



X^L Insurance

Arming Yourself Against Troubling Trends

Surging Severity, Evolving Standards and Generative Design

Brett Stewart

Manager Loss Prevention and Client Education

Program Objectives

(1.0 AIA LU/CEU)

1. Attendees will gain a deeper understanding of current claims trends and the forces that are driving higher severity events, thereby bringing awareness to claim avoidance and mitigation.
2. At the end of this session, attendees will better appreciate the dynamic and shifting nature of the standard of care that governs their practice and how failing to keep up with changes from a national to local level can increase liability exposures.
3. Participants will learn about trends in higher severity claims and the potential pitfalls of artificial intelligence in a way that will drive additional risk management and situational awareness at the firm level.
4. This program will provide participants with the skills to recognize and evaluate potential liability risks at an early stage allowing for more opportunities to effectively manage risk.



Financial Strength

AXA Group 2023 Full Year Results

Gross Revenues

€ 103 B

+3% vs. FY22

Underlying Earnings

€ 7.6 B

+6% vs. FY22

Underlying EPS

€ 3.08

+12% vs. FY21

Solvency II Ratio

227%

+12 pts. vs. FY22

AXA XL's core operating insurance and reinsurance companies have one or more of the following financial strength ratings: A.M. Best A+, S&P AA-

Key figures

NUMBERS WE'RE PROUD OF

149,000 EMPLOYEES

Committed to better protecting you around the world

50 COUNTRIES

The same quality of service and dedication around the world

95,000,000 CLIENTS

Making us one of the world's leading insurance companies

Numbers that speak for themselves

\$315.5M
2023 Gross
Written
Premium

AXA XL Design Professional Numbers

11,000

Design professional firms insured by AXA XL, ranging from small, individual practitioners to large, multinational firms, including many leading North American designers.

50+

Years in the design professional industry, including 35 years of partnering with DPRCG.

100,000

Registered users with access to our learning management system, the AXA XL EDGE.

© 2024 AXA SA or its affiliates

98%

ACEC member survey* respondents are “highly satisfied” with AXA XL’s pre-claims and claims assistance, voting AXA XL DP “Best in Class.”

*2022

Top 10

Provider of awarded learning units (LUs), as designated by the AIA.

Agenda

1 Current claim trends and challenges

2 What is driving severity

3 Evolving standard of care

4 Generative design



1

Current claim trends and challenges

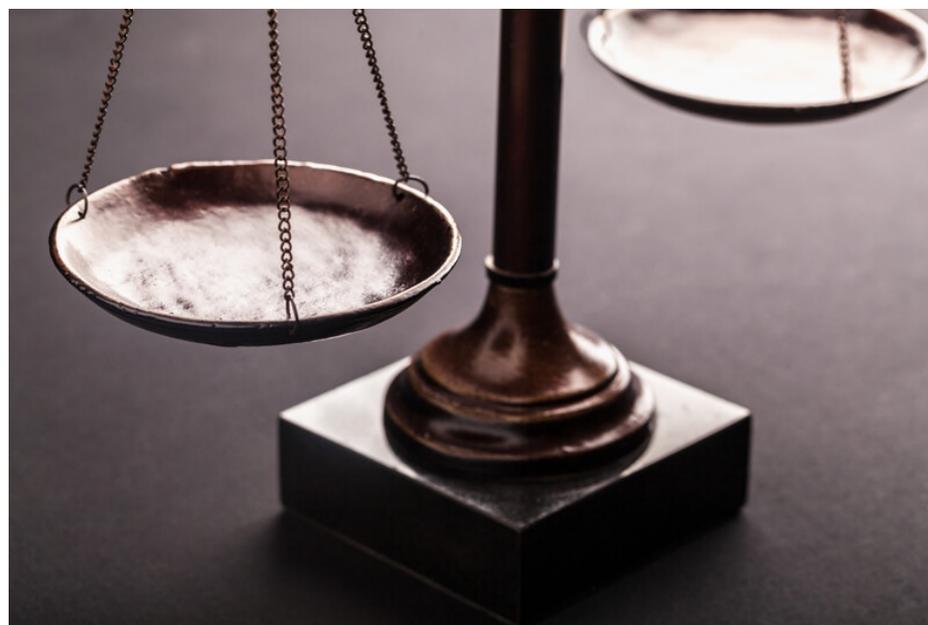
Increasing activity

- FNOL is up 6% over last year
- Increase in technical errors
 - Moving too quickly
 - Inexperience with certain technology
 - Inexperienced staff
 - Quality management
- Bigger projects bigger problems
- Demand for higher limits
- Accessibility claims
- Residential claims trending up
 - Apartments and condos
 - Constructability and technical design issues



Spotlight on contracts and firm growth

- Contract issues
 - Dispute resolution does not flow down
 - Prime-owner arbitration but not in sub agreement
 - Different limitations of liability
 - Subs unable to obtain higher insurance limits
 - Onerous indemnity
 - One-sided termination clauses
 - Overly broad confidentiality clauses
 - Payment clauses waiving all claims
- Merger and acquisition (non-organic growth)
 - Different cultures and risk management philosophies
 - Insurance broker not engaged early
- Newer generation of leadership lacking historical claim knowledge





2

What is driving severity

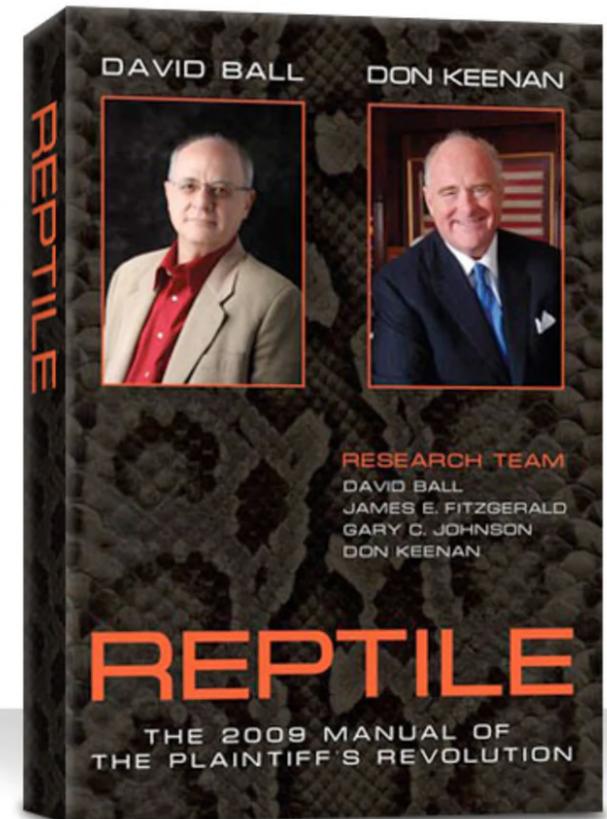
Claims cost more

- Severity up 25% over the last four years
- Large firms average \$150K per claim excess of deductible obligations
 - 40% increase since 2015
- Material cost escalation
- Increase in labor costs
- Legal costs increasing
- Inflation



Reptile theory

- Reptile theory – Keenan and Ball
- Shift in how civil cases are prosecuted to punish defendants
- Nuclear verdicts
 - People de-sensitized to large numbers
 - Trend in jurors distrusting or hostile to corporate defendants
 - Extraneous bad facts introduced into evidence “demonstrate bad actors” but have little impact on liability; e.g., inappropriate emails, chats or text messages
- Corpus Christi Texas
- Roundup





3

Evolving standard of care

How should your professional services be judged?

Common law insurable standard of care

In providing services under this Agreement, the Consultant shall perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances at the same time and in the same or similar locality.

Problematic elevated standard of care

Best
Best in class
Highest standards
Cutting edge
Nationally recognized design
Award winning
Legacy project
Free from error or defect
First class design
Guaranteed project performance level
Putting the client's interest above all else

UT-JURY-CV-501

The Utah Standard of Care for design professionals is the degree of care, skill, and diligence that a professional reasonably should use in the performance of services. This standard applies to any professional who provides design services, including architects, engineers, landscape architects, interior designers, surveyors, and other design professionals. Under the Utah Standard of Care, a professional must use **the same degree of care, skill, and diligence as a reasonably careful professional in the same discipline would use under similar circumstances**. This means that professionals are expected to be knowledgeable in their respective fields **and to use the latest techniques and practices in their work**. A professional must be aware of the risks associated with their work and take reasonable steps to reduce these risks. The Utah Standard of Care also requires that a professional use reasonable judgment and judgment-making skills in the performance of their services. **This means that a professional must consider the interests of their clients**, and use reasonable discretion in making decisions.



The standard of care is constantly evolving

- Prevailing scientific understanding and data
- Media reports and experience of you and your peers
- Rapidly evolving and updated codes, regulations, laws, and licensing requirements
- Industry group standards
- Code compliance may not satisfy the standard of care
- Program requirements might not reflect the standard of care and might not be correct



How is the standard of care tested?

- Factually intensive and expert driven analysis
- Focus on when and what you did, why you did it, what you relied on and why it was reasonable based on information currently available
 - Review of all relevant documents including reports, studies, resources and calculations
 - Answers to written questions
 - Deposition testimony
- The burden of proof is a preponderance of the evidence (>50%), not beyond a reasonable doubt



What would a reasonable designer do?

- Warn the client that someone could climb their building posing a life-safety hazard and business interruption event
- Tell the client that you perceive an unanchored airport display monitor as a condition so dangerous that a ten-year old could kill himself and that you advised your crew to lay the monitor down and walk away
- Tell the client that the site has known archeological hot spots and that they should retain an archeologist
- Convey to your client that designing to a 100-year flood event might not be enough to prevent significant property damage resulting in business interruption

Factors impacting the standard of care

- **High damage cases**
- **Larger projects**
- **Severe weather events**

Communicate and document

“Stop me before I kill again.” Chris Soelling

- Alternative design proposals and recommendations
 - RFP, proposal and discussions re: program requirements
- Deliver the facts re: budget, schedule and quality
- Rephrase the conversation
 - 1,000-year event versus 0.001% probability
- Document when and what you did, why you did it, what you relied on and why it was reasonable based on information currently available
- Issue spot – know what you don’t know
- Protect yourself contractually





4 Generative design

What is artificial intelligence?

The background of the slide is a dark blue space filled with numerous glowing, curved lines in shades of blue and yellow. These lines, which resemble fiber optic cables or data paths, curve and swirl across the frame, creating a sense of dynamic movement and digital connectivity. Small, bright white and blue particles are scattered throughout the scene, adding to the futuristic and high-tech aesthetic.

- **Software**
 - **Machine Learning**
 - **Generative AI**

Open AI's Dall-E



You

picture of a stadium similar to sofi stadium



DALL-E



Here are two images of a futuristic stadium inspired by SoFi Stadium, featuring sleek architecture, innovative designs, and sustainable technologies.



Sofi Stadium





How will design firms use AI?

- Schematic design
- Complex systems (MEP)
- Proposals
- Contract reviews
- Writing emails

Using AI

- Understand the best question to ask
- Question outputs
 - Publicly available contract language may not be the best
- Modify outputs to your needs
 - Similar responses to RFP
- Consider constructability and cost
- Consult with legal counsel to better understand copyright liability
- Don't become a commodity



How to (safely) navigate the future

- Have a firmwide policy on AI and follow it
- Establish an internal committee to monitor developing technology and update your policy
- Onboarding and annual training
- Discuss liability exposures
 - Copyright infringement and indemnity obligations
 - Uploading confidential information
 - Asking the wrong questions
 - Assuming information is correct, like contract clauses or proposal language
- Keep learning!



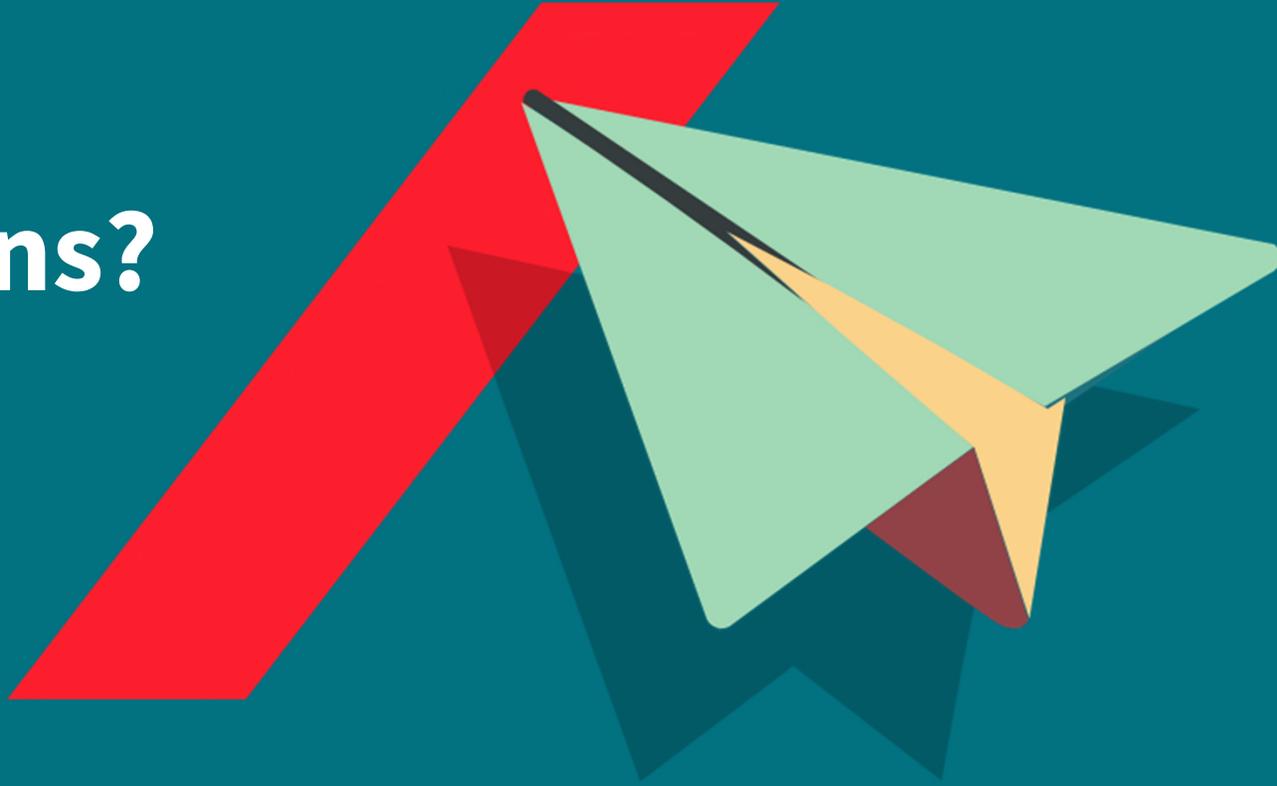
Understand How and When to Elevate a Concern

- Follow internal protocols and update them as necessary
- Minimize initial written communications when problems arise
- Do not admit liability
- Engage your broker early and often
- Open a loss prevention file
- Get legal counsel engaged if necessary





Questions?



The information contained herein is intended for informational purposes only. Insurance coverage in any particular case will depend upon the type of policy in effect, the terms, conditions and exclusions in any such policy, and the facts of each unique situation. No representation is made that any specific insurance coverage would apply in the circumstances outlined herein. Please refer to the individual policy forms for specific coverage details. This information is not intended to provide any legal advice

AXA XL is a division of AXA Group providing products and services through three business groups: AXA XL Insurance, AXA XL Reinsurance and AXA XL Risk Consulting. In the US, the AXA XL insurance companies are: Catlin Insurance Company, Inc., Greenwich Insurance Company, Indian Harbor Insurance Company, XL Insurance America, Inc., XL Specialty Insurance Company and T.H.E. Insurance Company. In Canada, insurance coverages are underwritten by XL Specialty Insurance Company - Canadian Branch. Coverages may also be underwritten by Lloyd's Syndicate #2003. Coverages underwritten by Lloyd's Syndicate #2003 are placed on behalf of the member of Syndicate #2003 by Catlin Canada Inc. Lloyd's ratings are independent of AXA Group. Not all of the insurers do business in all jurisdictions nor is coverage available in all jurisdictions. Information accurate as of March 2024.

AXA, the AXA and XL logos are trademarks of AXA SA or its affiliates. © 2024.





Connect with me!
Brett Stewart



Email:
Brett.Stewart@axaxl.com



Know You Can