



What Design Professionals Should Understand When Faced With a Claim Situation

Design professionals time and again find themselves faced with the situation of whether or not to report something to their professional liability carrier. Certainly, there is an abundance of risk management webinars, programs and articles, all discussing what steps to take for preventing a claim or incident from taking place, but this question being addressed here is what steps design professionals should take if they are challenged with a situation in which they're certain a claim will come to fruition.

When faced with a potential claim predicament, design professionals should consider the following as a guide.

Report the matter to your insurance broker or insurance carrier as soon as possible.

Professional liability practice policies are all written and issued on a claims-made basis. Therefore, claims must be reported during the policy period. Thus, haste in reporting can help to prevent a potential coverage problem or loss of important evidence. This rule is certainly the first and foremost rule in the entire process and should be strictly followed.

Never admit fault or culpability.

Aside from the realization that if you admit fault or negligence it places you in an indefensible situation, you also could place your professional liability coverage in jeopardy and find no coverage will be provided. There may be circumstances in which it is obvious that a problem exists, a building collapse, for example. However, you can concede that a problem exists without accepting blame or fault for the problem.

Collect and safeguard all of the documents, drawings, contracts and any photographs pertaining to the project.

All of the documents must be preserved in the event a suit arises. Make sure that none of the documents are changed,

altered or discarded. There may be other parties involved who may also have copies of your documents, and any contradictory documents will not be viewed favorably by the courts or other concerned parties. It would be extremely embarrassing and damaging to your firm if certain documents were missing or altered and another party is able to submit "clean" copies for the judge, jury and all to see. Always be certain that any changes made to documents during the course of the project are properly initialed and dated as changes were made.

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Do not immediately fire an employee you deem responsible for the situation.

If you have an employee who is likely responsible for the situation arising, do not fire them merely by reason of the problem occurring in the first place. If you fire that employee, you are taking an individual who may be the essential witness to the facts and circumstances surrounding and giving rise to the disagreement, and making them a possible hostile witness. This could make defending the claim even more difficult.

Also, when considering and applying your policy language, you may also be giving the individual the need to secure separate counsel. This then increases the costs of defense of the claim and could negatively impact your ability to defend yourself. If you feel strongly that the employee should be terminated, discuss the matter first with your assigned claims professional or legal counsel before taking such action.

Make certain that no one in your office discusses the matter with anyone other than your insurance broker, your attorney and your assigned insurance company claims professional.

In doing so, communication regarding the facts and circumstances of the dispute in question can be controlled. Making statements or admissions in conversations with outside parties that are unknown could be used against the firm in the future as the dispute progresses, and it could certainly damage your position or challenge the position you want to take.

Never offer money or services in an effort to resolve a matter.

The offering of money or services can be seen as admitting fault. Should you offer money or services in reaction to a situation, you are creating the potential that coverage could be jeopardized or denied.

If you discover a problem that is not yet apparent to the other parties connected with the project or transaction, do not try to keep the problem from the other parties.

Continue to communicate with the adverse party if circumstances or business considerations necessitate such communication to take place.

If you have other business transactions with the person or persons connected to the matter or claim, you still need to complete the pending business. Your staff should be advised not to talk about the facts or circumstances that gave rise to, or presently exist, relative to the dispute. However, failure to communicate on the balance of existing business or other non-related business may create an unpleasant environment, and this alone could possibly give rise to other claims or circumstances.

Do not try to settle anything.

Often, the attempt to fix a situation leads only to the creation of even larger problems. Be certain that before you commit to any further work, most especially in the remediation role, that you have first obtained the risk management guidance of your assigned claims specialist or the advice of an attorney assigned by your claims representative.

Never make an attempt to hide the problem.

If you discover a problem that is not yet apparent to the other parties connected with the project or transaction, do not try to keep the problem from the other parties. You have a professional standard that requires you to advise other parties that a problem exists. Also, there is no easier

way to exasperate the other parties connected to the project with you than to appear to have been less than forthcoming with them.

Don't take it personally.

It is unfortunate today that we have a litigious business climate to contend with. Never take it personally if someone decides to file a lawsuit against you. Do whatever you can to avoid letting your emotions rule out any discussions that you have in the matter. Continue to conduct the business of resolving any existing or potential dispute with the same professional demeanor that you use for your income producing work. In today's business environment, resolving disputes has just become a "part of doing business."



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