

CONSTRUCTION DEFECT - CLAIMS/LITIGATION

and the cost of the repairs. From an insurance company claims handling perspective there is the issue of different coverage positions regarding the damages or defects being claimed. Coordinating the number of parties that are involved usually results in a complex and difficult claim resolution process.

As an adjuster handling a CD claim it is important to always keep in mind that even if some or possibly all of the damages or defects being alleged may not be covered the insured may be found legally liable for all of the damages or defects. This issue becomes important if the insured is still actively in business. Follow your company's policies and procedures.

The number of parties typically involved in the CD claim or litigation it is extremely difficult to convince the plaintiff(s) and developer or general contractor to settle with the subcontractors and other parties separately. In my experience this complicates the settlement process. A settlement under these circumstances may require that you settle for a larger amount of money than your

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evaluation indicates to buy your peace. Make sure you follow your company's policies and procedures in this regard. Keep in mind that whatever amount you settle for may affect your CD claim settlements in future cases involving the same insured or trade. The settlement amount you agree to in one case is like establishing a basement amount and the other parties will attempt to convince you over a series of cases to increase that amount. From a negotiation standpoint it is always, in my opinion, a good idea to put a lot of thought into how much you decide to offer given these circumstances. This can be extremely difficult when your litigation expenses are increasing. I will discuss these issues and some possible strategies in more detail later in the book.

Each of the involved parties will have arguments regarding their respective liability positions. I have been involved in several thousand CD claims over the last 30 years and they involved liability and damage disputes that were continually being argued among the parties over the life of the case. This is not unusual in most type of claims but when you have 20 to 30 parties or more involved in the

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case it is extremely difficult for any particular party to reach a compromise or resolution.

The sheer number of parties involved contribute significantly to the complexity of the claim/litigation process and the difficulties that are encountered in attempting to resolve the claim(s) or litigation. For an adjuster a typical CD claim can involve a number of issues including coverage issues, additional insured issues, contractual liability issues, liability issues, damage issues, evaluation issues and resolution issues. Because of the difficulties that are encountered in CD claims and litigation including discovery issues a number of jurisdictions use mediators in an effort to reduce the overall cost involved in the process and to assist in the resolution of complex CD litigation. The mediators have been very successful in expediting the process and reducing the overall expenses. Could the process be improved? Of course there is always room for improvement.