MODULAR ADVANTAGE

Modular Building Institute

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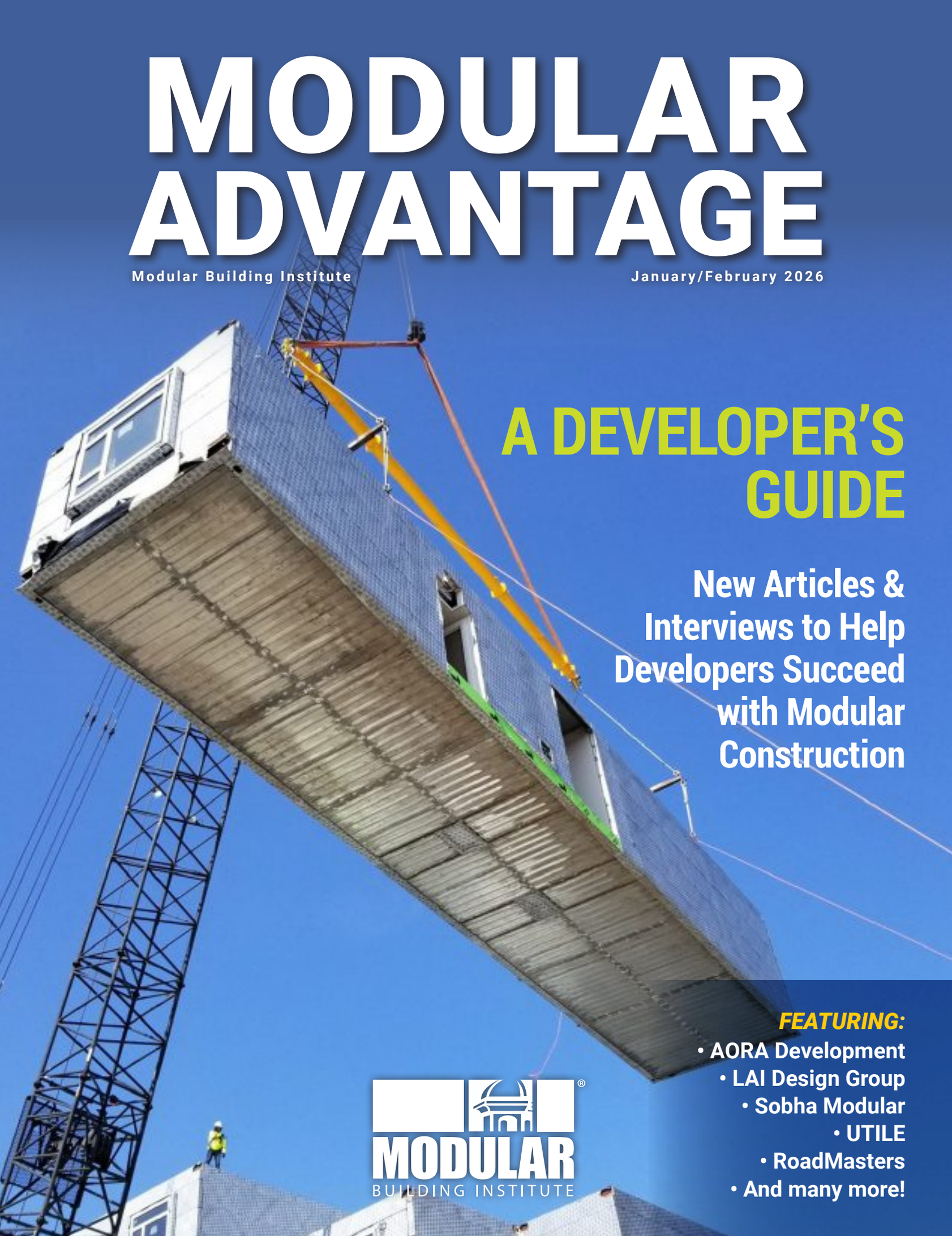

A DEVELOPER'S GUIDE

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MODULAR BUILDING INSTITUTE

Navigating Risk in Commercial Real Estate and Modular Construction:

Insights from a 44-Year Industry Veteran

By John McMullen, PCM, Marketing Director, Modular Building Institute

A Legacy in Risk Management

B. Daniel Seltzer's grandfather and father founded a risk management/insurance brokerage in Philadelphia in the 1920s, establishing the foundation for what would become his lifelong career. Over the span of 44 years, he's built a distinguished path in insurance and risk advising, holding the CPCU.

Early in his career, Seltzer gained early underwriting experience during eighteen months "running slips" at Lloyd's of London. He later returned to the family firm, where he climbed to President and CEO before its sale in 2013, and continued his career with a respected company in the field. Eighteen months ago, he joined RCM&D—a firm he has admired since childhood. For Seltzer, it was coming home again.

Founded in 1885, RCM&D (platform company of Unison Risk Advisors), employs roughly 1,600 people, all of whom share ownership in the privately controlled company.

Defining the Management of Risk in Real Estate Development

Seltzer categorizes real estate development risk into three primary types:

1. **Stabilized Assets —** Completed buildings where operational risk management is key, such as ensuring protective systems—sprinklers, surveillance, and life-safety components—are functioning properly.

2. **Development Projects —** Buildings under construction, where well-crafted insurance programs and strong indemnification requirements for general contractors and subcontractors are essential, including optimal Additional Insured endorsements and precise contractual language.

3. **Corporate Risk —** Directors and Officers or General Partnership Liability, requiring careful evaluation of exposures and selection of appropriate limits and retentions to protect the balance sheet.

Modular vs. Traditional Construction: A Risk Perspective

Seltzer explains that although modular construction differs quite a bit from traditional projects, the risk

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management process itself does not change. "Step one, risk identification, followed by quantifying the range of financial impact of such risk. The advisor must then recommend the method(s) for managing risk," he says.

The five fundamental strategies remain: avoidance, reduction, control, transfer, and assumption. Where modular and traditional construction diverge is in the type and intensity of certain risks.

Risks Modular Construction Reduces

Modular construction shortens the period of outdoor work which significantly reduces:

- Public and worker injury risk
- Weather-related damage
- Construction defect likelihood, due in part to more robust upfront engineering

Risks Modular Construction Amplifies

At the same time, modular introduces unique and amplified risks:

- **Transportation risk —** Usually, more parties are involved in the development, transit logistics are more complex, and storage and/or consolidation points increase. The risk advisor should assess the values and various parties in the mix, study the Gantt/CPM, and make recommendations to the developer.
- **"Zipping" risk —** The on-site joining of modular units—creates a sequencing risk unique to modular builds.

Why Modularity Challenges Insurers

Seltzer calls modular construction a "relative newcomer" to insurers because the industry lacks the actuarial history needed for accurate pricing. Until modular generates enough credible loss data, carriers often blend its results with traditional construction.

To illustrate the insurance challenge, Seltzer poses a thought-provoking comparison: "In what other industry does the provider of the product or service not know their ultimate costs until years after the sale is made? Insurance carriers do not know their costs until years after the premium is charged."

Still, he stresses that insurance for modular construction is readily available. The issue is not accessibility but accuracy of long-term modeling.

Mapping Risk Across Modular Project Phases

Modular projects involve manufacturing, transportation, and on-site assembly. Developers must understand exactly what they are responsible for versus what they subcontract. Risk advisors should research the developer's contractors, subcontractors, and design-build consultants—especially the modular manufacturer.

"If my client is a developer and they're going to hire A-B-C manufacturer, it's very important to research that firm to help assess what the risk is," Seltzer explains.

The Top Three Risk Pitfalls for Modular Developers

1. **Underinvesting Time in Risk Planning —** Developers often

Progression of Commercial Risk & Liability

Modular Development Project

Pre-Construction

The arrows depict various sources of risk which face the modular developer. Pre and Post Construction phases are separated to convey the importance of a continual working relationship with a risk advisor.

Design & Engineering

Incomplete design, coordination between parties, modularization strategy

→ Design fully finalized early, MEP penetrations, "Zipping" and stacking alignment

Logistics & Transportation

Transit constraints unknown, weather conditions, craning limitations

→ Bridge heights, road permits, police escorts, wind, delays = huge cost burn, access pads must be perfect

Factory Capacity

Overcommitted factories, standardized QC, supplier delays

→ Bottlenecks, late delivery, hidden defects inside modules, long lead times can stall production

Site/Foundation

Foundations not ready, tolerances unknown, utility coordination

→ Modules sit in storage or suffer weather damage, modules sit incorrectly, systems unable to connect immediately

Permitting/Regulatory

Local AHJ unfamiliar, state approval delays, zoning restrictions

→ Some municipalities do not understand = permit delays, require separate state approvals , Re-Routing/additional conditions

Charts shared with the Modular Building Institute under the express consent of RCM&D.

Post-Construction

Performance & Quality

Water intrusion, Acoustic/thermal deficiencies, structural movement

Joint failure, rushed sealant work, sound transmission at seams/vertical stacks, stress points, misaligned doors & floors

MEP & Systems Integration

Hook-Ups not performing, fire-rated assemblies compromised, Controls & Commissioning delays

Plumbing leaks, HVAC imbalance, failed safety inspections = rework and long commissioning cycles from faulty factory installations

Warranty QA & Documentation

Unclear warranty responsibilities, Incomplete “as-builts”

Factory/GC/Subcontractors overlapping scopes, drawings may not fully reflect final installation requirements

Legal, Contracting & Insurance

Latent defect found years later, insurance claims complex due to scope split

Waterproofing at seams is main cause long-term claims, who/what was proximate cause of loss?

Financial

Cost overruns during post-set work, delayed occupancy revenue

Cost balloon if modules delivered out of sequence, field corrections accumulate, inspections trigger added work, ongoing commissioning or inspection issues

Contractual Liability and Alignment

RED is where Owner/Developer may be exposed

Lender | **Investors** | **Municipality**

Modular Developer

- Property cover (Bldrs Risk, Commercial Output, ThroughPut or other acceptable marine form) for Project-Specific or "Rolling" coverage, insuring the interests of multiple parties
- General Liability $1m/Occ & $2m/Agg Per Project, ISO 20 10 11 85, Occurrence Form
- Automobile Liability $1,000,000 (owned, leased & Non-Owned vehicles)
- Workers Compensation & Employers Liability **$1m/$1m/$1m**
- Environmental Liability **$3,000,000** (on-site, transporting & disposal, 3 year "Tail")
- Design Build professionals - **$3,000,000** minimum limit with 3 years beyond completion
- **$35,000,000** Umbrella - Project Aggregate
- Minimum Carrier AM Best Rating A-, **XIII**
- General & Excess Liability through **Statute of Repose**
- Waiver of Subrogation & Additional Insured status from **all Contractors & Subcontractors**

Design Build Professionals

- Professional Liability **$2,000,000 minimum**
- **2 years** beyond expiration of agreement
- A-, **VIII** Best Rating

General Contractor

- General + Excess Liability **$5,000,000 Annual** Aggregate limits
- **3 Years for Completed Operations**
- **A-, IX** AM Best Rating
- Professional Liability **$1,000,000** with 3 years beyond completion
- Environmental Liability **$2,000,000** (on-site, transporting & disposal, 3 year "Tail")
- Waiver of Subrogation & Additional Insured status from **Contractor only**
- Workers Compensation & Employers Liability **$500k/$500k/$500k**
- Automobile Liability $1,000,000 (owned, leased & Non-Owned vehicles)

Electrical

- **No WC**
- **$500K Auto**
- **$3m CGL**

Plumbing

- **Poor AI status**
- **$3m Umbrella**
- **No WC**

Masonry

- **No AI status**
- **No Auto**

Roofer

- **No H&NO Auto**
- **$2m CGL**

Carpenter

- **$1m CGL**
- **A, VI Best**
- **No AI status**

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under-allocate time to the risk management process.

2. **Errors & Omissions (Professional Liability) Risk —** Modular projects involve many consultants. Developers commonly require these partners to carry professional liability insurance, but Seltzer recommends an additional layer be considered: OPPI (Owner's Protective Professional Indemnity) coverage.

3. **Disjointed Property Insurance —** Modular projects include multiple risk locations: manufacturing facilities, transit routes, temporary storage, project-site staging areas, and installation zones. Seltzer strongly recommends a single inland marine policy, covering transit, off-site storage, temporary housing, and builder's risk under one program.

Choosing the Right Broker

With over 35,000 insurance brokers in the U.S., Seltzer suggests a deliberate and thorough process in advance of hiring your risk advisor, similar to that of a doctor and tax advisor. He emphasizes that the right broker should:

- Arrive prepared and ask insightful questions
- Review all contracts
- Visit the project site
- Produce professional-quality submissions
- Understand modular construction deeply

"A broker who does not meet these criteria may leave the developer with gaps revealed only when it's too late," he cautions.

For Seltzer, transparency isn't a courtesy—it's a safeguard. "Developers should always see exactly what the broker submits to the market and the underwriters' written responses," he says. This level of visibility is rare but essential, as a single omitted detail can cascade into costly exposures.

Business Interruption and Real Loss Scenarios

Seltzer distinguishes between Loss of Income, which covers the loss of net income and continuing expenses, and Extra Expense, which covers the post-loss incremental increase of costs required to minimize loss. "Coverage must reflect the actual project architecture, supply chain, and lender requirements—not a generic template," he says, offering real scenarios he sees often to illustrate the stakes, including:

- Flood at the manufacturing plant destroys modules, causing a two-month delay.
- Fire two weeks before the issuance of the Certificate of Occupancy halts progress and increases interest expenses.
- Trucking consolidation turns a $50,000-per-truck exposure into $400,000 in one location.

Professional Liability: Retroactive Dates and Project vs. Practice Policies

Seltzer demystifies Claims Made Professional Liability insurance: a retroactive date defines how far back claims-made coverage applies. "For example, May 1st, 2018 - a $1 million limit applies to all projects since that date—not a single customer and not a single year. Most policies are Practice-based, covering the consultant's entire practice, while Per-Project policies are not seen as often and are more expensive, though far clearer," he notes.

Managing Risk in Transit and Storage

Developers frequently rely on fragmented coverage placed by several different parties, including manufacturer, transporter, freight forwarded, supplier, and warehouse owner. Seltzer's solution: a consolidated property program

(inland marine policy), ensuring all parties' interests are covered as the material moves from the first time by the supplier to the last time when delivered to the project site since the developer/owner pays 100% of all costs. "Fragmented programs lead to finger-pointing, lengthy subrogation, and costly disputes," he states.

Cyber Risks: The Silent Threat

Additionally, Seltzer flags two cyber threats:

1. **Social engineering —** Fraudulent payment requests and spoofed emails. SOPs requiring verbal confirmation before wiring funds mitigate risk.

2. **Ransomware —** Malicious actors lock systems until ransom is paid, potentially crippling operations.

"Cyber Insurance exists but must be carefully structured, as coverage varies from one carrier to the next, and given the nature of this risk, often the insuring agreement is not keeping up with the times," explains Seltzer.

Why Professional Liability (AKA E&O) is the "Wild West"

Unlike per state statutory workers' compensation, professional liability is highly customized. "Just because someone buys professional liability doesn't mean it's done correctly," Seltzer warns. Customization requires experienced guidance—otherwise, developers assume risk unknowingly.

Front-End Planning and Contract Structure

Seltzer says that front-end planning is where risk—and opportunity—resides. "Developers who engage deeply in the process can materially reduce 'Total Cost of Risk' or TCOR."

Contracts should hold the party performing work financially responsible, with indemnification for others, and name the developer as an additional insured (excluding workers' comp and professional liability). But additional insured coverage is nuanced. "Over 100 endorsements exist, and many only cover work during active operations, not during the statute of repose," Seltzer notes.

Evaluating Modular Suppliers and Closing Coverage Gaps

Developers must examine suppliers' schedules, financial stability, and backup plans. Seltzer recommends:

- Reviewing proposed Gantt charts or CPM schedules
- Considering performance, supply, or completion bonds
- Negotiating reciprocity agreements for alternate manufacturing

Coverage gaps often appear in transportation, additional insured endorsements, professional liability, and builder's risk. Choosing the right advisor is critical. Risk is rarely mishandled because developers don't care, but because they may trust an insurance broker with little to no modular expertise.

Surround Yourself with Experts

Finally, Seltzer emphasizes that risk evolves. "Surrounding yourself with really well-intended experts is the best way. And run it as a business. Insurance decisions should be intentional, dynamic, and continuously reassessed. Don't just buy insurance from the same person you've always bought from. Risk is dynamic, and that can create risk. Have an advisor that stays involved and asks good questions."

If you're looking for a risk advisor with deep industry insight and a hands-on, analytical approach, connect with Daniel Seltzer at RCM&D at dseltzer@rcmd.com or 800-346-4075.