

Risk Management Tips

A risk management publication for design professionals

November 2016

Observation vs. Inspection

Although it might seem like a matter of semantics, the use of these two different words, “observation” versus “inspection,” in professional service contracts can be significant. Consider the following:

1. An engineer's contract documents provide that he will make periodic visits to the site to observe the progress and quality of the executed work but he does not guarantee the performance of the Contractor. During a mediation the client provides copies of invoices from the engineer for “inspections” rather than “observations” and also notes that the time amount billed for these “inspections” includes several full day visits to the site. While the engineer asserted he was merely observing the work per the contract, the wording of the invoices and time spent at the site made his contention less effective.
2. A design professional exchanges routine e-mails during the course of a project which make reference to the design professional's “inspection” rather than “observation”. The client contends the design professional was not merely observing the contractor's work and cites the e-mails.

The above examples illustrate the importance of contract language and the consistent use of “observation” terminology throughout a project.

Wilkes Alexander of the Fisk Alexander law firm in Dallas, Texas also makes the following suggestion for site visits:

When visiting the site and taking pictures during your observation site visit, you may consider using what has been referred to as the “5 foot or 500 foot rule.” This means that when photographing the work in progress, if there is a particular issue that you want to document, move in close and photograph just that issue. If you want to take overall pictures of the site, put some distance between you and the lens. The reason is that casual pictures that may be taken from 5 feet to 50 feet away may show a condition that the design professional is not really focused on, but that might turn out to be a real issue later. For example, a recent tragic case involved a quadriplegic injury from a collapsed balcony in which an architectural intern visiting the site accidentally photographed the improper connection of the balcony to the wall system while taking a random picture from about 20 feet away. This condition was never recognized by the architect, nor reported to the owner or contractor. Afterwards, the architect was sued and that picture was discovered and a substantial verdict was rendered.



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Because there is an important difference between the definition and general understanding of “inspection” and “observation,” design firms should take care that their contract, communications, and behavior reflect the obligations to “observe” not “inspect” the contractor’s performance during construction and that the observation is for the limited purpose as defined in the professional service agreement. This will help manage client expectations.

For more information, please see our Advisory Bulletin, Observation vs Inspection on Travelers’ new online site for professional liability risk management coming in 2017.

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