



AXIOM Claims Analytics

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

CASE NUMBER TWO

In 1985 or 1986 I was assigned several CD cases in litigation involving condominium complexes. My insured was a developer in one of the CD cases that I was assigned. I confirmed coverage and sent out a reservation of rights letter. I retained defense counsel from the company's approved list of attorneys. I had just started at that particular company and was not familiar with the attorneys on the approved list. At that time there was very little case law and no statutes that specifically involved the handling of CD claims.

I contacted defense counsel and discussed how to approach the handling considering the fact there was very little legal guidance regarding CD claims. Defense counsel indicated that he had dealt with the plaintiff attorney who was involved in the condominium case in the past on several other cases. He convinced me that he had developed a rapport with the plaintiff attorney and was confident that we could expedite the claims handling, discovery process and resolution. Hopefully in the process control the overall expenses.

Defense counsel and I discussed and agreed on the following plan of action:

1. Plaintiff counsel had provided a defect list and information regarding the defects and property damage which were being alleged. The alleged defects and property damage involved the structures and common areas

* * * Excerpt Pg.1



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8. Defense counsel and I agreed not to involve the few remaining subcontractors whose potential exposure was extremely minimal. We both agreed that the more parties that we got involved in the process the more potential for problems and the possibility the situation could end up in protracted litigation. Prior to this case I had not been involved in this type of approach so there was some risk involved. But when I considered the potential for a much more reasonable settlement and overall reduced expenses I felt it was worth the risk. Fortunately my settlement authority at that particular company, although not unlimited, allowed me to make the decisions that needed to be made to pursue the plan of action. Follow your own company's policies and procedures.

9. According to the timetable all of the experts met at the condominium complex and conducted a joint inspection. Interestingly all of the five subcontractors sent experts to observe the joint inspection and they later attended and participated in the discussions regarding the identity of the defects and property damage. They also participated in the development of the scope of repair and method of repair

* * * Excerpt Pg. 3



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* * * Excerpt Pg. 5

In my experience the types of claims handling approaches discussed in Case Number One and Case Number Two can only be attempted by the insurance carrier(s) for the developer or general contractor. There are benefits and potential drawbacks to the approaches. You have much better control over the entire claims process. There is a real potential for the insurance carrier(s) for the developer or general contractor to reduce the amount of their expenses, costs and loss payments. The other potential is that you may not be able to recover 100% of your loss payments. It will be impossible with any degree of certainty to predict the amount of your potential recovery. Based on my experience it will probably be worth it based on the expenses that would be saved whether the claim is litigated or not. It also requires the claims person to have enough confidence in their ability to control and direct the handling of the claim(s) to be successful.

The keys to success:

1. Follow your company's policies and procedures.
2. Confirm coverage and depending on your state and jurisdiction place the appropriate insurance carriers for the insured on notice. I will be discussing coverage triggers and allocation of damages in this book and on the website.
3. If there are there other potential carriers who may have coverage it may be difficult to convince them to participate in the process. If they