Coverage Changes.** The umbrella/excess market has hardened quickly – largely driven by nuclear auto verdicts and large construction casualty losses. With new insurers in the excess and surplus market, coverage is far from standardized. 2021 will see continued proliferation of virus and communicable disease exclusions. Other coverage issues will arise from lack of true follow-form language, as well as coverage forms that have issues specific to underlying additional insureds, primary/non-contributory and waiver of subrogation provisions.

    Alan Bressler & Matias Ormaza

15. **Certificates of Insurance Move Electronic.** Electronic delivery of certificates of insurance will be the norm in 2021 with recipients preferring to receive certificates via e-mail with fewer brick and mortar offices open and project staff further spread out.

    Trudy Henry, Jerry Noyola & Carly Underwood

16. **Data-Driven Brokers Will Find Better Deals for Clients.** With underwriters spread thin (physically and numerically), insurers will rely more and more in 2021 on analytics and actuaries rather than relationships, experience, and feel to make decisions. The best results will involve brokers who aggregate, share, and effectively use data, metrics, benchmarking, and analytical tools.

    Nabeel Tanveer

17. **Group Captive Insurance Continues to Reap Benefits for Qualifying Firms.** For more than a decade, Greyling has led the industry in placing A/E firms in group captive insurance programs for high exposure/low claim coverages like commercial general liability, business auto, and workers' compensation. 2021 will see more qualifying A/E firms benefit from exiting traditional insurance and moving to a group captive in the wake of an increasingly hardening insurance marketplace – with massive short and longer term savings.

    Matias Ormaza

18. **Concerns Over Cancellation of Insurance.** Given the likelihood of smaller firms going out of business or being acquired, clients and third-party certificate recipients will be stringent about obtaining copies of specific notice of cancellation endorsements attached to certificates of insurance and frequently required by contracts. These requirements – which are often written in a way that most insurers cannot satisfy – will be increasingly enforced by third-party compliance firms as the economic downtown and personnel changes has disproportionately impacted administrative staff at A/E firms and their clients who are used to dealing with certificate of insurance processing.

    Katie Kresner & Nicole Larsen

19. **Firms Assess Insurance Limits.** Despite the hardening of the market for many lines of coverage, A/E firms will purchase higher limits of insurance in key areas for 2021. Firms in prime contract positions will consider higher per claim and aggregate professional liability limits to guard against sub defaults, acquisitions, and closures. Private equity participation in A/E firm ownership will cause benchmarking and likely increase in professional liability and umbrella/excess insurance. The prospect of further layoffs and adverse employment decisions will lead A/E firms to raise employment practices liability insurance limits.

    Gregg Bundschuh & Kent Collier

HR and Employee Benefits

20. **New Benefits, and Risks, for Flexible Work Locations.** As A/E firms have been forced to become more flexible in work location requirements, they will increasingly have employees that are living and working in new cities and states during 2021. With this expanding geographic footprint, firms need to be aware of new benefit and compliance requirements that may apply in new places. A/E firms will also need to guard against increased risk with a more remote workforce, with a focus on adding states to workers' compensation policies and considering employment practices insurance coverage and limits.

    Dan Barden, Suzannah Gill & Lorri Osterhage

21. Focus on Managing Healthcare Claims. While the impact of Covid-19 on health plans resulted in an approximately 5% reduction in medical claims in 2020, we anticipate that claims will return to normal levels in 2021. In additional, for-profit medical providers may be looking to recoup revenue that was lost in 2019 at the height of the shutdown, so we may see more aggressive billing and collection tactics. With that in mind, firms need to have renewed focus on managing their health plan and claims adjudication accuracy to ensure that they can continue to offer a high level of benefits. We'll see increased attention to pharmacy and stop loss captive strategies that provide significant financial returns but minimal employee impact.

Suzannah Gill

If your firm is confronted with any of these risk issues, please don't hesitate to contact us for a solution.

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