

Working With Your Attorney: Tips and Guidelines



Claims Management by the Architect

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A liability claim made against an architect on a project typically begins with a written notice of claim and demand for payment and can escalate to a lawsuit. All claims have the potential of ending up in court if alternative dispute resolution methods are not successful. Many professional liability insurance providers offer services to assist in mitigating the claim early, and a quick, proactive claims management response can often be successful. An understanding by the architect of beneficial internal management actions to take at the infancy of the process in assisting your attorney, as well as a basic understanding of the process of giving fact testimony can be helpful in building a claims defense, maximizing success in defeating the claim, or minimizing liability exposure.

DOCUMENTS ORGANIZATION – When your attorney prepares a defense for the claim or lawsuit against your firm, the project documents and the factual knowledge of the project team constitute the foundation for the defense argument from which your attorney can work. Accordingly, the more organized your documents and your collective knowledge of relevant facts, the less complicated and more effective your attorney’s efforts can be. The following suggested tips and guidelines are offered to assist the architect in managing the elements of the claims defense that fall within the architect’s control.

TEAM PARTICIPANTS – The issues in conflict typically involve actions taken by the project team, and those who performed the work will have the factual knowledge of past actions and events and hopefully will have documented those actions and events in the project files. To build an effective defense, the professional needs to assist the attorney with the following:

- Identifying team members having knowledge of relevant facts and obtain input from each
- Determining the role of each team member in the defense
- Contacting persons who are no longer with the firm
- Determining if the ex-employee will be supportive or adverse
- Determining the role of each sub-consultant in the issues
- Assessing the relationship with the sub-consultants, the potential liability of the sub-consultants, and pros and cons for filing 3rd party claims against relevant sub-consultants who are non-responsive to communications or who refuse to cooperate with the defense

MANAGING THE FACTS – The facts are what they are, but the team’s collective knowledge of past events can help your attorney formulate the defense initiative.

- Prepare a chronological history of each contested issue, cross-referenced with corresponding communications or project documents
- Label internally generated documents “Attorney-Client Work Product” to maintain privilege
- Copy your attorney on all privileged documents

MANAGING PROJECT DOCUMENTS – Project files can be voluminous and those not designated as privileged must be produced during the discovery process. You are more familiar with the documents than counsel, and your assistance in managing the files can be of great benefit.

- Place a litigation hold on the project file by circulating an email to all project team members, firm administrators, and the IT Manager directing that all project documents are to be preserved and not deleted
- Identify documents related to each contested issue
- Establish file management protocols
- Establish communications protocols and procedures
- Label internally generated documents “Attorney-Client Work Product” to maintain privilege
- Copy your attorney on all privileged documents

Defense counsel will review the files in their entirety to determine privileged status and determine the facts in the case. For large projects it may be worthwhile to store the files in a central location where the documents can be secure and easily accessible. Determine with counsel if the documents should be stored in your office. Be prepared to assist counsel in document searches to locate relevant documents. (NOTE: This activity alone supports the need for a standardized office filing system and rigorous close out procedures.)