

Providing Services in Emergency Situations

During an emergency, design professionals are often willing to volunteer their services to help protect public health and safety and to provide immediate services to aid recovery efforts. There is potential liability with such volunteer efforts or with any immediate emergency response involving a limited scope of services.

Despite efforts by professional societies and trade associations to educate state legislators, many states still do not have volunteer protection acts affording state immunity to licensed design professionals providing services during emergency situations. While the governor of a state may use the police powers of the state to provide immunity to volunteer design professionals, such actions are rarely taken.

States should provide the immunity of the state to design professionals responding at the request of a government official to provide emergency professional services. State agencies and even private parties should defend and indemnify the design professional for any claims, costs, losses, or damages incurred for all but their gross negligence if the immunity of a volunteer protection statute is unavailable.

Absent any immunity provided by the state, a licensed design professional would be responsible for meeting a standard of care of similar professionals in similar circumstances. In evaluating components of the built environment following a natural disaster, the design

professional's risk can be reduced by qualifying any stated determination to show that the determination was made from information available at a specific time and represented a professional opinion. No reasonable design professional should provide an "absolute" statement of structural integrity, habitability, conformity to water quality standards, or safety.

The standard of care would be lower in an emergency situation than it would be under normal circumstances. Although there is no specific immunity for design professionals providing emergency relief services, the general rule is that design professionals must perform voluntary or emergency services in accordance with the same care and diligence as other design professionals providing similar services under the same conditions provides a framework for limiting risk.

To clarify how risk may be limited contractually, Victor recommends provisions (see page 2) for use when providing services to private clients for a fee (Version A) and when acting as a volunteer (Version B) during the aftermath of an emergency. Such provisions limit the risk of the design professional and should be considered as additions to the written contract. The contract should clearly spell out the scope of services and the limitations of the design professional's services based upon the conditions encountered. Design professionals are cautioned to seek specific recommendations from their

legal counsel. **(Note:** the Victor and CNA program would cover an insured firm in a volunteer capacity in the same way it covers the firm providing services for a fee.)

Provided below are two sample contract provisions that address the basic concerns of design professionals providing services in an emergency situation:

Sample Indemnification Language for Design Professionals Providing Services in an Emergency Situation

VERSION A (TO BE USED WHEN PROVIDING SERVICES FOR A FEE)

In response to the declared natural disaster associated with the (Name and date of disaster), (Name of A&E firm) has agreed, at the specific request of (Name of client), to conduct a visual observation of certain projects/facilities for structural integrity or non-structural elements affecting health and safety. Further, based upon such limited observation (Name of A&E firm) will render a professional opinion as to the integrity of the project/facility for its normal use and/or occupancy.

In return for (Name of A&E firm) providing evaluation services during a declared disaster or local emergency, (Name of client) agrees that neither (Name of A&E firm), nor its consultants, agents, or employees shall be jointly, severally, or individually liable to the (Name of client) in excess of the compensation to be paid pursuant to this Agreement. In addition, (Name of client) agrees to indemnify, defend, and hold (Name of A&E firm), its consultants, agents, or employees, harmless from and against any and all claims, defense costs (including attorneys' fees and dispute resolution costs), damages and other liabilities, actual or alleged, arising out of, or in any way connected with, (Name of A&E firm)'s providing professional services, regardless

of how or under what circumstances or by what cause such injuries or damages are sustained. However, that this indemnification shall not apply in the event of a willful act or an act or omission by (Name of A&E firm) constituting gross negligence.

VERSION B (TO BE USED WHEN PROVIDING SERVICES ON A VOLUNTARY BASIS)

In response to the declared natural disaster associated with the (Name and date of disaster), (Name of A&E firm) has agreed, at the specific request of (Name of client), to conduct a voluntary visual observation of certain projects/facilities for structural integrity or non-structural elements affecting health and safety. Further, based upon such limited observation (Name of A&E firm) will render a professional opinion as to the integrity of the project/facility for its normal use and/or occupancy.

In return for (Name of A&E firm) providing evaluation services during a declared disaster or local emergency on a voluntary basis, (Name of client) agrees that neither (Name of A&E firm), nor its consultants, agents, or employees shall be jointly, severally or individually liable to the (Name of client). In addition, (Name of client) agrees to indemnify, defend, and hold (Name of A&E firm), its consultants, agents, or employees, harmless from and against any and all claims, defense costs (including attorneys' fees and dispute resolution costs), damages, and other liabilities, actual or alleged, arising out of, or in any way connected with, (Name of A&E firm)'s providing professional services, regardless of how or under what circumstances or by what cause such injuries or damages are sustained. However, that this indemnification shall not apply in the event of a willful act or an act or omission by (Name of A&E firm) constituting gross negligence.

Visit us at victorinsuranceus.com/schoolofriskmanagement to learn more.

This document is for illustrative purposes only and is not a contract. It is intended to provide a general overview of the program described. Please remember only the insurance policy can give actual terms, coverage, amounts, conditions and exclusions. Program availability and coverage are subject to individual underwriting criteria.

Victor Insurance Managers Inc. (fka Victor O. Schinnerer & Company, Inc.) recently filed in all U.S. jurisdictions to re-brand and change its name. This name change has become effective in almost all states while still pending in several states, which we expect will complete their approval processes shortly.

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