

MANAGING RISK THROUGH LEGISLATION

Presented to:

AMERICAN INSURANCE & INVESTMENT DESIGN CONFERENCE

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MANAGING A/E RISK (THE USUAL SUSPECTS)

Right Client/Project

Right Contract

Right Team

QC/QA

Communicate/Document

WHAT ABOUT LEGISLATION?

PURPOSE OF LEGISLATION?

Affect Public Policy

ADVANTAGE OF LEGISLATION?

MACRO/SYSTEMIC APPROACH

- Treats Disease, not Symptoms -

- De-Personalizes the Issue -

PUBLIC DEBATE

PURSUE LEGISLATION?

Issue Common to Identifiable Interest Group(s)?

Group Has and is Willing to Spend Political Capital to Address Issue?

Group is Willing to Risk Fallout?

Group/Members Committed?

RUNNING LEGISLATION

Identify Problem (Public Policy Issue)

Decide Legislation = Solution

Draft Bill

Identify/Enlist Stakeholders

Identify/Enlist Sponsor

The Bill (Leg. Research & Gen. Counsel)

File/Educate/Lobby/Track

ANY A/E LIABILITY RISK = PUBLIC POLICY ISSUE?

What's the single most common
and vexing provision in A/E
contracts?

**'BROAD-FORM' INDEMNITY
PROVISIONS (BFIs)**

BFIs = PUBLIC POLICY ISSUE?

Frequency?

Risks?

Negotiable?

Fair?

Enforceable?

ACEC: QUEUE HB 279

PUBLIC POLICY ISSUE
Indemnity Provisions that:

Jeopardize A/E Insurance

Encompass Risks that A/Es Can't
Control

Require A/E to Defend Up-Front

Require A/E to Reimburse Absent Fault

RUNNING HB 279

Identified Problem (*i.e.*, BFIs)

Identified Legislation as Solution

Drafted Bill

Stakeholders (AIA, AGC, ULC&T, etc.)

Sponsor (Rep. Kay Christofferson)

The Bill (Leg. Research & Gen. Counsel)

Filed/Educated/Lobbied/Tracked

UTAH CODE §13-8-7

Indemnity Provision in A/E Contract Void as
Against Public Policy if it:

Jeopardizes A/E Insurance

Encompasses Risks that A/Es Can't Control

Requires A/E Duty to Defend

Requires A/E to Reimburse Absent Fault

Compromise: Excl. Private Sector & DB
Contracts

OTHER A/E SUCCESSES

Statutes of Limitations/Repose
(Utah Code Section 78B-2-225)
(several iterations)

Preconstruction/Construction Liens; SCR
(Utah Code Sections 38-1a-301, *et seq.*)

Good Samaritan Law
(Utah Code Section 78B-4-514)

COMING ATTRACTIONS?

Amend Utah Code Section 13-8-7
(incl. Private Sector & DB Contracts)

Amend Utah Code Section 78B-2-225
(Case Law – Clean-Up)

Run ‘Allocation of Damages’ Bill?

CONTINUED VIGILANCE (*e.g.*, HB 441)

MANAGING RISK THROUGH LEGISLATION

LESSONS LEARNED

Complicated (Long-Lead Times)

Hard Work

Commitment

EFFECTIVE