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## PROVIDING SERVICES IN EMERGENCY SITUATIONS

During times of emergency, design professionals always have been willing to volunteer their services to assist in protecting public health and safety and to provide immediate services to aid in recovery efforts. Prudent design professionals realize that with such volunteer efforts, or with any immediate response effort involving a limited scope of services during the aftermath of an emergency, there is potential liability.

Despite efforts by the professional societies and trade associations representing design professionals to educate state legislators, many states still do not have volunteer protection acts affording the immunity of the state to licensed design professionals providing services during emergency situations such as those created by floods, earthquakes, or other natural disasters. While it is possible for the governor of a state to use the police powers of the state to provide immunity to volunteer design professionals, such actions are rarely taken.

It would seem to be appropriate that a state provide the immunity of the state to design professionals responding at the request of a government official to provide professional services in an emergency situation. It also is practicable for a state agency or even private parties to defend and indemnify the design professional for any claims, costs, losses, or damages incurred by design professionals for all but their gross negligence if the immunity of a volunteer protection statute is not available.

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, of course, can be reduced by qualifying any stated determination in a way that clearly identifies that the determination was made from information available at a specific time and represented a professional opinion. No reasonable architect, engineer, or other design professional would provide an "absolute" statement of structural integrity, habitability, conformity to water quality standards, or safety. In addition, the standard of care expected of a design professional would be lower in an emergency situation than it would be under normal circumstances.

Although, in many states, there is no specific immunity for design professionals providing emergency relief services, the general rule that a design professional performing voluntary or emergency services must provide their 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.

In response to the need for a clarification, CNA/Schinnerer recommends contractual provisions (see below) 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. In addition to risk allocation provisions, written contracts should clearly spell out the scope of services and the limitations of the design professional's services based upon the conditions encountered. While design professionals are cautioned to seek specific recommendations from their legal counsel as to the appropriate contract language to minimize their risk. Provided below are two sample contract provisions that address the basic concerns of design professionals providing services in an emergency situation:

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.

It is of note that the CNA/Schinnerer professional liability insurance would cover an insured firm in a volunteer capacity in the same way that it covers the firm in providing services for a fee.