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CLAIMS

The contractor is in financial difficulty

When it is obvious that the contractor is in trouble, and there is a strong possibility that there will be a claim for extras, it is time to strengthen the alliance with the client and lay the groundwork for a common defense.

The client is in financial difficulty

When clients restrict construction field services to save money, it is appropriate to warn them in writing that it is no longer possible to sign unqualified certificates because the design professional cannot be responsible for what is going on in the field. If cheap materials are substituted, again, clients should be warned in writing. (Remember—design professionals are not just liable to clients. In tort, they are liable to the world at large.) When issues of safety arise, it is the design professional's duty to stop the project and report the situation to the proper authorities.

Unexpected site conditions

Every time contractors report an unforeseen condition, clients should be briefed. The design professional should force all parties to discuss the situation and agree on a course of action. The worst thing design professionals can do is allow work to continue with a promise to discuss extras later.

Arguments with contractor about quality

When the contract gives the design professional the authority to reject improper work, the design professional should do so, with the client's full knowledge of the situation. The design professional should not assume responsibility for the situation and 'protect' the client from confronting the responsible party. A client looking at an unexpected statement of claim from a contractor will often drag the design professional into the lawsuit as a third party.

How to react when a claim is made

- ✓ Keep calm and act in a professional manner. Avoid any immediate or emotional reactions: counter-accusations are unproductive and could make the situation worse.
- ✓ Report all relevant circumstances to the insurer, and make sure members of your firm do not take any action without discussing the implications with the insurance company.
- ✓ Avoid any admission of responsibility, even if you think you have made an error.
- ✓ Keep communicating with all parties in a professional and business-like manner.
- ✓ If work is continuing on the project, try to maintain a team environment, based on everyone's mutual interest in successfully completing the job.
- ✓ Assemble and organize all necessary documentation.