



## The Business of Structural Engineering

By Corey M. Matsuoka, P.E., Chair CASE Executive Committee

They do not teach business skills at the College of Engineering. At least they did not teach them at UCLA when I went there in the early 90s. They did a pretty good job of teaching me about things like pre-stressed concrete, AISC steel design, and shear/moment diagrams, but they did not go into things like liability and claims, how to transition from a project manager to a firm leader, and they definitely did not tell me that I could have a duty to defend someone even if no fault had been established. If they did, it might have been enough to scare me away from becoming a structural engineer.

It is too late now to change professions, but the good news is that there are organizations like CASE to help. CASE, the Council of American Structural Engineers, is a coalition of the American Council of Engineering Companies (ACEC) and offers structural engineers the opportunity to further develop their businesses through shared business practices, advice to reduce professional liability exposure, and tactics to increase profitability. We do this through developing guidelines and contracts that outline best practices, along with extensive risk management tools designed to keep liability in check. We also sponsor seminars and workshops that present best business practices while providing the opportunity to share ideas and information with structural engineering peers from around the nation.

One critical topic to the business of structural engineering is California's successful passing of a new law (S.B. 496) blocking immediate duty-to-defend requirements for design professionals in private-sector and most public-sector contracts. The law limits design professionals' defense obligation (and that of their carriers) to the comparative fault of the design professional. Previously, this protection only was mandated by law to contracts between local public agencies and design professionals.

For some historical background of why this new law is so important, we should look at a couple of cases trialed in California. The first is the case of *Crawford v. Weather Shield Mfg. Inc.* (2008). In this case, the California Supreme Court held that the contractual duty-to-defend was immediate even when not explicitly specified in the contract. As a result, the subcontractor was ordered to pay all of the general contractor's attorney's fees and costs, even though the jury ruled the subcontractor to be fault free. The second case, *UDC v. CH2M Hill* (2010) made it clear that the holding in the *Crawford* case concerning an immediate duty-to-defend extended to design professionals

as well. In the end, a jury found CH2M Hill to be fault free, but the design professional was still ordered to pay all of its client's attorney's fees and cost.

What makes these cases even scarier is that the provision of immediate duty-to-defend is an uninsurable risk for design professionals under their professional liability policies. To say it another way, a design professional who enters into a contract with this clause could be required to pay for a client's attorney's fees and costs without the help of insurance, even if the design professional was ultimately found to be fault free by a court of law. This is because, generally speaking, professional liability covers the professional negligence of parties and does not cover any additional liabilities assumed by agreeing to bad contract terms.

With S.B. 496, private or local agency contracts that attempt to include an immediate duty-to-defend clause will be unenforceable. This means that if a matter is litigated, and the design professional is determined to be 25% at fault, then the law requires that the professional would be responsible for only 25% of the attorney's fees and costs of the party seeking contractual indemnity. Even better, since the 25% is determined to be tied to the design professional's negligence, this cost now becomes insurable.

If you want to hear more about the immediate duty-to-defend clause or learn more about running your business more efficiently while reducing your risk, join us for our *Business of Structural Engineering Workshop*. For

more detailed information about the workshop, look for our ad in this month's issue, contact Heather Talbert at [htalbert@acec.org](mailto:htalbert@acec.org), or visit [www.acec.org/education/seminars](http://www.acec.org/education/seminars). ■



Information on S.B. 496 was based on the article by Justin Witzmann and Brian Stewart, "California Duty to Defend Rests on Fault," which appeared in the *Professional Times* magazine, summer 2017 issue.



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