



AXIOM Claims Analytics

Resources for Construction Defect Claims Handling
Consulting Services, Expert Witness, Training

CASE NUMBER ONE

Approximately 12 years ago I was handling CD claims for a particular insurance company. I was assigned a new CD claim involving a developer who had built 42 tract custom homes. The claim submission was in the form of a letter from the named insured's personal attorney. There was no reference in either the caption of the letter or in the body of the letter to any pending litigation. The letter indicated, among other things, that 12 of the homeowners were currently complaining about multiple construction defects and property damage allegedly due to the construction. Personal counsel anticipated additional homeowners would also be making claims shortly.

I obtained a copy of the insurance policy and verified that we had provided general liability coverage to the insured for the last five or six years and they were currently insured. I contacted the insured's personal counsel and confirmed there was no litigation currently pending. In fact none of the homeowners had retained counsel. Each of the houses had been sold for an amount slightly in excess of 1 million dollars. At that time no other parties had been placed on notice of the claims. Personal counsel assured me that the insured had subcontracted out all of the construction work to subcontractors.

* * * Excerpt Pg.1



AXIOM Claims Analytics

Resources for Construction Defect Claims Handling
Consulting Services, Expert Witness, Training

I was not familiar with any general contractor experts in the area where the housing tract was located. I called several defense attorneys in the area asking for a referral. One of the defense attorneys referred me to a general contractor expert who he had used in the past. He suggested that particular general contractor expert and indicated that he had over 20 years of actual general contracting experience and had been working as a forensic construction expert for a number of years.

I contacted the general contractor expert and confirmed he had over 25 years of actual general contractor experience in addition to having testified in a number of depositions and in several trials involving CD defect and damage issues. We discussed my claims handling philosophy. As a result of our conversation I was confident of his ability to assist me in the approach I wanted to take and his ability to help me in achieving my claim resolution goals.

* * * Excerpt Pg.5



AXIOM Claims Analytics

Resources for Construction Defect Claims Handling
Consulting Services, Expert Witness, Training

* * * Excerpt Pg.9

In my opinion it is possible to effectively handle a non-litigated CD claim and control the expenses, settlements and other issues. It requires a plan of action, effective communication and the realization that everything may not proceed as you initially planned. I hope you will consider this approach if your company's policies and procedures will allow it.

If a CD claim is in litigation it is possible in some cases for the insurance carrier(s) for the developer or general contractor to attempt to expedite the settlement or resolution process. Unfortunately it is more difficult than for non-litigated CD claims. It is very difficult but not impossible for a subcontractor to have any control or influence over the handling, resolution process or settlement of a CD claim in litigation. I will be discussing different approaches in my next book "Litigation Management".