How to Avoid Liability Caused In-House

The determination of professional liability is essentially the application of an objective standard upon design professionals. This standard is measured by what is considered to be reasonably prudent practice for those engaged in similar activities in the same general geographic area. The standard’s origins lie in the very simple concept that when one acts, one must act in a manner to avoid harming another. However, not every act resulting in harm to another imposes professional liability; only those acts negligently performed result in culpability.

Liability claims against design professionals will increase if they make errors, commit to performing services beyond the scope of their professional capacity, abandon their professionalism in favor of economic expediency, fail or refuse to recognize areas of potential liability, or inadequately train and inform associates and employees to meet the requirements of modern professional conduct. There are, of course, other factors that result in claims against architects and engineers, but they are, for the most part, external factors over which a design professional has little, if any, control.

Some may say that the design professional is becoming less a professional and more a business entrepreneur − or that the nature of the profession has changed and that what was a professional act is now a simple matter of business expediency. Clearly, external influences with roots in pure business economics impose themselves upon design professionals. However, professionals should not permit these influences to dominate their conduct to the extent that they lose sight of the fact that by reason of specialized education, training, licensure, and ethical conduct, they are first and foremost professionals.

A primary step aimed toward reducing exposure to professional liability claims is establishing a program of in-house quality control. To begin formulating such a program, the areas within the design process which most frequently give rise to claims must be identified.

Five Problem Areas That Need Attention:

1. Failure to Supervise and Review the Work of New Employees
   Over the years, our analysis of claims against design professionals indicates that a major portion of design error stems from the work of inexperienced employees. The need for effective internal review seems to be confirmed by a related statistic: firms experience a greater number of claims during and immediately after a period of rapid growth than they do during a period of moderate growth. A glut of new hires and a heavy work-flow hinders the ability of senior staff and project managers to train new employees in the culture and procedures of the firm, to emphasize the importance of understanding contractual and professional obligations, and to look over the shoulders of new staff members.
2. Inadequate Project Coordination and In-House Communication
A second potential error arises from a lack of coordination within the design office. As design and construction projects become more complex, and the role of each individual more specialized, many members of a design team often have little or no concept of how their segment of the design relates to the total project or construction process. As new digital technologies, including building information modeling, gain widespread use, there might be a greater disconnect between the team members relying on these technologies and those who are unfamiliar with the emerging tools of the trade.

3. Failure to Communicate Between Prime Professional and Consultants
A third practice area that creates claims is a lack of coordination among the disciplines engaged in a total design process. Communication among the various professional offices engaged in the total design is often woefully inadequate, leading to considerable problems, misunderstandings, and claims. While the greater sharing of design information through modern technology might reduce this risk, reliance on technology alone will not eliminate communication problems.

4. Lack of Quality Control on Design Changes
Claims experience indicates that because of changes requested by the client, the design professional may acquiesce to unreasonable time schedules that do not permit adequate review and coordination of the design changes.

5. Poorly-Worded Contracts
Finally, the use of nonstandard contracts that fail to adequately define the duties and responsibilities of design professionals often generates disputes. Contracts that impose upon design professionals burdens and commitments that are not a recognized part of a professional function create unnecessary and unwarranted exposures. They open the door to professional liability claims and legal actions based on contractually assumed obligations that exceed the scope of professional liability insurance coverage.

Conclusion
Solutions to these five problem areas vary with the size and function of each professional service firm - but they can be addressed with good results that can significantly reduce exposure. General recommendations can be made and put into practice in a manner consistent with good business practice and sound economics. In-house loss prevention and quality control measures are effective and worthwhile only if they set reasonable and attainable goals, are consistently implemented, and do not greatly increase the firm’s overhead expenses.

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