DEFECT RISK MANAGEMENT FOR DRYWALL CONTRACTORS

By James R. LaCroix

Are drywall contractors sued for construction defects?

It is no secret to anyone that there has been a large increase in construction defect lawsuits. We are reminded everyday by those who tell us they have just been brought into lawsuits and by reading articles about the larger cases. If you have had the good fortune to not have been involved, it’s less likely that it was because your work was good, but more likely that those projects were not discovered by plaintiff attorneys. Doing good work is no guarantee that you will not be sued. Often, just your name on a subcontractor list is reason enough.

Although being sued is not as random as a lightning strike, it may appear that way sometimes. But, if there is a lawsuit, as sure as lightning strikes you, the drywall contractor will be named as a party. It is at this point that the quality of your work will matter.

Surprisingly, it is seldom that the appearance of the work has anything to do with ultimate settlements or jury awards. The cause for this is often misunderstood by those who are not directly involved with construction litigation, and rightly so, as it can be somewhat complicated.

Who Pays?

First, in almost all cases, the settlements or awards are paid by insurance companies. Second, the insurance companies are not paying for poor or defective work (unless you have that type of policy—few do), but rather for the liability arising out of the results of defective work. Third, bad looking or poorly finished work seldom results in liability, but code violations or structural defects can.

Now, be aware that poor work appearance, or cracks, can cause the lay person to think that all sorts of problems exist; this is often what precipitates lawsuits. The experts, however, know what to look for and what will ultimately cause the insurance companies to be responsible.

You may believe or have heard that your insurance will both pay for your defense and your loss if you lose, and you may have heard that few small contractors are never sued because they have minimal assets. This is generally true. The costs of lawyers and experts is enormous, and most lawyers would not be able to pursue these cases if “deep pockets” (i.e., the insurance companies) were not involved. They know it is unlikely they could get much from the typical small contractor. But, this is not always the case, so don’t count on it in place of good insurance.

What you may not know is that you probably will be named in the lawsuit and that you will not be released from it even if you have no insurance and little or no assets for a substantial period of time (as long as three years from the date the complaint was filed and the date of service, and up to five years from the date the complaint was filed until the matter must be brought to trial). That can seem like an eternity when you are under attack by the legal system, have no idea of the outcome and don’t know what it will cost you.

In addition, you may need to hire a lawyer. If so, you will be required to
research and provide all your files. Visits to the site may be required, and attendance at mediations and settlement conferences may also be required.

Now that I’ve told you all this, you may be thinking it’s time to retire to the mountains and give up your dreams of a successful business.

**Protect Yourself**

But I have described a scenario that is probably the worst it could be. If you are confident in your work and your workers, and take the care necessary to run a “tight ship,” you will be able prove yourself under scrutiny.

There are many ways to help yourself beforehand to eliminate some of this risk. Here are a few:

- Satisfy contractor/owner complaints quickly and cheerfully.
- Double check that the right materials are being used.
- Verify areas of contusion before installation.
- Err on the side of better materials, extra fasteners.
- Do not rely on the building inspector to catch errors.
- Notify the general contractor in writing of problems (handwritten is okay), and ask for written clarification.
- Keep notes about job problems.
- Keep your files at least 10 years.
- Remember: You are expected to know building codes.

**Problem Areas**

The largest awards against drywall contractors have come from two distinct areas: improper nailing and firewalls. These areas create huge liability issues for lawyers because of potential hazards to the life of the occupants. Juries are...
not sympathetic if they think buildings were built unsafe.

Ask anyone who has done destructive testing of drywall (including tearing apart work to count nails and see how it was assembled), and they will tell you that drywallers frequently omit fasteners at the top and bottom plate, and almost never fasten to mid wall blocking in drywall shear walls. Proper nail length is frequently wrong as well.

The construction of fire walls and draft stops is also frequently improper or incomplete. Take care to see that fire walls are continuous to their intended locations, and that first layers are tight fitting and properly nailed. Be aware of critical and often missed areas near chimney chases, soffits, stairs, furred spaces and split-level conditions.

A smaller issue, but one that comes up frequently, is sound transmission. The primary attack on this issue has been the lack of resilient sound channel in proper locations, and in some instances, the wrong style.

If you remember a condition from a similar job and don’t see that condition on a job you’re working on, don’t ignore it, ask the contractor about it. You could be found at fault if you omitted work that is normally done by your trade even if it wasn’t in your contract.

Just remember, it is false economy to short cut on materials, labor or supervision. It will cost you in the future in time, effort and money, and it could cost you your business life blood—your clientele. Repeat lawsuits may prevent you from obtaining insurance or may increase your premiums.

I believe that the time of the shoddy contractor or worker is coming to an end, and that good old-fashioned ethics and workmanship will be in high demand.

About the Author
James R LaCroix has worked in the construction industry for more than 30 years, has been a general contractor and drywall contractor, and has been a consultant and an expert for drywall and drywall-related issues. He has been an expert witness for construction defect litigation for eight years. He currently holds a California General Contractor’s license, and is a California Quality Assurance Inspector.