



The Toll of Litigation

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Claims 101*- Surviving a Lawsuit**

**Claims 101, The Fundamentals of Claims Detection and Response, Geoprofessional Business Association, www.geoprofessional.org, info@geoprofessional.org.*

*** Preparing for a Rapid Response: Assembling a Project-Intervention Team (PIT) Crew, GBA Best Practices.*

(and GBA Case Histories)

Perspectives



Plaintiff's Lawsuit

Against your business, or worse,
you personally,
..... or both

The plaintiff's perspective- \$\$\$\$\$\$

Design vs. Construction

- Cause of damages
- Experts' opinions
- Probable cost of repair
- Gather the docs
- Who built it?
- Who designed it?
- Subcontractors and Sub-consultants
- When completed?



Avoid a lawsuit if possible.

- Have a document retention policy that makes sense.
- Maintain good communications with clients.
- Try to resolve disputes early.

Do not let emotions rule good business decisions.

See GBA Case Histories 1 & 6.

The Financial and Emotional Toll of Litigation

The Financial Toll

- Professional liability insurance deductibles must be met
- Policy aggregate limits may be insufficient to cover the cost of handling the claim and paying a settlement or verdict (wasting policies)

Key personnel may have to be rededicated to litigation for months with lost time and expense.

Litigation Costs

Action	Cost
Electronic discovery	\$10,000+
Experts	\$20,000+
Depositions	\$10,000 - 50,000+
Mediation	\$10,000+
Trial	\$50,000+

The Emotional Toll

- YOU failed to meet the standard of care established by your industry peers
- Embarrassment, anger, self-doubt, frustration, humiliation, anxiety, depression, sleeplessness

Practice Tip: Did you notify all insurance carriers?

Managing “Claims”

- Understand your emotional responses to stress
- How to deal with “allegations”

Every (geo)professional has a personal stake in preventing claims.

Detecting an “Issue”

- Slow paying your bill
- Hesitation in discussing the issue with you
- Client cash flow issues
- The “Rogue” client - silence can be deafening

External Responses

- Do not admit fault
- Implement your document retention plan, that was in place prior to the claim and keep the claim internal
- Promptly notify your attorney and insurance carrier

Be cautious in responding to the precursors of a claim, speak with your construction lawyer first

Do Not Admit Fault

- Claim(s) against geoprofessionals may be weak based on:
 - Speculation on geoprofessionals services (scope)
 - Misinterpretation of recommendations
 - Misunderstanding of standards
- Review your contract for limits of liability.

**GBA, Case History 26*

Internal Responses

- Do you have a written document retention policy?
- Assemble your PIT crew
- Call your insurance carrier and construction lawyer

Project-Intervention Team (PIT) Crew

- CEO as Crew chief and other practiced negotiators with professional expertise
- Key member traits - self-control and patience, technical expertise, appropriate experience, authority to commit the firm to a monetary payout, humility, and negotiating “how-to” knowledge

Implement a PIT crew next week

Notify Your Insurance Carrier

- Know what your insurance policy covers
- Ask if you can select counsel, if not ask for panel counsel (in following years, negotiate with your insurer the right for your Firm to select counsel)

Construction Attorney

- Hire a construction attorney whom you trust as a business advisor for claims and call him/her
- Utilize the attorney-client privilege
- Preserve files and documents- retention is key
- Do not reduce any admissions of fault to w



The Litigation Process

- The stages of litigation or arbitration:
- Initial pleadings
- Discovery
- Retaining experts
- Mediation
- Trial/Arbitration Hearing
- Appeals

Surviving Litigation

- Try to resolve the claim early
- Hire a reputable construction attorney
- Do not gamble on a trial verdict/outcome that you can't afford
- Know litigation will affect your life professionally and personally

Always tell the truth!

Thank you and

the fine print.

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