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Independent assessment a key to dealing with disaster

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The recent collapse of the building and death of a worker at Chester Village is a stark reminder that construction can be a dangerous business. While a disaster such as that one is rare, an owner or contractor faced with a building collapse should still have a plan of action to deal with the aftermath.

After the shock and awe have worn off, the first thing you as an owner or contractor must do is notify your insurance company in the fashion required by your policy. Failure to do so could lead to denial of a valid claim simply because of a lack of timely notice as

required under all policies. Given the ex-pense of litigation (including attorney's fees), potential liability, and lost revenue and profit, you cannot afford to omit or delay this simple step.

The second and equally important step is to find an independent third party expert to assess the situation for you while the dust is still floating and before the cleanup has begun. A collapse such as that at Chester Village can have multiple causes. It could be from the design of the project, the execution of that design, an errant subcontractor, faulty materials, bad soil readings, vandalism or various other causes. A third-party investigator that has no stake in the outcome of the project will be willing to let you know what the issues are that led to the collapse, regardless of whether that result is what you want to hear.

In order to allow a third party to make such an assessment, you must have all of the plans, engineer's drawings, engineer's reports, and specifications ready and easily accessible for examination. Without the plans and specifications as a starting place, it would be difficult to determine the baseline from which to begin the analysis.

Once the finger-pointing begins, information will be key in assisting you and your legal advisors with how to best deal with the myriad legal issues that will most certainly arise. These include insurance coverage issues, construction defect claims, faulty design, faulty engineering, faulty material or simple human error. Each and every party to the project,

from the insurance company to the drywall supplier, may seek to place blame elsewhere, in an effort to avoid liability and monetary loss.

An independent and unbiased assessment early in the process will help you and your attorney determine the best avenue to deal with the situation. Getting this assessment early, before county, state and insurance investigators have sifted through the rubble, will make the assessment more accurate. Additionally, the more information that you have early in the process, the better able you will be to assist these other investigators, whether from the insurance company or a county agency, in completing their investigation.

Well-organized information regarding the project creates a good record of events as they happen and evolve. Be sure that you keep consistent notes and stay apprised of all of the developments on the job site both prior to any disaster and after such a disaster. Being able to present documented information about the progress of the project prior to the collapse to any investigators or experts examining the collapse site can minimize speculation.

Having information relating to the project design and progress easily accessible and well organized will go a long way toward creating the right impression of competence in the minds of insurance and governmental investigators, thus increasing your credibility with those investigators. Remember that investigators are human and can form an impression based upon their own particular agendas, their experiences with you and your company, and their personal viewpoints. Creating an organized first impression will increase the likelihood that other parties may be under the microscope early in the investigation, thus giving you and your attorney valuable time to assess the situation and react appropriately.

If, after careful analysis of the data from your notes and the third party assessment described above, you, with the advice of an experienced attorney, conclude that you may be at fault in some way for the disaster, you need to review your options in a frank and self-aware manner. Avoid the all too human reaction of falling into denial. Dealing with the facts, good or bad, early on with your attorney in a confidential setting will put you in the mindset to deal better with any eventual financial, regulatory and human issues.

Once the third-party investigations begin, you should be in regular contact with your attorney so that he or she can assure that the investigators, whether from insurance companies or governmental agencies, are kept apprised of your actions regarding the investigation, and so he or she can assure that you are communicating these actions in a clear and appropriate manner so as to avoid misinterpretation.

In a situation of such magnitude, it may be a good strategy for your attorney to be the point of contact with investigators. However, if your company prefers to speak directly to investigators and media, assure that that your company has a single individual as the point of contact for all inquires. Having one spokesperson will keep the message is consistent and clear.

In summary, none of us want to be involved with a building collapse, much less one that involves fatalities. However, you should do your best to assure that you are prepared for such an event. Following the steps outlined above, from immediate notice to your insurance carrier to managing your contact with governmental and insurance investigators, will go a long way toward assuring that your business comes out of a horrible situation in the best possible shape.

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