

Beazley Insight

Design Professionals Beware: California Supreme Court Refuses to Review *UDC v. CH2M Hill* Decision

by Colleen M. Palmer, Esq.

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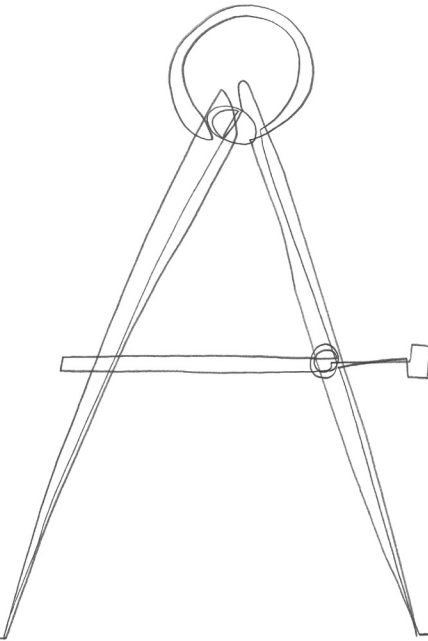
Our feature article in the April edition of the Beazley A&E Reporter discussed the January 2010 California Court of Appeals decision *UDC-Universal Development L.P. v. CH2M Hill*, 181 Cal.App.4th 10, 103 Cal.Rptr.3d 684 (2010). (Click [here](#) to read the article). **We just learned that the California Supreme Court has refused to review the decision, leaving it as “the law of the land” in California. Thus, a design professional agreeing to defend and indemnify its client is responsible for that defense regardless of whether it is found liable for the underlying claims.**

Beazley Recommendations:

Design professionals should **ensure that any indemnity provision is appropriately negligence-based** such that the design professional's obligation is limited to the extent the damages are caused by the design professional's negligence **and should delete any express duty to defend language in the provision.**

However, based on the *Crawford* and *CH2M Hill* decisions, they may need to go further. It may be insufficient to simply delete duty to defend language since the duty to defend may be implied in contractual indemnity provisions. Accordingly, design professionals must take additional precautions when their professional services agreements are governed by California law. In such cases, design professionals should not only delete express duty to defend language, but also **include an express disclaimer of the duty to defend** as follows:

“The parties expressly agree that this indemnity provision does not include, and in no event shall the



Design Professional be required to assume, any obligation or duty to defend any claims, causes of action, demands, or lawsuits in connection with or arising out of this Project or the services rendered by the Design Professional.”

In addition to the recommendations above, design professionals should strive to negotiate an Agreed Remedy provision that limits the design professional’s liability to its client to a sum certain for all damages, including those associated with indemnity obligations.

Indemnity provisions are often the most challenging provisions during contract negotiations. In light of these recent California decisions, design professionals must be particularly vigilant if the professional services agreement is governed by California law to ensure they do not assume responsibilities that are not covered by the design professional’s professional liability insurance policy.

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Beazley Group has been underwriting architects and engineers insurance to cover the domestic and international liabilities of U.S. firms for more than 20 years.



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