

a/e RISK REVIEW

A P U B L I C A T I O N O F T H E P R O F E S S I O N A L L I A B I L I T Y A G E N T S N E T W O R K

[We are reissuing this article, first sent out in December 2004, to update you about claims reporting requirements in California. The following notes are updates to that original article which begins below.]

1. For licensed engineers:

The requirement to report claims judgments and settlements, now codified as Business and Professions Code section 6770, will go into effect as of January 1, 2008. As is noted in the original article below, the legislature suspended enforcement of this requirement until funding was made available to the state's Board for Professional Engineers and Land Surveyors (PELS) to retain staff to administer. This funding is now in place.

6770.3 provides that the obligation applies to the "licensee in responsible charge of that portion of the project that was the subject of the civil judgment, settlement or arbitration award." Licensees are also obligated to respond to subsequent inquiries of PELS.

2. For licensed architects:

Unfortunately, the attempt to amend B&P Code 5588 to increase the reporting threshold for architects to \$50,000, consistent with what is now required from engineers, was not successful. Therefore architects must continue to give notification of matters involving \$5000 or more.

Feedback that we have received from our clients is that the California Architects Board has not been unduly aggressive in responding to the notifications that they have received.

New reporting requirements for California architects and engineers

At Dealey, Renton & Associates we are committed to providing you with timely information on insurance and liability issues that affect your practice. Please take note that several California laws have changed. Should you have a professional liability claim, you and your insurance company have new, or in some cases expanded responsibilities to report claims to your state professional boards.

I. For licensed architects

The California Business and Professions Codes include many provisions

affecting the practice of architecture and engineering in the state. Section 5588, which has been in effect for many years, requires professional liability insurance companies to notify the California Architects Board of claims settlements and awards against licensed architects in excess of \$5000 for claims "caused by the license holder's fraud, deceit, negligence, incompetency or recklessness in practice."

Since the law very clearly limited the parameters of such a notification to matters actually caused by the architect's fault, and since most claims are settled

with no admission of fault, reports by insurance companies have been few and far between.

Now the rules have changed. Attorney General Bill Lockyer, in an opinion issued on August 26, 2004, concluded that this law requires notification of any settlement or award exceeding \$5000 regardless of any finding of or admission of fault. Counsel advises that "while opinions of the Attorney General are not technically binding under California Law, they are usually given significant weight by the courts, especially where as here, there is an absence of any direct controlling authority from the California Court of Appeal."

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Consequently, professional liability insurance companies are now required to notify the California Architects Board of all settlements or awards in excess of \$5,000. Licensees are also required to report such settlements or awards. Some insurers have shown us their proposed notification forms which simply state that there has been a settlement of a disputed claim with no admission of fault.

Officials at the Board have advised DRA that at this time, they only have two employees to receive and analyze such reports. We expect that these individuals will begin receiving a significant increase in reports and it is questionable what, if any, action they will be able to take. It would seem that, at least for the time being, follow-up investigations may be limited to very large settlements or where a licensee is involved in multiple notifications.

In the following section, you will note that the corresponding law affecting licensed engineers sets the reporting threshold at \$50,000. The California Council of the American Institute of Architects has advised us that they may support legislation to amend the B&P Code 5588 requirement to \$50,000 to be consistent with the more realistic requirements for professional engineers.

II. For licensed engineers

A similar law requiring notification of claims against professional engineers and land surveyors was recently approved by the governor.

Senate Bill 1549 provides for amendments to a number of Business and Professions Codes involving various professions. The provisions of interest to licensed engineers go into effect in 2006. They require notice to the California Board for Professional Engineers and Land Surveyors of "any civil action, judgment, settlement, arbitration award or administrative action against the licensee or certificate holder relating to the practice of professional engineering or land surveying in the amount of \$50,000 or greater."

This law requires notification of claims by professional liability insurance companies and any California court "that has been notified that the defendant is a licensee or certificate holder" beginning January 1, 2006. It also requires you, as the individual licensee or certificate holder, to notify the Board of such matters beginning July 1, 2006. There is no explanation of the discrepancy in the effective dates.

The law specifically states that confidential settlements must also be reported to the Board and that, for the purposes of this law, such reports would not be construed as violations of confidentiality agreements.

All licensees, including state or local government agencies, self-insured licensees or certificate holder employees are also required to provide such a report.

The provisions of how the Board processes these submissions become operative on July 1, 2006, "only if appropriation of this purpose is made from the Engineers and Land Surveyors Fund for the 2006/07 fiscal year in the annual Budget Act." This provision could prove problematic.

Overall

At this time it is unknown what, if any effect these laws will have on possible disciplinary procedures. It is important that you, as a licensed design professional, are aware of your obligations and the fact that your professional liability insurer will be reporting to your licensing agency as provided by these codes. Please be certain that all members of your professional staff are made aware of the new requirements.

Excerpts from the laws:

[The full text of the Attorney General's opinion may be obtained on-line at <http://caag.state.ca.us/opinions/published/03-1102.pdf>.]

FOR ARCHITECTS:

California Business and Professions Code, Section 5588

Every insurer providing professional liability insurance to a holder of a license, and every license holder,

claim against a licensee or certificate holder resulting from any judgement, settlement, or arbitration award of \$50,000 or greater.

14. Requires any state or local government agency that self-insures a licensee or certificate holder to report specified information to the Board regarding the payment of a claim against a licensee or certificate holder resulting from any judgment, settlement, or arbitration award of \$50,000 or greater.

15. Permits the Board to adopt regulations to further define the reporting requirements.

DRA thanks...

Lisa Dyson of XL Design Professional Insurance Company and Dion Cominos

of the San Francisco law firm of Gordon & Rees for their assistance with the preparation of this article.

Can we be of assistance?

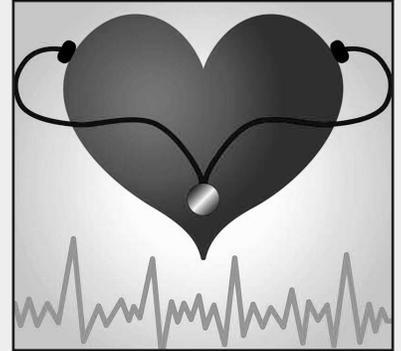
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