

DESIGN PROFESSIONAL UPDATE

Opinion of Bill Lockyer, Attorney General, No. 03-1102, 04 C.D.O.S. 7949

An insurer is required to report to the California Architects Board a settlement or arbitration award exceeding \$5,000 that involves a claim for damages alleging that an insured architect has engaged in wrongful conduct, even when there is no admission or determination of fault.

By Steven Sharafian and Jordan M. Wofford

Section 5588 of the Architects Practice Act (Bus. & Prof. Code §§ 5500-5610.7) requires that every insurer and every architect report to the California Architects Board any settlement or arbitration award of more than \$5,000 of a “claim or action for damages caused by the license holder’s fraud, deceit, negligence, incompetency, or recklessness.”

On August 26, 2004, the California Attorney General issued an opinion interpreting the language of section 5588, specifically addressing what determination of fault triggers the reporting requirement, what type of “settlement” and “claim” trigger the reporting requirement, and whether an insurer must make a report when payment is made on behalf of an architectural firm rather than on behalf of one of the firm’s individual license holders.

Alleged Wrongful Conduct

Section 5588 requires reporting of any settlement or arbitration award exceeding \$5,000 of a claim or action for damages “caused by” an architect’s fraud, deceit, or other wrongdoing. The California Attorney General concluded that the claimant’s allegation of wrongdoing is alone sufficient for purposes of triggering the reporting requirements of section 5588. No admission or determination of fault is required. To determine otherwise, would allow an

architect or insurer to avoid the reporting requirements simply by refusing to admit the wrongful conduct, or by the lack of finding of fault by an arbitrator. The Attorney General also reasoned that allowing a mere allegation of wrongdoing to trigger the reporting requirements promotes the Board’s ability to protect the public from unethical or incompetent architects. Section 5588 imposes only a reporting requirement. The Board is advised of the settlement or award and then determines whether its investigation of the matter would be appropriate. Of course, the architect may still establish that no wrongful conduct occurred and avoid disciplinary action.

“Settlement” of a “Claim”

The California Attorney General concluded that the “settlement” of a “claim” is any agreement resolving all or part of a demand for money which is based upon an insured architect’s alleged “fraud, deceit, negligence, incompetency, or recklessness.” Unless the appropriate designated category of wrongful conduct is alleged, the settlement or arbitration of such a claim would not trigger the reporting requirements.

Payment on Behalf of an Architectural Firm

An insurer is required to report to the Board with respect to the architect having responsible control when an insurer pays a settlement amount or arbitration award

based upon a claim that alleges fraud, deceit, negligence, incompetency, or recklessness with respect to the architectural services performed.

Again, section 5588 imposes only a reporting requirement. If the Board later determines to investigate a matter, and if the responsible architect disagrees with the firm's or insurer's settlement of the claim, the architect may explain to the Board why he or she believes that the claim lacked merit.

Comment: Although opinions of the state Attorney General are not binding, they are entitled to considerable weight. We will continue to monitor the issue and provide further updates.