

Reduce Your Risk of Frivolous Claims

Engineers and firms can be forced to defend themselves against a legal claim, even when there has been no wrongdoing. Companies of all sizes are vulnerable and the process can be costly and tie up key resources. The good news is, there are many ways to reduce your risk and to be prepared if such a situation transpires.

What activities could lead to a civil claim?

Professional Services

- Incomplete documentation
- Advice for repair, refurbishing, renovation
- Disputes related to scope of service, end outcome or deliverables
- Error in your report or ambiguous reports
- An oversight while drafting or reviewing drawings
- Professional reviews of procedures
- Faulty design resulting in damage, bodily harm, or requirement for reconstruction
- Issues developing after construction: mold, water entry, inherent vice, insufficient fire protection

Breach of Regulations

- Breach of privacy
- Designs that do not meet code
- A complaint made against you to the PEO
- Accusation of criminal act

General Operations

- Supervision
- Libel and slander of a competitor
- Loss of a client's documents
- An oversight during an onsite inspection, assessment or investigation.
- A breach of your contractual obligations
- Vicarious liability (being held liable for a sub consultant's work)
- Training provided to others
- Speaking engagements on professional topics
- Project delays

Field work

- Injury to a 3rd party
- Failure of proto-types or products
- Project management –at risk (project budget, overseeing trades, etc.)
- Damage to a client's equipment or facility
- Liability as a tenant

Risk Prevention

Key Points to Remember

You and your company are exposed to risks when conducting work. You could have decades of experience and the highest level of competency in your field and still be subject to an unfounded accusation of wrongdoing. There are, however ways to guard against frivolous allegations and help reduce the burden of defending yourself if you are named in a lawsuit or legal proceeding.

- ✓ **Contractual Agreements:** Prior to commencing work, always execute a written contract to assure that both parties understand and are comfortable with the details of the agreement. Clearly define the scope of services in written contracts and define the information you require to achieve the deliverables. The agreement with your client should be carefully reviewed prior to being signed. Be wary of indemnification clauses that could oblige you to assume additional liability.
- ✓ **Staffing:** The employees and the sub consultants that you hire have a direct impact on your business (including administration staff). Always hire personnel that are qualified, ethical and reputable. Carefully review the work of aspiring professionals, including associates, students and junior staff.
- ✓ **Industry trends and regulations:** Keep your Certificate of Authorization up to date and be aware of any legislative changes affecting the industry. Maintaining your OSPE membership will help you to stay connected to your peers and have access to industry information and professional development opportunities. Regularly discuss industry trends with colleagues, participate in industry groups and read professional journals.
- ✓ **Documentation:** The most important way to prevent misunderstandings is to ensure that your files are well documented at all stages of your project, including corresponding notes, copies of permits, meeting minutes, noted phone calls and emails. The notes prepared after a meeting should be shared with the client to assure that their take away from the conversation was the same as yours. Keep draft work and calculations to justify opinions. A well documented file becomes a great reference tool, can be utilized to sort out any disagreements and should it come to it, be the key part of your defense in the event of a claim.
- ✓ **Reports:** When preparing your report to the client make sure it is clear, concise and well-written. Ensure the report mentions assumptions, limitations and reliance on third party documents as well as any future contingencies. Confirm that the client understands the details of the report and assessment.
- ✓ **Insurance:** Insurance is not the first thing on your mind when operating a business; however it is invaluable. Having the proper insurance in place will minimize the financial impact that a claim could have on your business and could help

keep your business afloat. If you have any coverage-related questions, call your broker.

- ✓ **Specialization:** Acknowledge your limitations in experience when accepting work. Do not provide engineering services that you are not comfortable with or that are outside of your expertise. It's ok to admit that some services may be outside of your expertise. Seek mentorship from more experienced professionals or hire a specialized sub-consultant to assist with a part of the project that you do not feel comfortable taking on.
- ✓ **Choose your clients carefully:** By working with clients who are known to be ethical, reputable and financially stable, you significantly reduce your chances of having a frivolous claim made against you. Keep a good rapport with your clients to encourage honest and clear communication. Being aware of potential issues or displeasure with the project right away will help you to rectify these situations before they become disastrous.
- ✓ **Manage client's expectations:** Ensure the client understands the scope of services. Both parties must agree to the scope of the work prior to commencement. It's important to communicate your expectations and limitations at all stages of the project. Clearly define the deliverables and timelines when possible. Maintaining frequent communication with your client will prevent false expectations from developing. Listen to your client's concerns and address them. Be attentive to their feedback and do not guarantee results or make promises that cannot be achieved.
- ✓ **Peer Review:** Encourage the use of peer reviews and other quality management tools.

In the Event of a Claim

If a formal statement of claim or a regulatory complaint is made against you, please consider the following tips to assure the best possible outcome:

- **Don't** admit liability
- **Don't** alter records or falsify information
- ✓ **Do** continue to conduct yourself professionally and ethically
- ✓ Report a claim or potential claim to your insurer right away to allow for sufficient time for proper action to be taken.
- ✓ Utilize resources such as OSPE, your insurance broker, adjuster and legal counsel for support and guidance.
- ✓ Be prepared for your defense by reviewing your file to refresh your memory on the events leading to the accusation, and have your files in order. An adjuster and legal counsel will be appointed to you. Your legal counsel will help with the preparation of statement of defence.

This resource was created by: BMS Canada Risk Services Limited and Corestone Law