



PSLS Session: 506 Contracts In Depth

January 13, 2026

FRP PROFESSIONAL RISK PRACTICE

KEVIN SCOTT NORRIS LAW





Some Red Flag Words:
In Communication and Contracts

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Words to Watch (or Avoid)

Highest

Guarantee

Inspect

Best

Warrant

Supervise

Most

Certify

Oversee

Complete

Assure

Estimate

All

Ensure

Strict Compliance

Each and Every

Indemnify

Fault

Including but not Limited

Defend

Yes, but...

These words can create or escalate any problem

Be An Advocate for Your Firm!

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Sound Risk Management Includes:



Risk Mitigation
and Avoidance
Plans



Go/No Go
Analyses



Contracts



Communication



Documentation



Contingencies



Adequate Profit



Client Selection

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Relationships matter!

“Most clients...cannot truly evaluate the technical competence of the surveyor.

Nevertheless, clients do know how they are treated by the surveyor.

Some surveyors are technically proficient, but do not have particularly good communication skills. Chances are that those surveyors will have greater incidences of disputes and claims in their practice than other surveyors who may not be as advanced technically, but who communicate well with their clients.

Clients are often unaware of all the effort that the surveyor expends on the client's behalf. Whether bringing good or bad news to the client, always convey the message that the surveyor is there to assist the client.”

Clients should be involved in decision making.

How to Select?

- Do your homework
 - Online search for past projects
 - Search for other companies they were associated with
 - Credit check
 - Peer discussion
 - Lexis/Nexis Search – see how many lawsuits they've been involved in
 - Acceptable terms and conditions

Who Are Your Strategic Clients?

Are they a strategic fit?	Are they a quality client?
✓ Allow you to develop new capabilities	✓ Profitable projects
✓ Help you expand to new territories	✓ Prompt payment
✓ Improve profitability	✓ Hire qualified contractors and consultants
	✓ Agreeable to contract negotiations

PROJECT NAME:
 PROJECT START DATE:
 PROPOSAL DUE DATE:

Issue	Risk Score: 1 (low) 3 (medium) 5 (high)	Explanation	Your Firm's Mitigation Strategy to Address Higher Risks
PROJECT			
General Risk Assessment of Project Type		High risk project types include multi-family residential, bridges, large public use projects, educational, and high-security facilities.	
Knowledge of/Comfort Level with this Specific Project		Evaluate your capabilities and experience relative to the project and the services you're being asked to provide. Relevant experience should yield a lower risk score.	
Knowledge of/Comfort Level with this Project Delivery Method		Lack of familiarity with the project delivery mode (e.g., design/build, multi-prime, or IPD) can pose higher risks.	
Knowledge of/Management of Pre-Existing Conditions		Renovation or addition projects may pose higher risk. Some of this risk can be mitigated for the design team if the Owner permits the design team to rely upon prior information such as record drawings.	
Overall Risk Assessment of the Specific Project/Services		Evaluate your "gut feeling" about this specific project and the associated professional services. When you look back on this project ten years from now, what will you think? Does this project help meet strategic goals?	
Category Sum	0		
PLACE			
General Risk Assessment of Project Location		Projects in litigious states like CA, CO, FL, IL, LA, MO, NJ, NY, PA, and TX pose higher risk. Assess the risk of both the state and the specific region for the project.	
Concerns About this Specific Project Location		Higher risks exist in areas with dense populations, hazardous soil conditions, extreme weather conditions, sensitive neighbors, etc.	
Knowledge of/Comfort Level with this Specific Project Location		Has your firm worked on previous projects in this location? Do you understand the politics and the community? Relevant experience lowers risk.	



Contracts

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What Should Be Included In a Surveyor's Contract

- Clear Offer of Both Parties
- Scope
- Schedule
- Required Authorizations
- Owner/Client Responsibilities
- Payment

What Should Be Included In a Surveyor's Contract

- Standard of Care
- Changes
- Suspension/Termination
- Risk Allocation/Limitation of Liability/Consequential Damages
- Assignment/Successors
- Applicable Law/Dispute Resolution

Standard Forms

Engineers Joint Contract Documents Committee (EJCDC) and The American Institute of Architects (AIA) publish standard forms specifically for surveyors

EJCDC's E-560, *Agreement Between Engineer and Land Surveyor for Professional Services* - used when engineer engages land surveyor, includes scope of services section that includes a boundary survey using the latest ALTA/NSPS standards, topographic surveys, and construction stakeout services

AIA's C201-2015, *Standard Form of Consultant's Services: Land Survey* – used when owner engages land surveyor with similar scope section, and meant to be attached to C103-2015, *Standard Form of Agreement Between Owner and Consultant without a Predefined Scope of Consultant's Services*, to form the contract, or used in conjunction with other owner- surveyor agreement forms



Communication & Documentation

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Choose an Appropriate Means to Communicate

Common Delivery Methods		Best For:
E-mail*	➔	Documentation Details Sharing Smaller Files
Text*	➔	Short, Simple Messages Limited or No Follow-Up
Voicemail*	➔	Short, Simple Messages Request for Follow-Up Call or Meeting
Phone call	➔	Check-Ins More Complex Issues Urgent Updates
Face to Face Meeting	➔	Consensus Among Multiple People/Parties Resolving Difficult Issues or Conflicts

Other Options:

- File Sharing Sites*
 - Procore
 - Newforma
 - Egnyte
- Online Meetings:
 - Zoom
 - MS Teams

*Discoverable in a claim

Avoid These Common Communication Issues

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W
H
O

Too Many Parties in the Chain

Sharing Information Beyond “the Circle”

- Forwards
- Reply-all's

Missing Key Parties

Tone-deafness

- Blaming
- Self-Criticism
- Complaining
- Too Casual
- Too Technical without Explanation
- Too Much Information

W
H
A
T

Typos

Communicate & Document

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Set expectations up front:

“we’re not perfect”

Specifics that can lead to problems:

- Designing out of sequence
 - Fast-track schedule
 - Unrealistic budget

Keep talking to client, and help when a problem occurs

Identify the issues, and solve them quickly

Communicate and Document

Centralize
Communications

Prepare Written
Minutes of Meetings

Standardize
Communications

Segregate
Communications

- Confirm direction of the Contractor
- Provide written copies to Client

- Prepare promptly
- Distribute to all parties
- Require parties who disagree to respond

- Site observation reports
- Minutes
- Incident reports

- Potential claims



Contingencies

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The Importance of Contingencies

70%* of projects are delivered late and over budget. Causes:

- Construction labor shortages
- Overburdened/under-resourced Authorities Having Jurisdiction
- Supply chain challenges
- Recent pandemic-specific concerns:
 - Social distancing on site and site sanitation procedures → decreased efficiency
 - Teleworking challenges

Claimants are looking for deep pockets. Contingencies help mitigate this risk



Adequate Profit

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Key Contributors to an Adequate Profit

- Careful client selection
- Adequate initial fee
- Clearly-defined scope
- Right to be compensated for additional services
- Timely invoicing
- Rights and penalties for non-payment

Suits for nonpayment are often met by counter-claims of negligence.



What happens when it goes wrong?

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Definition of “**Claim**”

Claim means any notification received by you demanding compensatory money Damages or compensatory, corrective or remedial services. Two or more **Claims** for or arising out of the same or related **Wrongful Act(s)** shall be considered a single **Claim** for all purposes under this Policy.

Source: Berkley Design Professional Policy

Note: Definitions vary by insurer

Definition of “**Damages**”

Damages means **compensatory monetary amounts** for a covered **Claim** that you become legally liable including **judgments** (inclusive of any pre-or post-judgment **interest**), **awards**, or **settlements** agreed with our prior approval. **Damages** include **finances, sanctions, taxes, penalties, punitive or exemplary damages** and the multiple portion of any multiplied damage award unless any are uninsurable pursuant to applicable law. For purposes of Insuring Agreement B, **Damages** include **Emergency Expense** and **Clean-Up Costs**. **Damages** do not include any return, withdrawal or reduction of professional fees, profits or other charges.

Source: Berkley Design Professional Policy; Note: Definitions vary by insurer

Definition of “**Wrongful Act**”

Wrongful Act means any actual or alleged act, error or omission by you or by any entity or person for whom you are legally liable.

Related **Wrongful Act(s)** are those that arise out of, are based on, logically or causally relate to or are in consequence of the same or related **Professional Services** or **Contractor Services**.

Source: Berkley Design Professional Policy

Note: Definitions vary by insurer

So, Some Red Flag Words Are...

(i.e., Signs You MAY have a Claim)

Demand for Money

Judgment

Request for Document(s)

Demand for Service(s)

Award

Emergency Expense(s)

Damage(s)

Settlement

Clean Up Cost(s)

Mediation

Fine

Negligence/Negligent

Arbitration

Sanction

Liable/Liability

Litigation

Penalty

Injury

Subpoena

When in doubt, report it to the insurance company!

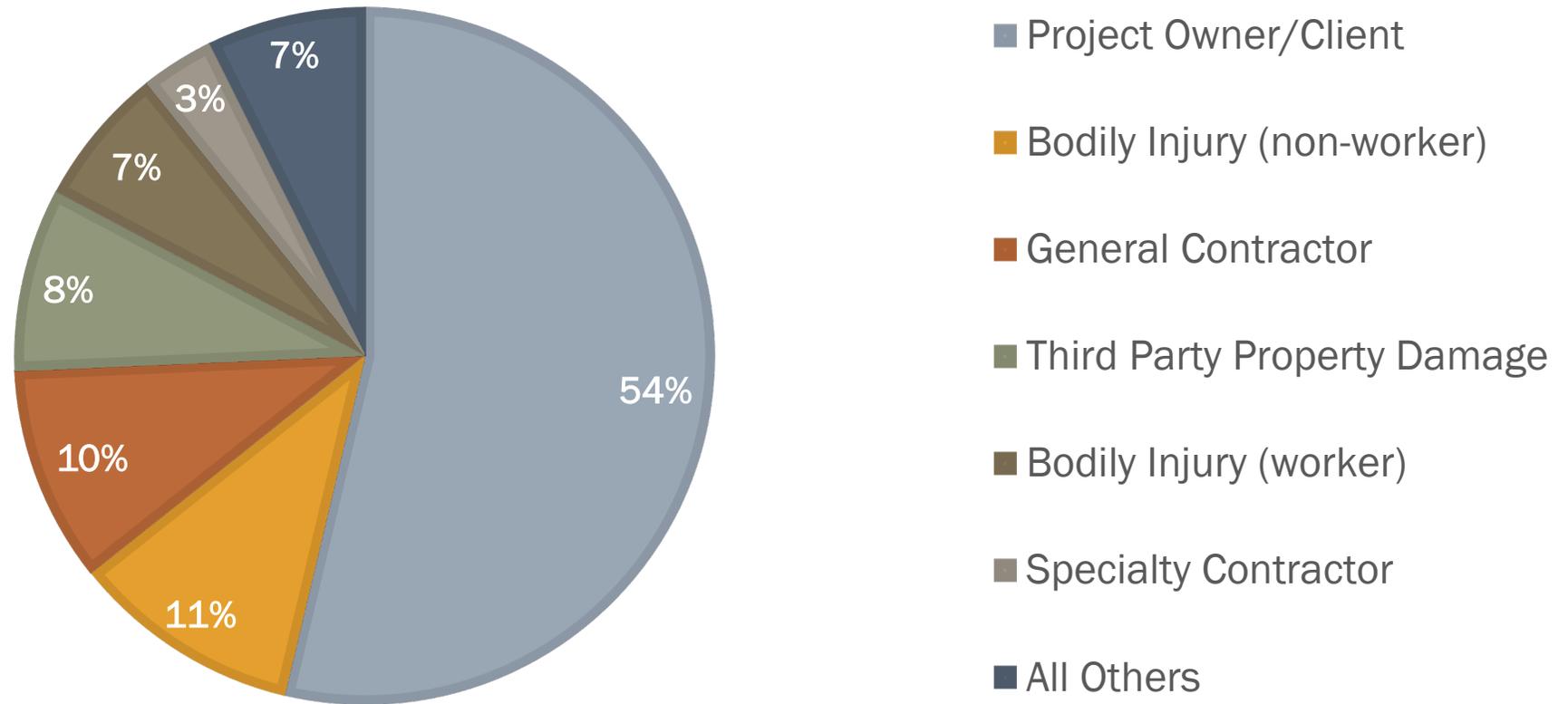


What are the Risks:
Where do Claims Come From?
How Often?

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Frequency by Type of Claimant Against Large Engineering Firms



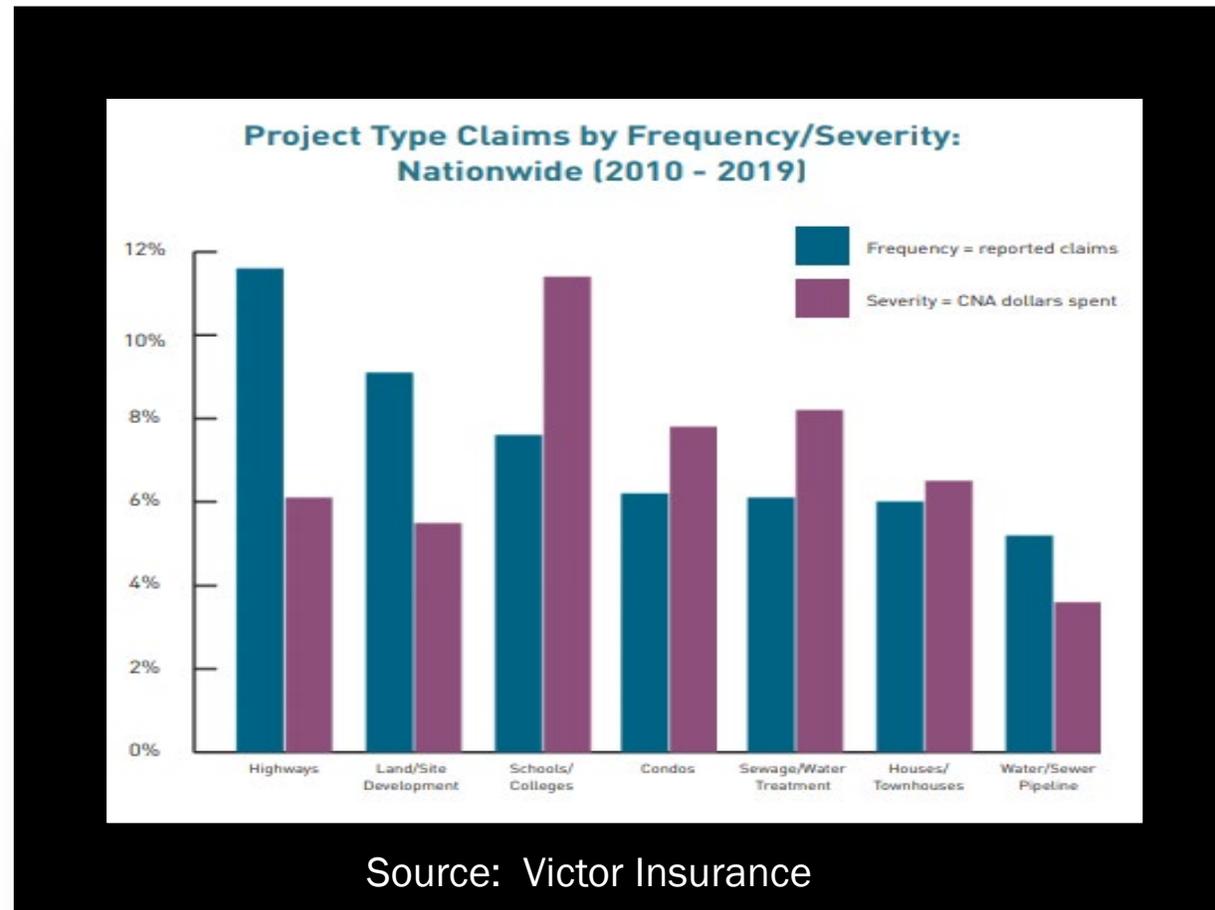
More than half of all claims are made by owners and clients

Owner/Client claims represent 64.5% of claims made against surveyors

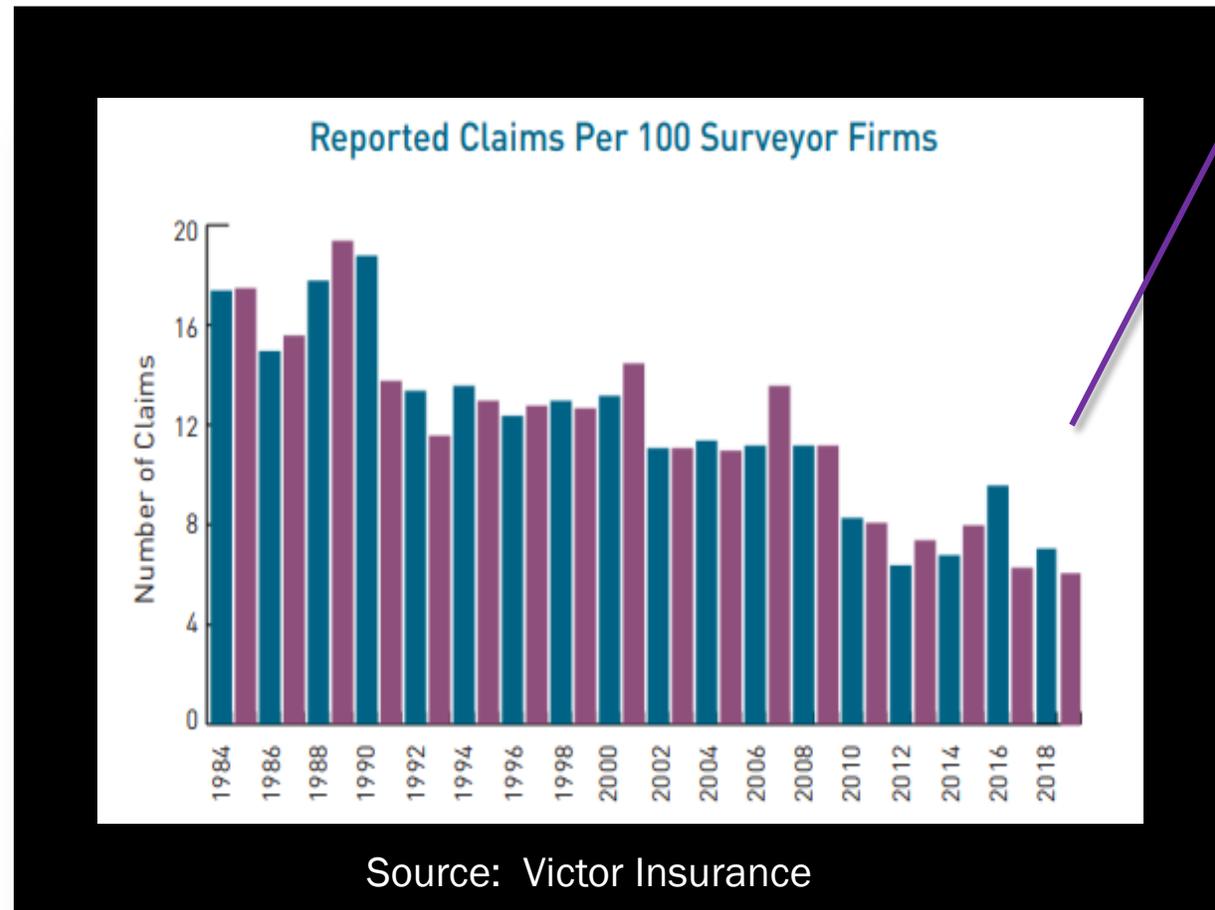
Source: Victor Insurance

Frequency/Severity by Project Type Against Large Engineering Firms

Land/
Site Development
has the
second highest
frequency of
claims



Reported Claims Per 100 Surveyor Firms



Risk Management among surveyors is more effective now than it was 30 years ago!



Top Problem Areas for Surveyors

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Common Claims/Problem Areas for Surveyors

- Boundaries/Easements/Trespass
- Construction Stakeout
- Site Preparation
- Site Improvements
- Foundations/Substructure Issues
- Certifications

Start by Identifying Key Concerns—Examples:

- Residential or other High-Risk Projects
- Unknown/Hidden Conditions
- Scheduling
- Trespassing
- Environmental Hazards
- Safety
- Being the “Deep Pocket”



Recent Case Studies

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A Case Study

DOCUMENTATION

A surveyor provided a **boundary and topographic survey for a farm** property awaiting development. The **client had little experience with surveyors** and never had a proper survey done before. The surveyor discovered that the **property had various discrepancies** and **notified the client verbally** that the problems needed to be fixed. **Several years passed** before the client began working on the property **without the problems getting fixed**. The **client later claimed \$260,000 in losses**. At mediation there appeared to be **minimal liability for the surveyor**.

The client **filed a complaint against the surveyor with the state licensing board**, alleging **incompetence and misconduct**. Based on various documentation that showed that the client knew of the boundary issues, the **board ruled in favor of the surveyor**. At mediation, the **client noted 25 errors with the survey**. While the **errors were irrelevant to the claim**, defense counsel felt that this **could affect a jury** if the case went to trial.

The **case settled with \$95,000 as an indemnity payment** and **defense costs of more than \$68,000**.

Source: Victor Insurance

A Case Study

Surveyor received faxed request for survey of residential property from title agency

- No written contract or contact with owners

Survey crew mistakenly goes to wrong address and survey is prepared for neighboring property

- Bad survey never discovered during sale
- Survey doesn't identify garage encroaching 3-4' over neighbor's line
- Owner discovers encroachment when prevented from building its own garage

Lawsuit is filed against surveyor by neighbor

- Damages spiral based on topography, township ordinances, approvals, etc. Case ultimately settles for **\$100k+ after \$39K in fees/expenses**

A Case Study

Residential housing developer hires civil engineer/surveyor firm; scope includes earthwork takeoff to balance the site

Topo based on some supplied data – sparse spot elevations and aerial survey topo with 2-foot contour intervals

Low fee so did not independently verify beyond a previously surveyed benchmark

Resulted in inaccurate topo survey, compounded by computational mistake in the actual takeoff by the firm's uninsured subconsultant

Developer claimed 48,000 cubic yards needed to balance the site, approx. \$7K per lot, total claim exceeded \$500K

Claim Closed – **\$23k in legal expenses; \$227k in indemnity- total claim expenses of \$250,000. \$5k client deductible and \$8K from the uninsured subconsultant**

A Case Study

Surveyor hired by owner and home builder to stakeout foundation

\$300 fee. Proposal with scope and fee only, no waiver of consequential damages clause

Instrument error: failed to clear a faulty data point

Resulted in rotated or skewed foundation layout on the site

Neither builder nor surveyor noticed the rotation during excavation, or footings and foundation, including site visit by surveyor, and even foundation location survey (as-built)

Claim to demo and rebuild foundation per plans

Claim for additional costs for 3 month delay: interest on loan, storage of belongings, loss of rental income

Claim Closed – **\$2k in legal expenses; \$74k in indemnity- total claim \$76,000.** \$0k client deductible!

A Case Study

Civil / Surveying Firm is Hired to Provide:

- Site Design for a pool house for an affluent Mainline resident
- Architect's design call for a large bay window to capture the "perfect summer sunset"
- Due to local SWM requirements and design elements project has many different iterations
- Excavator is scheduled to arrive first thing Monday morning, so Survey crew scrambles for stakeout
 - Crew chief "grabs" what he believes is the most recent file
- Concrete is poured / framing begins / bay window not in correct location
- Settlement was in excess of **\$250K**

When in Doubt: Contact Mark or Kevin



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SESSION EVALUATION

