



Ray Mellon and James Rowland Discuss Lack of Good Samaritan Laws in New York

The Call for Volunteers

In the days immediately following Hurricane Sandy, many New York architects were eager to volunteer their services to assist New Yorkers in need. At the specific request of the New York City Department of Buildings ("DOB"), architects voluntarily accompanied City personnel to inspect compromised homes in storm-ravaged areas of Brooklyn, Queens and Staten Island. These architects provided indispensable assistance, both to the effected homeowners and the DOB, in determining the extent of damage and the necessary remedial work required. Unfortunately, in the absence of a Good Samaritan Law or an indemnification agreement from the City, the architects who answered the DOB's call did so with the knowledge that they could face liability for rendering voluntary architectural services.

It is admirable that this risk of liability did not discourage many New York architects from helping their neighbors and their city begin the recovery process. However, it is disgraceful that these same design professionals face potential liability if they voluntarily assist their communities during such dire circumstances. And, Hurricane Sandy is not the first time New York design professional have

faced this problem. Many engineers were sued as a result of rendering professional services in the inspection and clean-up following the terrorist attack on September 11, 2001.

Despite the combined efforts of the State and local chapters of the AIA, as well as various engineering organizations, the New York Legislature has adamantly refused to pass Good Samaritan Legislation to protect architects and engineers who provide emergency volunteer services. (Several states, including California, Florida and Connecticut, already have Good Samaritan laws in place.) The devastating impact of Hurricane Sandy, coupled with the willingness of many architects to volunteer their services, should be the impetus to have the New York Legislature finally pass the Good Samaritan Statute. With passage, design professionals will finally be able to volunteer their services in times of need without the fear of years of litigation.

Additionally, a related issue has gained currency in the design community as a result of Hurricane Sandy. There is a misconception that professional liability policies will not provide coverage for architectural services rendered on a voluntary basis. A review of many professional liability policies reveals that coverage is dependent upon the rendering of professional services whether or not the design professional was compensated. In fact, only one smaller carrier had language in its policy that defined covered services as being provided "for a fee." While all policies reviewed included typical exclusions for claims arising out of fraudulent or intentionally wrongful, criminal or malicious acts, etc., none included a specific exclusion concerning voluntary services.

Accordingly, virtually all of the professional liability policies on the market today provide coverage for architects rendering voluntary architectural services. However, architects should confer with their insurance brokers to ensure that their policies do not contain definitions of professional services including the necessity of a "fee" or a specific exclusion pertaining to voluntary architectural services.

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