How Wall and Ceiling Contractors Can Beat the High Costs of Litigation

by Steven A. Hilger, Esq.

A project manager for a large general contractor once told me of his solution for dealing with subcontractor disputes. He would simply say, “Take this change at our pricing or let the lawyers take 40% of the whole deal.” This strongarm tactic prevails throughout the wall and ceiling industry and seems to get worse in a recessionary economy.

The reason the tactic works is because so many wall and ceiling contractors fear the unknown of the high costs of litigation. This fear is generated from: 1). high hourly rates for attorneys; 2). the general system used by attorneys in handling cases, such as the partner-associate-paralegal team, which sometimes accelerates costs because of duplication of effort; and 3). the result that the person who does the most work, the paralegal, knows the least about the law, and the partner, who knows the most about the law, knows the least about the case. Here are some ideas on how to reduce both the fear and the costs.

First, if you are faced with a claim which could result in litigation, take immediate interest in the case; 2). learning the facts; 3). evaluating alternatives; and 4). preparing or assisting in the preparation of a focused global strategy which, when implemented, will lead toward payment of the claims and associated costs.

Second, find someone within your organization who can responsibly and efficiently classify the types of claims, sort through your documentation, and categorize the material which will support your position. This should be someone with firsthand experience on the job.

Third, you and your responsible assistant should actively participate in discovery of your opponent’s position by attending depositions, and more importantly, attending and participating in document productions by your opponents, as well as your allies. By doing this, you will find documents and obtain information that even the best trained partner-associate-paralegal may miss. Further, most of your opponents won’t have nearly the job-related knowledge that you have, and your opponents usually go the partner(s)-associate(s)-paralegal(s) route when it comes to litigation. So you can gain a quick and tremendous strategic advantage over your adversary by using this approach.

If you follow this plan, your savings will be enormous—sometimes between $65 and $125 per hour. Further, you will get a lot more for the money you do spend because you will be up to speed on the issue and can provide more meaningful assistance to your attorneys. Try it. You will be pleasantly surprised.

About the Author

Stephen A. Hilger, Esq., practices law with the firm of Rhoades, McKee, Boar, Goodrich and Titta in Grand Rapids, Michigan. His experience is in litigation, primarily construction litigation with a heavy emphasis in the drywall and stucco industry. He has represented and continues to represent several AWCI members.