E & O Premium-Crisis Solution With a Bottom Line Increase

By Sherwin J. Braun, AIA

In talking to Mr. Braun about his following article on the insurance crisis, it was evident that the March 13 seminar, Solutions to Professional Liability Disaster, was conceived by the Chapter's Liability Committee (chaired by Braun) out of a genuine interest in freeing the architect from the incumbrance of anxiety and administration surrounding frivolous lawsuits. Through this article and the March 13 seminar Braun hopes to help reduce excessive concern and confusion created by the liability crisis. In his words, this would provide the setting for “getting back to what we were educated for — creating good architecture.”

The current liability insurance crisis has, in one way or another, affected all business. Cash reserves for deductibles, participation in legal costs and the cost of the premiums are particularly burdensome to the small business owner. Rapid increases in insurance demands are especially intolerable for small business which is reluctant to increase prices because, compared with its large business counterparts, a big part of its market position is based on the ability to produce quality work with lower overhead.

One industry dominated by small business is architecture, and it is becoming clear that continuing rapid insurance cost increases could damage our profession. According to two surveys, a typical architectural firm earns below 7.5% before tax profits. Many earn less. And, insurance costs are eroding these already horrendously low profits — low profits despite the already low pay scales. Compare a recent graduate of law school just entering a firm and earning $40,000 with a seasoned, 45-year-old architect earning $40,000-$50,000 or a good project manager who has been out of school approximately ten years and is earning somewhere in the $30,000 range. Does this make sense? Isn’t a functional, leak-resistant building that won’t fall down just as important, if not more, than legal representation? If the architect is good, he or she wouldn’t need the lawyer. And, with the advent of this liability insurance crisis, where are small architectural firms getting the money to cover these premium increases? It certainly can’t be from the profits earned. If a remedy isn’t prescribed soon, many firms will be driven out of business and fewer will venture into the profession.

The current liability insurance situation within the architectural field is indeed bleak. Errors and omissions insurance, the architect’s traditional and legitimate protection against faulty design, is provided by a limited number of insurance companies: Lloyd’s of London, CNA, and Design Professional Insurance Company (DPIC), and not all are writing new policies. DPIC, formed about ten years ago during another insurance crisis, has created quality control guidelines for design professionals in Illinois and anyone participating in their program qualified for credit to their insurance rates.

In the Chicago area, E & O insurance premiums have increased 100%-200% within the last year or so. My firm, Braun Skiba, Ltd., is facing a 125% premium increase this year. A 3½-year-old Chicago-based firm is confronting a 300% increase when business has only doubled. Shouldn’t insurance just double too? Putting this in perspective, according to DPIC, premiums in 1978 were equal to 4% of an architect’s gross fee. Today premiums are equal to 5%–7%, and when the architect is prime contractor for all services provided for a job, consulting engineers, landscape architects and others must be paid out of that fee.

Depending on the extent of engineering on a project, the architect’s fee can represent less than 60% of the total fee, but he pays a premium on 100%. While we present the insurance company with an analysis of the fees paid our consultants and design projects represented in our fee but not likely to be built, we, the insured, are not privy to the formula used ostensibly to adjust downward our fee basis and thus our premium.

Deductibility is another matter. One two-year-old firm with gross billings of about $300,000 pays 4% of its fees in premiums ($12,000 per year) and reserves another 5% ($15,000) for its deductible. The deductible alone is roughly equal to the salary of a beginning architect, and taken along with premium cost, it exceeds typical profits by 2.5%. That’s ridiculous! Why should an architect want to become an entrepreneur if before he opens his door he can forecast a perennial loss?

Together we must find equitable means for this profession to survive with financial integrity.

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E & O Solution

Continued from pg. 1

As a result of continuing rapid insurance premium costs, many are seeking alternative ways to keep their premiums and deductible at a reasonable level. Some firms are just taking a gamble: they are paying a 5%-7% premium, carry a $15,000-$25,000 deductible, and are paying 100% of their attorney fees, an undefinable amount up to their deductible limit. The deductible reserve is not just a safety-net either — an amount that won’t really be used but sits there earning interest. According to DPIC, 40% of their insured will be sued and first costs are the burden of the insured.

Of course, we are all aware that as time goes on a dollar does not cover what it had in the previous year. But, with any price increase, we hope for better service or more benefits — something tangible for the increased fees. This is not the case in architecture’s increased premiums. Unfortunately, the increase in costs for E&O insurance is not due to greater coverage (in fact some firms want additional coverage they simply cannot get), but to legal coverage. Litigation is rampant within the construction industry. Since 1978 there has been a 25% increase in the number of claims made, according to DPIC. Architects are finding that all sorts of construction-related lawsuits that are not applicable to them are being thrown their way by plaintiffs or by other members of the design team resulting in increased legal costs and, therefore, increased insurance costs.

The DPIC reports that for every $1 premium paid, 20% goes to administration and commission, 48% goes to legal fees and only 32% goes to settlements on losses or claims. Of the settlements won by the plaintiff, only 15% were E&O cases. The common activity of intra-team and third party suing is a waste of money and time by plaintiffs or by other members of the design team resulting in increased legal costs and, therefore, increased insurance costs.

Architects should work together to strengthen our profession and right what has been wronged. We should give back to architecture what it has given to us.

When their responsibility is clearly not related to the suit...

Because of fear of jeopardizing market position by increasing fees and because they are not able to come up with the cash reserve, some small firms have decided to go uninsured. If the owner-client wants the firm insured while they are working on their project, he or she must pay the premium.

Insurance costs are also preventing new firms from forming and young firms from continuing their practice, therefore preventing the generation of new ideas and competition that is needed to keep the profession alive and healthy. Compare, for example, the difference in start-up costs for an architectural firm and a public relations firm, both two-person firms. The architectural firm has a 50% higher billing potential than the public relations firm, but E&O insurance coverage must be obtained before the architect begins. A minimum policy premium is likely to be $5,000-$7,000 plus $5,000 to $15,000 in deductible which should be in the bank. First year insurance costs alone for the architectural firm is likely to equal the entire capital investment of a public relations firm.

The fee for reducing costs and thereby reopening this field to new and small firms is to curtail the legal services used.

One way to reduce legal costs is to use arbitration in construction litigation. It is a procedure which I believe produces fair verdicts because ordinarily the panel is better able to understand the complex construction issues than a jury or even a bright judge unfamiliar with construction issues. It is also faster because hearing delays are avoided as much as possible. This system ought to be strengthened, but it cannot be until arbitrators are paid better to induce more members of the construction industry to become involved for the best of the profession.

We’ve been hitting on lawyers a lot. Let’s give them due respect — nobody, not even the lawyers, gets paid for sitting on an arbitration panel the first day, and nobody ever gets paid for time spent preparing for a hearing.

Another way to reduce legal fees is to place a limitation of liability in the standard AIA contract. The limitation would be related to the face value of the E&O policy. If an owner wanted more coverage, he or she would pay the additional amount in the premium.

Another consideration is to limit the time duration that an architect is liable for the building. It cannot be forever and so the agreement with the owner should be limited to a reasonable period of time.

I feel the best way to curtail legal costs is to have Unified Risk Insurance. By using the insurance, an architect would carry his or her own E&O insurance, but the joint venture, or developer, or owner would obtain a unified risk policy for everyone involved on a job — the contractor and his subcontractor, the architects and his consultants, the developer and his investors would be paid for by the owner as part of the development costs or by the construction manager/general manager as part of the building cost. This policy may not decrease the claims made by a third party, but it will eliminate all the unnecessary intra-team suing, attorney’s fees, and multi-insurance company administration costs which is a major cause of the current liability insurance crisis.

The construction industry as a whole suffers when just one segment suffers. One bad link weakens the whole chain unless someone pays attention to it. And if we believe in the creativity and the efficiency generated by a free market — open to the large and small, new and established — we as professionals and architects, should work together to strengthen our profession and right what has been wronged. We should give back to architecture what it has given to us.

All of us need to work together. The “product” of our profession has given much to society. Together we must find equitable means for this profession to survive with financial integrity.
Legal Briefs

Reviewing the New AIA Document 312

By Werner Sabo, AIA

As the Institute pointed out in the January 1 issue of Memo, "the best way for architects to protect themselves is through loss prevention; that a thorough understanding of the contract documents by all members of the design team and written confirmation of all verbal agreements are essential." Mr. Sabo will cover revised and/or replaced AIA documents in a series of articles, beginning with this issue of the Focus.

In early 1985, The AIA published the new AIA Document 312 Performance Bond and Payment Bond. This document was the result of efforts by a number of organizations, including the Surety Association of America, beginning in 1977. Although really two separate bonds, both are usually issued simultaneously, with the contractor paying one premium. These bond forms are substantially different than the prior form, AIA Document 311, and should be reviewed by all architects that use such forms.

This article will examine a few of the major points of the forms, particularly the Performance Bond. Of particular importance are the owner's obligations in case of a real or threatened default by the contractor. The architect is often called upon to advise the owner if the contractor fails to perform. Prompt and proper adherence to the requirements of the bonds will assure that the Surety will complete performance, while delay or ignorance of the requirements of the Bond may result in a malpractice action against the architect.

The Performance Bond requires that the owner attempt to call a conference between the contractor and the surety if the owner is considering declaring a contractor default. The conference is for the purpose of reconciling differences between the contractor and owner and must be held within 15 days of the owner's notice. In case the problems cannot be solved, the owner then must declare a contractor default and terminate the contractor's right to complete construction. This cannot be done until at least 20 days after the first notice is given. The owner must then agree to pay the balance of the contract price to the surety or successor contractor.

Only if all of the above conditions are met is the surety obligated to perform under the Bond. The surety then has a number of options to complete the contract, including using the original contractor with the consent of the owner, having the surety's own forces complete the contract, or hiring another contractor to finish the work with the consent of the owner. If the surety elects to use a substitute contractor, the surety must pay for the cost of any additional contract documents, the new contractor must provide for new bonds, and the surety must pay the owner's damages as stated in the Performance Bond.

If the owner decides that the surety is not acting with reasonable promptness, he may give the surety additional written notice demanding that the surety perform its obligations under the Bond. If the surety does not act within 15 days thereafter, the surety is deemed to be in default, and the owner can obtain legal remedies against the surety. No responsible surety would neglect such notice.

The Bonds state that the surety does not have to be notified of changes to the construction contract, except for major changes, in which case the approval of the surety must be sought. Also, the owner must initiate a suit for defective work performed by the surety within two years.

The Payment Bond contains one notification provision that the owner must follow. If the owner has knowledge of any claims, demands, liens, or suits, he must notify the contractor and surety and tender defense of these to the contractor and surety. If the owner is not in default, the surety will indemnify the owner for these items.

These Bonds spell out the obligations and options of the parties to a greater extent than the earlier bonds, and are an improvement over the earlier bond forms. It is hoped that these new forms will result in less litigation, but this can occur only if the parties are aware of the provisions contained in the bonds. The architect will be called upon to advise the owner in case of possible contractor default, and the architect must be aware of the owner's obligations as defined by these bonds.

In Memory

William W. Benn, AIA Member Emeritus was a member of the Chicago Chapter since 1946. In the mid-1950's he served as supervising architect for the city of Chicago's Building Department. He was a retired senior partner of Johnck, Ehman & Benn. Benn graduated with degrees in both engineering and architecture from the University of Illinois where he was a roommate of Ira Bach, who, prior to his death last March, had been a longtime head of Chicago's Plan Commission.
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IHDA Projects Offer Challenges

At the Illinois Council AIA State Conference held this past November, James Kiley, director of the Illinois Housing Development Authority, assured his architect audience that the IHDA "provides a genuine challenge" to the architect who gets involved with IHDA developments. Mr. Kiley was emphatic in describing the IHDA as the "most active force in housing in the State of Illinois [having] almost half of the entire Build Illinois program." He encouraged architects to accept the challenge of working with the Authority in the Build Illinois program for congregate care. Excerpts from his speech follow.

Typically, housing developments have interested architects less than commercial projects because of the higher budgets for commercial buildings and because that often tends to offer greater opportunities for creativity. We, on the other hand, have intended to encourage creativity, recognizing that the constraints imposed by our own high standards and the restrictions of HUD's regulations impose several limitations on your work.

Our design and construction standards are continuously being revised and upgraded. At this very moment, we're in the process of developing energy conservation guidelines that eventually will be adopted for all of our developments that we finance. These factors combine, we think, to provide a genuine challenge to the architect who gets involved with our developments. Furthermore, because a certain portion of each affordable program is set aside for new construction, there are additional economic benefits, and some related opportunities for architects who engage in tract development work.

A major programmatic thrust for the Authority is our congregate care for the elderly. One of the ways housing needs are fulfilled for these people is through nursing homes in the State of Illinois. There are wonderful homes, but for a great percentage of the population in the State the future is very bleak.

We're trying very hard to come up with what we call congregate care. The elderly would move from their individual homes or apartments into individual apartment units that we have created in developments around the State. Facilities would include housekeeping and linen services, transportation to and from local markets, and a dining room that can become a place for people to meet on a daily basis, so that they aren't blocking themselves away in an apartment. It's a hell of a challenge to architects, I think, [to create] places where the elderly can feel they are still a part of daily activity.

We're desperately trying to do congregate care, and we're going to announce our first two or three over the next couple of months as part of the Build Illinois program. We are also about to undertake another innovative step, which, once again, will put us in the forefront nationally in helping save our still critical housing problems. We plan to take a large portion of the fees from the 80-20 developments (where 20% of all units built by the Authority with housing bonds are set aside for what the Federal Government defines as "low-income

Continued on pg. 10

You’ll Find
Solutions to Professional Liability Disaster
at March 13 Seminar

You’ll get these solutions from:
• architect Jack Hartray, FAIA, Nagle Hartray & Associates;
• attorney Paul Lurie, Lurie Sklar & Simon;
• contractor Sidney Robbins, chairman, executive committee, Inland Construction Co.
• insurance broker Roy Vince, ICED;
• the State Department of Insurance — Robert Heifler, chief assistant to deputy director;
• developer and attorney Ronald Grais, Neiman & Grais.

Think of the anxiety and money you can save by making a reservation for this seminar at only $15. Non-members are invited at $25. Use your quarterly calendar to register or just send us your check with information on for whom we should save space.

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Life Cycle Costing

Runaway maintenance costs are a major expense in public-used buildings. Qualified sources now quote them to be as much as two times original construction costs!

Installation of ceramic and quarry tiles in heavily-trafficked structures offer the building owner cost controls which we suspect have not been fully appreciated until Life Cycle Costing was developed by the General Services Administration.

Using the GSA method to obtain a true picture of Life Cycle Values, add total projected maintenance costs for the expected life of the structure to construction costs. Then, divide this combined total by the number of years. The result will approximate true costs for the building and will give complete expected cost-per-year figures as well.

SHOPPING MALLS. Throngs visit them daily. Yet, the only floor maintenance required is regular damp mopping and a periodic scrubbing. No waxing, buffing, or stripping necessary.

With today's wide variety of tile sizes, shapes, patterns and colors, the designer is limited only by imagination. Esthetics can be the first consideration; the durability is built-in. Think of ceramic materials as a sort of "steel-hard carpet."

Why finish a building with inferior materials? It is the finish that shows, and certainly does not look good if it wears out, tears or stains, and has to be replaced. Ask us for a copy of the independently-conducted Life Cycle Cost Study. It demonstrates how ceramic and quarry tiles compare with other popular types of vertical and horizontal finishing materials. Use these Life Cycle Costs during construction planning.

The designer will soon discover that no other finishing material looks as good as ceramic or quarry tiles: on walls, floors, or on paper!

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**Focus — 1986 — Calendar**

1. **EXHIBITION ON TALL BUILDINGS.** Last day at the ArchiCenter.

3. **FOCUS DEADLINE**

5. **ARCHICENTER LECTURE. Louis Sullivan's Banks & the Image of Progressive Banking, with Win de Witt, curator, Dept. Architecture, Chicago Historical Society. 12:15 p.m. No fee.**

6. **COMPUTER COMMITTEE PROGRAM. CADD Management. 5:30 p.m. Loewenberg & Fitch, 1 E. Erie, Suite 600.**

7. **DRAWINGS EXHIBITION. Critical Regionalism/New York. Last day at UIC College of Architecture Gallery 400, 400 S. Peoria.**

8. **AN EVENING AT THE THEATRE. The Master Builder, by Henrik Ibsen. At the Court Theatre. Dinner at 6 p.m. at the University of Chicago Quadrangle Club. $5 per person. Reservations: 663-4111.**


18. **OFFICE PRACTICE COMMITTEE PROGRAM. Ownership Transfer. 12:30 p.m. Board Room. Bring your lunch.**

19. **HOUSING COMMITTEE PROGRAM. Designing Housing for Maximum Energy Efficiency. John Porterfield. 5:30 p.m. Board Room.**

ASHRAE SEMINAR. Advanced Energy Controls. 5-9:30 p.m. Zum Deutschen Eck Restaurant, 2924 N. Southport, Chicago. Speaker: Douglas Hittle of C.E.R.L. Information: Dan Doyle, 328-3555.

ARCHICENTER LECTURE. Architecture of Change: Tales of Four Cities — Glasgow/Mackintosh, Pasadena/Greene & Greene, Vienna/Olbrich, Hoffman & Wagner & Oak Park/Frank Lloyd Wright. Lyman Shepard. 12:15 p.m. Free.


LECTURE ON GINZEL. Dennis Adrian, Chicago art critic. 4 p.m. Room 3290 Alumni Hall, 400 S. Peoria. Opening reception for Retrospective, 5-7 p.m.

MICROCOMPUTER COMMITTEE MTG. 5:30 p.m. Program & location information: Jeanne Breslin, 864-9360.

SMPS COLD CALL TRAINING. Chicago Hilton through 2/21. 11 a.m.-2 p.m. both days. Information: Pat Rosenzweig, 987-9541.


21. **UIC LECTURE. When Terragni Spoke to Dante. Thomas Schumacher, associate professor at University of Maryland. 4 p.m., Behavioral Sciences Bldg., Rm. 250, 1007 W. Harrison. Information: 996-3335.**

23. **CHS SLIDE LECTURE. William Morris & the Revival of Weaving in the 19th Century. Larry Lutchmansingh, associate professor of art history, Bowdoin College. 2 p.m. Auditorium. Information: 642-4600.**

24. **UIC REGIONAL VOICES LECTURE. Donald Roller Wilson, Fayetteville, Arkansas. A painter of elaborate, quasi-religious & whimsical "Southern Gothic" images. 2 p.m. Gallery 400, College of Architecture.**

25. **BOARD OF DIRECTORS MEETING. Noon. Board Room.**

26. **ARCHICENTER LECTURE. Remodeling of the Conrad Hilton Hotel & Towers. Jeff Orlove of Solomon, Cordwell, Buenz. 12:15 p.m. Free.**
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Getting to Know . . .

Chicago Tile Institute

The Chicago Tile Institute, whose showroom and office is located at 1311 Merchandise Mart, is a non-profit promotion fund supported by ceramic tile contractors doing business in northeastern Illinois, and employing the trained craftsmen of Tile Layers’ Local #67 and Tile Finishers’ Local #25.

The Institute is a source of technical and product information for the design profession in the greater Chicago area. Copies of current literature such as the Tile Council of American Installation Handbook the various ANSI Standards relating to ceramic tilework, and comparative cost analysis studies are available on request.

The yearly program schedule of the CTI includes technical and informational meetings, displays and advertising. Representatives of the Chicago Tile Institute participate in all Handbook and national standards conferences.

Trustees of the CTI are Arthur D’Ambrosio, Illinois Tile Co. chairman; James Allen, Allen Tiling Company; Georg Lockerbie, Continental Acid-Proofing; and Earl Trostrud, Jr., Trostrud Mosaic & Tile Co. Pam Schroeder is the Institute’s showroom design consultant.

Citylab: Town and Gown Get Together

CITYLAB, a joint urban design workshop set up by the city of Chicago’s Department of Planning and the University of Illinois at Chicago, marked its opening with an open house held November 19 in the South Loop’s Benbow Building. Elizabeth L. Hollander, city planning commissioner and Richard Whitaker, dean of the UIC College of Architecture, Art and Urban Planning acted as hosts.

Hollander and Whitaker praised CITYLAB as a training tool for UIC architectural and urban planning graduate students and as a way for the city to get fresh design insights for current city planning projects.

CITYLAB was conceived in part from an earlier cooperative effort to plan for the 7th Annual International Urban Design Conference held here last October.
The Department of Planning is donating the use of two floors at 441 S. Plymouth Court plus the after-work hours services of one of its urban design specialists. The University is supplying 16 students and two instructors, one each from the departments of architecture and urban planning. Three student teams are now hard at work on designs for a boulevard linking McCormick Place and downtown, using Michigan Avenue and Cermak Road. Future projects will deal with design problems for the River North and West Loop areas.

CITYLAB is under the general direction of Stanley Tigerman, FAIA, director of the IIT School of Architecture. Other UIC staff include Martin Jaffe of the School of Urban Planning and Stuart Cohen, AIA of the School of Architecture. Stephen Roman acts as City Department of Planning liaison.

Vicki Granacki
City of Chicago
Department of Planning

New Members

AIA
- John Bellas, Architectural Interiors, Inc.;
- Robert Fugman, Tigerman Fugman & Curry; Walter E. Haas, Haas Associates;
- Robert Hoidal, Burger King Corporation;
- David A. Levene, Hague-Richards Associates;
- John P. Mackey, James C. dark, Walgreen Co.; Christopher P. dartersteck, RMM Inc.; Andrew endelson, O'Donnell Wicklund Pigozzi;
- Thomas Moreau, Larocca Associates;
- Joseph Scifo, Chicago Board Options Exchange;
- Michael Shymanski, Michael Shymanski Architects; Robert Vagnieres, Jr., Robert C. Vagnieres, Jr., Architects;
- on W. Welker, JWW Development, Inc.

Associates
- Daniel Colella, Skidmore, Owings & Merrill;
- Robert S. Franzen, Hague-Richards Associates; Michelle Kowalski, Carol Ross Jarney Architects; Catherine M. Lee, Carol Ross Jarney Architects; Melody S. Mason, kidmore, Owings & Merrill; Susmita Som, Continental Architects, Inc.

Professional Affiliates
- Laurie McGovern, Environ, Inc.

Transfers
- from NYC, Mary Anderson-Buckley; from Central Illinois Chapter, Mark Kruse, Tilton & Lewis Associates.

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IHDA Challenges

Continued from pg. 5

Persons”) and plow them back into developments in certain inner-city communities that otherwise would never be done. This is our own special kind of linkage development, and though linkage is the concept that many people are talking about these days, no one has yet been able to come up with a workable program. We have one that we believe can and will work, and we are at this very moment putting the finishing touches on a plan.

The Authority today is challenged by dramatic changes in Federal law to carry out our mandate to provide housing for low and moderate-income families. Our first step is innovative financing to maintain the process. Our next step, by creative design, is to plan housing that meets all of our architectural, our building, and our energy standards while holding costs down.

With the coming developments under Build Illinois and even the most limited single-family construction, there is the potential to involve yourselves with participating developers, or, of course, to become developer-architects as some of your colleagues have already done, and to participate with us.

Problems? Yes, of course, there’s going to be problems. A challenge? You bet! But if it wasn’t, I don’t think any of you would be interested.

Women and Minorities

Task Force Formed

The Chapter Membership Committee has established a Women and Minority Architects’ Task Force. It’s goal is to examine problems and issues concerning these professionals and to encourage their membership in the AIA. The next meeting of this task force will be Tuesday, February 18, at 5:30 p.m. in the Board Room. Please come if you have an interest.

I believe in an ‘emotional architecture.’ It is very important for human kind that architecture should move by its beauty; if there are many equally valid technical solutions to a problem, the one which offers the user a message of beauty and emotion, that one is architecture.

Luis Barragan
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