

NOTE: The information provided here is adapted from *The XL Insurance Contract Guide for Design Professionals*, a risk management handbook for architects and engineers written for the exclusive use of its policyholders. In support of the humanitarian relief effort now taking place in Haiti, the Design Professional group of XL Insurance provides this information to all design professionals and related entities as they consider providing professional services in this time of great need. For more information about XL Insurance, go to xldp.com.

Random Acts of Humanity

*"I walk on the bodies of dead people," said Haitian first lady Elisabeth Préval. "Many people are beneath the buildings. The general hospital has collapsed. We need support. We need help. **We need engineers,**" said Mrs. Preval. "This is a catastrophe."¹*

The very recent earthquake in Haiti brings with it the call for design professionals. Considering the humanitarian acts of our U.S. A/E community over the course of many catastrophic events in past years, we anticipate that it's only a very short matter of time until our professionals' boots hit the ground in Haiti, protecting the public from further damage and injury in the massive ongoing search, rescue and recovery effort. It is important therefore that we at the Design Professional group of XL Insurance remind the professional men and women providing these random acts of humanity to protect themselves as well.

First and foremost, protect yourselves and your people from physical harm. The tenuous condition of the ravaged infrastructure in Haiti dictates that extraordinary safety measures be implemented before undertaking such humanitarian efforts. In other words, BE CAREFUL OUT THERE! Additionally, because the law may not protect you from liability, even for services performed for such a worthy cause, now is not the time to forego sound risk-management practices. Accordingly, it is extremely important that you get a written contract that not only specifies your roles and responsibilities but also provides a waiver of any liability that could be imposed on you and indemnification for you in the event of any harm you might incur or claims by any third parties against you. It doesn't have to be a full-blown contract. Instead, you might adapt the EJCDC or AIA short-form agreements or consider modifying the attached sample Agreement for Emergency Professional Services.

If you choose not to use a short-form agreement and prefer to use letter agreements for post-emergency situations, you might consider including a waiver and indemnity such as the following:

EMERGENCY SERVICES

The Client understands that emergency conditions exist because of [*specific emergency situation*]. The Client further recognizes that time and circumstances do not permit the Consultant to perform his or her services with the degree of skill and care normally provided under nonemergency circumstances. The Client desires, however, to have the Consultant use reasonable efforts to perform his or her services under these emergency conditions. In consideration of the substantial risks to the Consultant in performing these emergency services for or on behalf of the Client, the Client agrees to the fullest extent permitted by law to indemnify and hold harmless the Consultant against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising out of or resulting from the Consultant's providing emergency services for or on behalf of the Client excepting only those damages, liabilities or costs arising directly from the sole negligence or willful misconduct of the Consultant.

In addition, the Client agrees, to the maximum extent permitted by law, to waive any claims against the Consultant arising out of the performance of these emergency services.

The Client acknowledges that (1) the Consultant has discussed the risks and difficulties of performing services under the existing emergency conditions; (2) the Client is aware of the legal implications of agreeing to the waiver and indemnity provisions; and (3) the Client enters into this Agreement freely and without reservation.

Initialed: Client _____ Consultant _____

You should also describe and limit the scope of your services to prevent future misunderstandings. Here is a sample of rather protective wording you might adapt to your situation:

The Consultant is a structural engineer [or architect, etc.], and all observations, opinions and conclusions are limited to structural review. The Consultant cannot investigate any possible electrical or mechanical damage nor can the Consultant render an opinion on the existence of asbestos or any other toxic material or contaminants on the site.

The Consultant has not had the opportunity to review plans, calculations or soils data for the structure or other information normally available to consultants, nor has the Consultant been able to perform detailed analyses or structural calculations. Because of the existing emergency situation, the Consultant's opinions and conclusions are based on limited visual observations and, as such, should be considered preliminary only. The Client must have these opinions and conclusions verified by detailed analysis once the emergency period has passed. No other warranty, either express or implied, is made or intended.

XL supports the brave and selfless professional men and women participating in these monumental humanitarian efforts and stands ready to provide further risk management and loss prevention advice and counsel.

The information contained herein in no way should be construed as legal advice and should be used in conjunction with specific guidance from competent legal counsel experienced in the design and construction industry and familiar with the laws in your state, province or jurisdiction whose laws will govern your contract.

¹From Martin Barillas' article in the Spero News 1/14/10

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