

© 2002, Victor O. Schinnerer & Company, Inc. The information presented here is for risk management guidance. It is not legal advice nor should it be construed to be a determination on issues of coverage for specific claims.

CONSTRUCTION PHASE OFFICE AND FIELD SERVICES

- ✓ Make sure the client understands the purpose of your observations—to determine whether the contractor is constructing the project in general conformity with the overall design concept and intent.
- ✓ Make sure the client understands that your review and submittal of partial and final payment applications implies that, in your best judgment, the certified work has been completed. It does not mean that the work absolutely conforms to drawings and specifications.
- ✓ Construction observations should be documented using a standard format, including all dates and times of observation. The use of photographs to document unusual events is strongly recommended.
- ✓ Make sure the field services are thorough enough to identify workmanship that is patently faulty. Courts have found design professionals negligent when unauthorized departures from the drawings and specifications by the contractor should have been obvious to the design professional.
- ✓ The design professional's construction contract administrator should not interpret any drawings or specifications; the design professional should only provide clarification. Ruling on a certain ambiguity may imply negligence in their preparation.
- ✓ If, in the course of field observations, you note hazards or discrepancies, inform the contractor's superintendent in writing. Copies of this notice should be sent to the client and placed in the job file. Many design professionals use standardized forms to speed communications.
- ✓ Do not waive any contract language by interpreting, evaluating or in any way accepting total or partial responsibility for the contractor's safety program.
- ✓ Do not assume the responsibility of stopping construction. Instead, advise the client to order the work stopped, unless there is a danger of imminent harm to individuals on the project.
- ✓ When certifying contractor work for progress payments:
 - ✓ Certify to only those parties to whom you have a contractual obligation. Under no circumstances should you provide a certification of the construction to any other party. Sureties and lending institutions may send out questionnaires for you to complete. You do not owe them certifications and you could be liable for an improper certification that resulted in a loss.
 - ✓ Qualify certification language with phrases like 'in my professional opinion.' Certification language should include the adjective 'general' or 'substantial' so as not to indicate absoluteness.
 - ✓ Make sure the contractor has not 'front-end loaded' payment requests, and determine if all work for which payment has been requested has been completed as represented.
 - ✓ Require evidence that all subcontractors and suppliers have been paid and all lien waivers have been filed with respect to all certifications for final payment.
 - ✓ Do not cause undue delay in performing any certification.