

OCTOBER, 2006 - Risk Management for Design Professionals - Part II

Speaker: [John Cahill](#), Attorney with [Hays, McConn, Rice & Pickering](#), Houston TX, Tel. 713-752-8322

PRESENTATION SUMMARY

To a room of about 40, John Cahill, an attorney with Hays, McConn, Rice & Pickering, who has a law degree from Baylor School of Law in 1984 and who specializes in representing design professions such as architects, engineers and surveyors, gave a presentation entitled, "*Risk Management for the Design Professionals - Part II.*" His presentation was a continuation of his [April 2006](#) presentation.

Mr. Cahill began the presentation saying that since his previous presentation, a new case was tried in Texas that upheld the Certificate of Merit law for engineers and architects. He said he still hopes to bring a case to trial in the next 12 to 18 months that challenges who can write a certificate of merit.

Mr. Cahill cautioned professionals in making proposals that void their professional liability insurance by raising the standard of care. He cautioned against using the word "Warranty" in a proposal or contract. He said that some carriers will review your standard contract to ensure you do not word it in such a way that could void your insurance.

When signing contracts, Mr. Cahill warned against indemnifying for any parties conduct except your own. He also warned that the professional should not sign a contract that guarantees that his professional liability insurance will be in effect beyond a certain period of time since you may be dropped from coverage or may not be able to afford future premiums.



Mr. Cahill cautioned structural engineers from exonerating geotechnical engineers by:

- 1) Not letting the geotechnical engineer review the foundation plans if the geo report suggests they be given the plans to check that they comply with the geotechnical requirements, and
- 2) Not following the geotechnical report even if you know it is deficient in its foundation design recommendations. He said the structural engineer should rather require that the geotechnical engineer revise his report and if he does not, then the structural engineer should write a letter to his client advising him that the report is not sufficient to use in designing the foundation.

Mr. Cahill did not speak highly of arbitration with respect to professionals being sued, saying that: a) arbitration is more costly than court cases, b) the arbitrator is likely to always award the plaintiff at least some money, and c) most arbitrators are attorneys and very few are engineers or architects.

Mr. Cahill cautioned architects and engineers to *never* deviate from the Americans with Disabilities Act (ADA), no matter what their client requests. He said that there are now public service watchdog groups that go out and measure buildings for minimum ADA requirements. These groups then file complaints with the Federal Government causing the buildings to be remodeled to meet ADA, which in turn prompts some of the building owners (or subsequent owners) to bring suit against the building's design professional.

[PAST PRESENTATIONS \(click here\)](#)