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The Importance of Selecting Effective Legal Counsel

In today's complex legal landscape, the importance of selecting effective legal counsel cannot be overstated. Whether you are an individual facing a personal legal issue or a design firm navigating regulatory challenges, the right legal representation can make a significant difference in the outcome of your case. Effective legal counsel not only provides expert advice and representation but also offers strategic insights that can help you avoid potential pitfalls and achieve your desired results. This paper explores the critical factors to consider when choosing legal counsel and highlights the benefits of making an informed decision.

There are currently approximately 1,300,000 licensed lawyers in the United States. Legal costs can be substantial, and, like all fields, the quality of legal advice varies. Some lawyers are exceptional, while others may not meet your expectations. Additionally, legal fees can vary widely. So, how does an architect, engineer, or other type of design firm decide whom to choose to represent their firm? Remember, you are in the driver's seat when it comes to choosing legal counsel, except in cases where insurance companies have the right to make that decision under the terms and conditions of the policy. And, as we will discuss, you may have some leverage in those situations as well.

Law school provides students with a broad overview of the law, often introducing them to various legal fields. For instance, while law students typically take a class or two in general business law, specialized areas such as design and construction law are generally not covered. Obtaining a license to practice law is merely the beginning of a lifelong journey of in-depth legal learning. Like medical professionals, it can take years of additional study and experience for a lawyer to claim expertise in a particular field. It's important to remember that having initials behind one's name can be misleading; after all, half of all law school graduates finish in the bottom half of their class. Typically, lawyers gain experience in both business and construction law by working in firms that specialize in these areas or have individual groups of attorneys that focus on these areas. Often, young lawyers receive education in design and construction law when hired by firms retained by professional liability carriers to represent architecture and engineering firms in claim situations.

The most essential lawyer a firm can choose is arguably an outside lawyer with whom they can consult periodically on a wide variety of legal issues. This type of lawyer is often referred to as an outside General Counsel. "General" is the keyword. Larger firms usually bring a lawyer in-house at some point to assist with a wide range of legal matters and act as the firm's in-house General Counsel. While the General Counsel may specialize in one or more areas of law, they generally have the experience, knowledge, and wisdom to assist in many legal areas. If they

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don't know the answer, they can usually call on someone else in their firm or reach outside the firm to consult with a specialist.

Some firms choose a lawyer based on an existing relationship, such as a college buddy, a church member, or a family member. However, selecting legal counsel on this basis is generally not advisable. You may end up losing a relationship. While it is essential to develop and maintain a relationship of mutual respect and trust with your lawyer, likability or confidence alone does not guarantee their qualification for the task at hand. Although these selections may occasionally work out, a more rigorous selection process is recommended. Learning these lessons the hard way, through experience, is not ideal. Choosing the wrong lawyer can be costly, both financially and emotionally, and can damage your firm's reputation in the marketplace. A lawyer experienced in design and construction-related issues can often mean the difference between success and failure. It can also mean the difference between sleeping soundly at night and being up with worry. Ensure you have someone on your side who can help you rest easy.

When a design or construction claim is brought against an architecture or engineering (A/E) firm, the professional liability carrier typically assigns legal counsel to represent the firm's interests. The carrier's right to choose legal counsel is usually stipulated in most, if not all, A/E professional liability policies. However, this does not mean you cannot express your own preference. You can always ask the carrier to consider your preferred attorney. Larger firms that pay higher premiums often have some leverage in persuading the insurance carrier to choose their preferred attorney. In the absence of such leverage or under unusual circumstances, however, the carrier will make the final decision on legal counsel.

Insurance carriers typically maintain a list of preferred attorneys, referred to as panel counsel. Regardless of the type of claim you are involved with, the value of your professional liability agent in the selection process cannot be overstated. These agents are usually well-acquainted with the panel counsel lists of insurance carriers and can provide valuable recommendations. If there is no local attorney you are comfortable with, you may be able to request that the carrier select a panel counsel from another city. However, obtaining this knowledge requires a discussion with your insurance broker.

Let's return to the question of how to select lawyers, starting with the choice of General Counsel. A relationship of trust and respect is essential in this case. You must have confidence in the person. It is beneficial if this lawyer has colleagues in their firm who specialize in areas of law that might be relevant to you. For instance, your General Counsel might have excellent experience in defending claims of professional negligence but may lack experience in representing design professionals before disciplinary or licensing boards or in intellectual

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property rights issues. Do they have someone else in their firm who can assist you? Alternatively, do you trust their judgment in recommending an outside lawyer to represent you in such situations? You don't want a General Counsel who tries to learn at your expense.

While it's helpful to have someone you can call on with general questions, some issues require specialized skills. These include tax matters, contract negotiations, ownership transitions, mergers and acquisitions, licensing and registration matters, and risk management issues, among others. If your General Counsel does not have experience in a particular area, do they have a partner or associate in the firm who does? If not, do you trust your General Counsel to do the right thing and recommend a different lawyer to represent you on a particular issue? Perhaps the General Counsel can retain and manage another lawyer who specializes in that specific area of law. Issues to consider:

- Experience – How much experience does a lawyer have in the particular field? Not only in terms of time but also in terms of success? Are they a regular speaker at legal or design association functions? Do you receive design/construction or business law newsletters from them, evidencing their knowledge and experience?
- Good communicator – Not all lawyers are great communicators. Perhaps they write well but are terrible speakers. Are you comfortable with them yourself? Are you comfortable with them getting up in front of others to argue your case?
- Professionalism – Your lawyer(s) represent you. Their appearance, abilities, and actions will reflect on your firm. Think about this when choosing legal representation.
- Fees – Do not be afraid to raise the issue of fees. What does this lawyer charge per hour? Are they willing to negotiate? Are they willing to provide an estimate of the fee range they believe the issue may cost you?

Your PLAN agent is very knowledgeable about legal counsel they can recommend. It's helpful to have a good fit that lends itself to a good relationship. If you are involved locally, it will likely be easier for you to choose a lawyer. When out of town, however, it may be beneficial to retain a lawyer in that geographic area. Ask colleagues who they might recommend. Ask your accountant. Consult local professional associations, e.g., bar associations, design associations such as AIA, and ACEC—interview 2 or 3 lawyers. Assess experience. Evaluate communication skills. Choose one.

Regardless of which lawyer represents you, you should never sit back and let your lawyer take control. You must play an active role in the process. After all, it is your firm at risk, not the lawyer's firm. You have knowledge and perspectives that your lawyer will not have, and they can be invaluable. Never be afraid of asking questions. If you have a good relationship, your attorney should welcome your questions and input.