Resiliency: A Business Imperative with Profitable Benefits

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Exploring Facets of Resiliency

- Building Resilient Business Models through ESG
- Fostering Resilience in the Built Environment
- Embedding Resiliency in Legal Frameworks
Setting the Stage for ESG

- Digital Transformation (AI Advancements)
- Geopolitical Instability/Wars
- Planetary Crisis
- Constant Global Transformation
- Inflation/Banking Crisis
- Post-Pandemic and Concerns Over the Next
Cascading Risks - Design & Construction Markets (2023)

Top Risks

- Climate Change
  - Physical risks
  - Transition risks

- Economic Uncertainty
  - Materials pricing
  - Supply chains
  - Labor/talent costs
  - Project funding and credit tightening with banking crisis

- Project Delivery Phase Risks
  - Communication, Documentation, and Quality Controls

- Talent shortages
  - Professional
  - Skilled Labor
ESG Risk Factors

**Environmental Issues**
- Climate Crisis
- Physical risks
- Transition risks
- Reputation risks
- Biodiversity
- Resource Constraints (energy, water, minerals, building materials, etc.)
- Pollution
- Solid Waste

**Social Issues**
- Talent shortages
- Upskilling/Training Workforce
- Social Unrest (Discrimination, Wealth Disparities, Pay Disparities, Social Equity, etc.)
- Workforce Safety
- Cyber Data Breaches
- Human rights/child labor
- Supply Chain Vulnerabilities
- Community Engagement
- Ethics/Compliance/Corruption

**Governance**
Managing Environmental and Social Risks and Optimizing Opportunity through:
- Controls – practices, procedures, policies to comply with laws, regulations, industry best practice
- Reporting – voluntary and/or mandatory disclosures on ESG performance metrics
- Resilience – strategic management of ESG risks now and in the future
ESG Metaphor

How resilient is your business to disruptive environmental and social shocks?

Shiny car = financial statements

Internal mechanisms = resilience and adaptability of the company
Tools:
ESG Risk Rating Tool (free for Victor/CNA insureds) to help design firms assess their ESG risks and opportunities, measured against international frameworks and standards (e.g. TCFD, GRI, SASB), and to receive an ESG rating/scorecard.

Webinars:
Unlock Your Firm’s ESG Potential with Victor’s ESG Risk Rating Tool
Demystifying ESG for Design Firms: Risks and Opportunities

Writings:
https://victorriskmanagement.blog/
Resilient Practice Models
Climate risk

Physical risk

Transition risk

Acute

Chronic
RESILIENCE

The ability to recover from or to be resistant to disruptions
Resilience

Embracing change

How does the environment affect the building?

Sustainability

Protecting our resources

How does the building affect the environment?
Resilience for how long?  
Resilience of what?  
Resilience to what?  
Resilience of whom?
The business case of Resilience

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<td>$5 billion</td>
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The business case of Resilience

Nearly eight in 10 institutional investors consider climate change to be a “significant risk.”
Source: EY

Every dollar spent on hurricane protection can prevent US$105 in business property loss and disruption.
Source: FM Global
Change is hard
Change is possible
Legal Benefits of Resilience
Climate Change Related Litigation

Federal Statutory Claims
- Clean Water Act violations
- Clear Air Act
- Endangered Species Act

State Law Claims
- Utility regulations
- Enforcement cases
- Industry lawsuits

Constitutional Claims
- First Amendment
- Fourth Amendment
- Fourteenth Amendment
- Commerce Clause
Securities Claims
- Greenwashing cases
- Lawsuits over ESG-related investigations

Claims Not Obviously Related to Climate Litigation
- Construction Lawsuits
- Workers’ compensation claims
- Supply chain disruptions
Legal System: Who Bears the Risk

Civil Legal System = who bears the risk?

- Evaluation of which party is in the better position
- Statutes/regulations can assign the risk to a specific party
- Parties can agree by contract to who bears the risk
- Judge and jury can decide which party should bear the risk after the fact

Examples

- ESG Disclosures: Companies should disclose information to investors
- Workers’ Comp: Employers should ensure workers have safe working conditions
- Construction Projects: Which party should address climate change
Construction Litigation is Expensive & Time Consuming

Involves multiple parties
- Owner/developer
- Architect/Engineer
- General Contractor
- Subcontractors
- Material Suppliers

Fact-intensive
- Length development of factual record
- Expert witness opinions needed

Average cost > $30 million in 2021 (North America)

Source: Arcadis
How Can the Legal System Help?

CONFUSION OVER WHO IS RESPONSIBLE + PROBLEMS = LITIGATION

Contracts - Identify and Assign Risk to Address Resiliency
- Construction contracts
- Supply chain contracts
- Communications contract
- Energy contracts
Takeaways

• ESG is a risk framework that can build resilient business models
• Resilience is a climate risk mitigation measure
• Contracts should include climate risk responsible parties
THANK YOU
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