



**Collinsworth Insurance**  
& Risk Management Services

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**AIA**  
Florida

# A 2020 Insurance/Risk Management Primer

Surprise - It Might Remind You of 2008



**Collinsworth Insurance**  
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Florida

## Course Participants will

1. Learn risk management fundamentals related to the firm's architectural practice and its business practice.
2. Learn Contract fundamentals – key concerns that can be impacted by COVID-19 uncertainties
3. Learn insurance fundamentals that provide funding mechanism that can maintain the insured's business and protect the practice (and its client)
4. Understand the demands of a claim, aka the claim drain

# Starting Point

- 1. What do I want?**
- 2. What do I need?**
- 3. How do get there?**

# Starting Point

1. What I want is different for each of us - successful project, professional and/or personal recognition, profit, personal growth
2. I need - skills, knowledge, experience, trusted advisors
3. I get there by - recognizing my needs, applying experience, learning from others, negotiating confidently

# 2020 Primer Contracts



## Standard of Care



# 2020 Primer Contracts / Standard of Care

The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances.

**B101-2017**

# 2020 Primer Contracts



## Compliance With Law Issues & Solutions

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# 2020 Primer Contracts / Compliance

2.1.3 As to all services provided to this Agreement...[the architect] ...shall exercise a degree of care and diligence in the performance of these services in accordance with the customary professional standards currently practiced by firms in Florida **AND in compliance with any and all applicable codes, laws, ordinances, etc....**

# 2020 Primer Contracts / Compliance

2.1.4 As to any drawings, plans, specifications or other documents or materials provided or prepared by Project Consultant or its Sub-Consultants, the Project Consultant agrees same: ... **Comply with all applicable laws, statutes, rules and regulations, building codes and Owner's [the school board] guidelines and regulations, which apply to or govern the Project**

# 2020 Primer Contracts / Compliance

2.1.5 All professional design services and associated products or instruments of those services provided by the Project Consultant shall:

.1 Be in accordance with all applicable codes, laws, and regulations of any governmental entity, including, but not limited to, [list of regulatory entities] with the Owner serving as the interpreter of the intent and meaning of ... any other applicable code[.]”

# 2020 Primer Contracts / Compliance

## Synopsis

Contract language provided Architect would comply with Standard of Care AND would comply with code requirements.

*Two distinct compliance requirements.*

*ConstructionRisk LLC – 2018 Newsletter*

# 2020 Primer Contracts / Compliance - Solutions

In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Architect and which result in a substantive change to the construction documents, the Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes.

# 2020 Primer Contracts / Compliance - Solutions

Architect shall exercise the reasonable standard of care to comply with requirements of applicable codes, regulations, and current written interpretation thereof published and in effect during the Architect's services. In the event of changes in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Architect and which result in a substantive change to the construction documents, the Architect shall not be held responsible for the resulting additional costs, fees or time, and shall be entitled to reasonable additional compensation for the time and expense of responding to such changes.



# 2020 Primer Contracts / Compliance - Solutions

The client acknowledges that the requirements of federal, state, and local laws, rules, codes, ordinances, and regulations, including the Americans with Disabilities Act, are subject to various and possible contradictory interpretations. The Consultant will use reasonable professional efforts and judgment to correctly interpret and apply such requirements. Consultant, however, cannot and does not warrant or guarantee that the work will comply with the interpretation of such requirements by others.

# 2020 Primer Contracts



## Scope of Services

# 2020 Primer

## Contracts / Scope - Define:

1. Services you will perform for the negotiated fee, i.e. the basic services
2. What services you can perform for an additional fee, i.e. supplemental or additional services
3. What services you will NOT perform, i.e. excluded services
4. Services to be performed by others

# 2020 Primer Contracts / Scope



## Beware of Scope Creep

Especially requests to provide services that may fall outside your scope of expertise and experience.

# 2020 Primer Contracts / Scope

**Remember**

**Even in an emergency situation, the Standard of Care remains what other similar professionals would have done under the same or similar situations at the time the services were provided**

Travelers, 2020

# 2020 Primer Contracts



## Construction Phase Services

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# 2020 Primer Contracts / CA Services

## Field Reports & Certifications “Virtual” Site Visits / Update Disclaimer

- Note the restrictions made by the Authorities
- Note the alternate means of observing the construction progress
- Include the technology / method used
- Clearly state it is not based on direct in-person observations

# 2020 Primer Contracts / CA Services

## Construction Phase Services

X-Reference - MEP Email

**Know your contract!  
Communicate with Client!**

**Resources available:  
Contact PLI Agent - Carrier  
Counsel for Legal Advice**

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# 2020 Primer Contracts / CA Services

## Certifications

**No change – limit to direct knowledge or information supplied to you / to your scope of services.**

**2020 Primer  
Contracts / CA Services**

**Construction Phase Services  
/ Contractor Delay Claims**

**COVID - Anticipated**

# 2020 Primer Contracts

## Waiver of Consequential Damages

Keystone Airpark Authority v. Pipeline Contractors,  
Inc.

# 2020 Primer

## Contracts / Consequential Damages

January 2019 – Florida appellate court certified this question to the Florida Supreme Court  
Not Accepted / Decision by 1<sup>st</sup> District Court of Appeals Currently Stands as Florida Law

*Where a contract expressly requires a party to inspect, monitor and observe construction work and to determine the suitability of materials used in the construction, but the party fails to do so and inferior materials are used, are the costs to repair damage caused by the use of the improper materials general, special, or consequential?*

# 2020 Primer Contracts / Consequential Damages

## Key Language Engineer's Contract

Passero shall have no liability for indirect, special, incidental, punitive or consequential damages of any kind.

# 2020 Primer Contracts / Consequential Damages

## Sample Language

Notwithstanding anything in this Agreement to the Contrary, it is agreed that neither party shall be liable in any event for any special or consequential damages suffered by the client arising out of the services hereunder. Special or consequential damages as used herein shall include, but not be limited to, loss of capital, loss of product, loss of use on any system, or other property, or any other indirect, special or consequential damage, whether arising in contract, tort (including negligence), warranty or strict liability.

Construction Risk LLC /Kent Holland

# 2020 Primer

## Contracts / Consequential Damages

### Sample Language / Mutual Waiver

Neither the Client nor the CONSULTANT shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

Beazley

# 2020 Primer Contracts



## Force Majeure

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# 2020 Primer Contracts / Force Majeure

**“The Architect shall not be responsible for delays caused by factors beyond the Architect’s reasonable control, including but not limited to delays because of strikes, lockouts, work slowdowns or stoppages, *government ordered industry shutdowns, power or server outages, acts of nature, widespread infectious disease outbreaks (including, but not limited to epidemics and pandemics)*, failure of any governmental or other regulatory authority to act in a timely manner, failure of the Client to furnish timely information or approve or disapprove of the Architect’s services or work product, or delays caused by faulty performance by the Client’s or by contractors of any level. When such delays beyond the Architect’s reasonable control occur, the Client agrees that the Architect shall not be responsible for damages, nor shall the Architect be deemed in default of this Agreement.”**

**Beazley Insurance Company / Mar 2020**

# 2020 Primer Contracts / Force Majeure




**What if my contract does not include?  
Unforeseen Conditions**

# 2020 Primer Contracts

## Termination Clauses For cause For convenience

# 2020 Primer Contracts / Termination

- 
1. Know what's in your contract
  2. Follow your contract
  3. Tap into resources – PLI Agent-Carrier / Legal Counsel

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# 2020 Primer Insurance



## Professional Liability

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# 2020 Primer Insurance / PLI

**Negligence – i.e. Standard of Care**

**Assuming more liability in a contract than  
available coverage**  
*Watch what you say*

**Avoid Warranties & Guarantees**

# 2020 Primer Insurance / PLI

Based upon, arising out of, or in any way relating directly or indirectly to any warranty or guarantee by You; however, this exclusion will not apply to any guarantee that Your Professional Services conform with the generally accepted standard of care applicable to that Professional Service.

- Hanover



# 2020 Primer Insurance / PLI



Policy Rating Factors  
Looking Forward - Rate Increase  
Limits - increase / decrease  
Cancellation  
Tail Coverage / ERP  
COVID-19

# 2020 Primer Insurance / PLI / Rating

## Revenue

Most carriers use a 3 to 5-year average revenue

Projected: some use - some don't - be conservative

Reduced revenue: short-term limited impact / long-term can take up to two-renewal cycles to impact

Multi-year policies - 98% no midterm rerate / no midterm replacement

# 2020 Primer Insurance / PLI / Rating

## Rating Credits

Risk Management Credits: Carrier webinars / Risk Mgmt Courses (like this)

Limitation of Liability: % use limited to \$250,000 or less

Waiver of Consequential Damages

Membership in a Professional Association - AIA, NCARB

# 2020 Primer Insurance / PLI / Rating

## Rating Debits

Project Types: Condos - Developer or Association /  
most guidelines include individual units as condo

## Uninsured Subs

Low percentage of written agreements - with Client /  
with Sub

Claims: Five-year loss ratios

# 2020 Primer Insurance / PLI / Limits

**Retroactive (Retro) Date:** 1<sup>st</sup> year policy inception / continuous coverage

**Increased Limits:** Unless negotiated (not always feasible) apply from date of increase - does not apply retroactively

**Decreased limits:** Applies retroactively and forward as of date of decrease (know your contracts)

# 2020 Primer

## Insurance / PLI / Cancel / Expire

### CLAIMS-MADE POLICY FORM CLAIMS-MADE & REPORTED POLICY FORM

ONCE CANCELLED / EXPIRED - UNLESS TAIL COVERAGE PURCHASED -  
IT IS AS IF COVERAGE NEVER EXISTED

MINI-TAIL: THIRTY (30), SIXTY (60), NINETY (90) DAYS

ERP/TAIL: COST FUNCTION OF EXPIRING POLICY - SOME CARRIERS  
HAVE A RETIRED POLICY - SUBJECT TO CARRIER GUIDELINES

RETIREMENT PLANNING: TALK TO YOU AGENT!

RETIRED PROFESSIONALS AUTOMATIC EXTENSION: LIMITED  
CARRIERS, GENERALLY 3, 5 OR 10-YEARS OF CONTINUOUS COVERAGE

# 2020 Primer

## Insurance / PLI / COVID 19

**Contracts: Know the terms & conditions / Use Contract Review Services**

**Pre-Claims Assist: This is NOT a claim - Use the services offered**

**Contractor Delay Claims / Cost-Overruns / Change Orders**

**Client Terminations / Budgets**

**8/11 - State of Florida instructed agencies to cut 8.5% from budgets**

**Election Cycles - 2020 / 2022**

**Recession / COVID - Budget cuts / lending freezes / permits slowing**

**COMMUNICATE - COMMUNICATE - COMMUNICATE  
DOCUMENT - DOCUMENT - DOCUMENT**

Contractors Guide to Change Orders  
Andrew M. Civitello, Jr.  
Amazon

# 2020 Primer Insurance / PLI Resources

Contract Review

Risk Management Materials

Circumstance Reporting

Pre-Claims Assist

Supplemental Payments

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# 2020 Primer

## Insurance – Workers Comp/Employers Liability

**Non-Construction Industry: WC required 4 or more 4 employees, including officers  
Exempt but NO immunity provided**

**Expected losses: See losses / Unknown impact on rates**

**COVID-19 Claim Concerns: Pierce Employers' Liability**

# 2020 Primer

## Insurance – Workers Comp/Employers Liability

### Links

State of Florida / Division of Workers Compensation

### WC Home Page

<https://www.myfloridacfo.com/Division/WC/>

### Exemptions

<https://www.myfloridacfo.com/Division/WC/Employer/Exemptions/default.htm>

# 2020 Primer

## Insurance - Workers Comp/Employers Liability

### State of Florida / Division of Workers Compensation COVID Stats

- As of 05/31
- 3,807 Indemnity Claims
- 1,718 Denied - Partial / Total
  
- As of 06/30
- 5,639 Indemnity Claims
- 2,643 Denied - Partial / Total
  
- As of 07/31
- 11,872 Indemnity Claims
- 5,176 Denied - Partial / Total
  
- Total Costs 2020 - \$13,120,059 / 5.3% of Total Indemnity

# 2020 Primer

## Insurance – Workers Comp/Employers Liability

State of Florida / Division of Workers Compensation  
COVID Stats  
Website Link

<https://www.myfloridacfo.com/Division/WC/PublicationsFormsManualsReports/Reports/>

# 2020 Primer Insurance / EPLI

## Employment Practices Liability

Not commercially available  
High deductibles (\$25,000 firm of 15)  
May contain COVID related exclusions

If you have the policy in place and have employees -  
maintain if possible

06/30 renewal - one EPLI carrier received 70 claims in  
a week

# 2020 Primer

Insurance / Contract Coverages / Auto

## Commercial Auto

Company does not own/lease vehicles -  
Hired/Nonowned Auto Liability - inexpensive, "may  
be" included with CGL

Owned /Leased Vehicles  
Rates are not stable  
Losses = Rate Increase  
MVRs / Driving Training

# 2020 Primer

Insurance / Contract Coverages / CGL

## Commercial General Liability

Covers premises / slips & falls / excludes professional services

Include (should): Blanket Additional Insured, Primary & Noncontributory, Waiver of Subrogation

Excludes:  
Business Income, Cyber Liability, Drones (UAV exceptions by carrier)

# 2020 Primer

Insurance / Contract Coverages / Cyber

## CYBER STATISTICS *Florida Trend / 2019-01-25*

300,000 Consumer Complaints (FBI) \$1.4B Reported  
Losses / \$110.6M Floridians

Business Email Compromise \$62.7M  
Corporate Data Breach \$5.1M

Backup / Train / Cyber-Insurance



# 2020 Primer

Insurance / Contract Coverages / Cyber

## CYBER EXPOSURES

Network Security  
Network Business Interruption / 3<sup>rd</sup> Party Provider  
Interruption  
Cyber Extortion (Ransomware)  
Fraudulent Wire Transfer

# 2020 Primer

Insurance / Property / Business Interruption



## Business Interruption

Does my policy cover COVID-19 shutdowns?

# 2020 Primer

## Insurance / Property

### Business Interruption

*PROBABLY NOT*

Physical Damage to Insured Location  
Covered Cause of Loss  
Governmental Action – tied to above  
Virus Exclusions

Report the Claim

# 2020 Primer

## Insurance / Property

**Business Interruption**

*Court Decisions - To Date - In Favor of Carrier*

*Michigan*

*D.C*

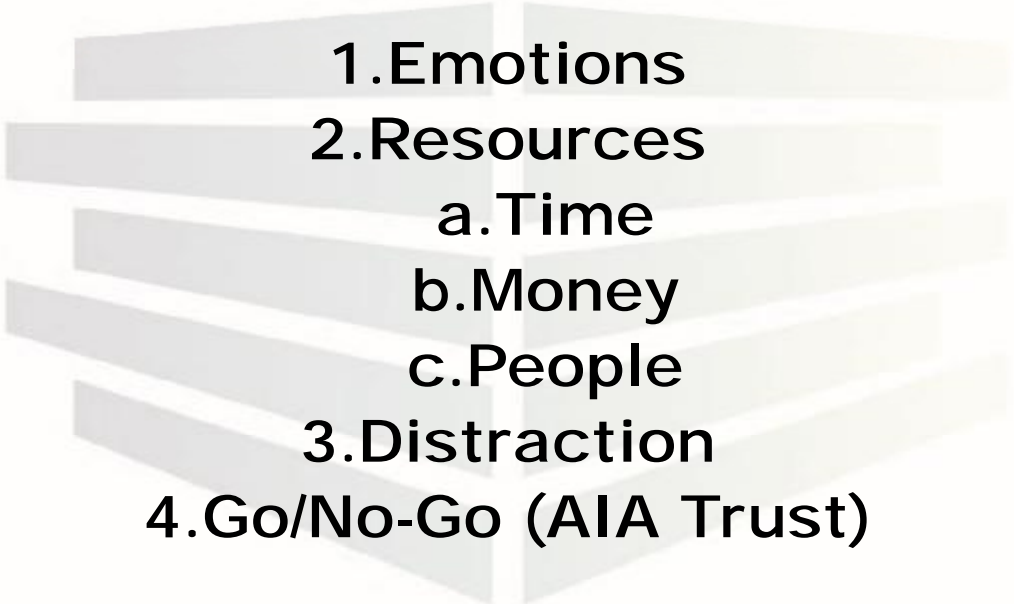
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# 2020 Insurance Primer

## Claims Drain

- 
1. Emotions
  2. Resources
    - a. Time
    - b. Money
    - c. People
  3. Distraction
  4. Go/No-Go (AIA Trust)

# 2020 Insurance Primer Claims

**Manage Client Expectations ...  
Beginning with your proposal and  
negotiation of clear equitable contract  
language**

# Questions?



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Florida



# Disclaimer:

This information is not legal advice and cannot be relied upon as such. Any suggested changes in wording of contract clauses, and any other information provided herein is for general educational purposes to assist in identifying potential issues concerning the insurability of certain identified risks that may result from the allocation of risks under the contractual agreement and to identify potential contract language that could minimize overall risk. Advice from legal counsel familiar with the laws of the state applicable to the contract should be sought for crafting final contract language. This is not intended to provide an exhaustive review of risk and insurance issues, and does not in any way affect, change or alter the coverage provided under any insurance policy.

