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Why is Marketing Hard?

By Leslie Kusek, Marketing Consultant

Marketing demands focus and consistency. In the hectic, project-driven world that we operate in, prioritizing dedicated time to a long term initiative is difficult.

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Be a Wise Health Care Consumer

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The way we purchase health care is unlike most other purchases we make. Many Americans will pour through a newspaper for a coupon that saves them fifty cents at the

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Keep Track of Your Stuff (just in case)

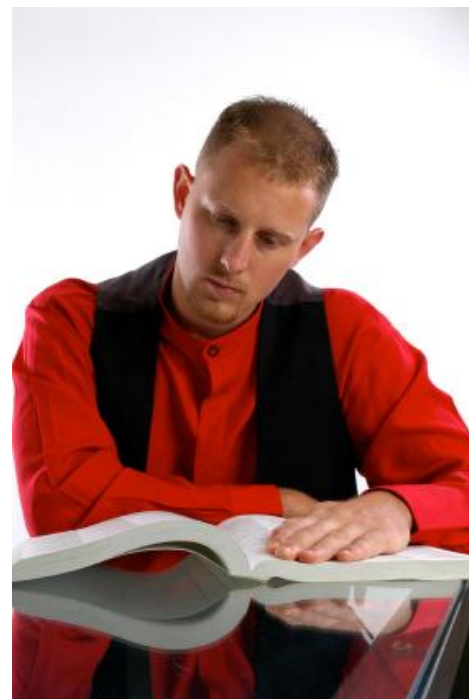
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It's a fact of life: We all need to make an effort to keep track of the things we accumulate throughout our busy lives. We can't seem to

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Avoiding Liabilities When Specifying Materials

The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with a qualified professional who can provide guidance that considers your own unique circumstances.



If you are like most architects and engineers, you chose your profession because you like to design. Indeed you probably get your greatest pleasure from designing a unique building, roadway, or electrical or mechanical system. This is where designers feel most comfortable and where they can apply what they learned while earning their degrees.

As a matter of course, however, designers find there is a parallel activity that must be performed in order to turn designs into reality. You are often called upon to specify the materials to be used to execute your designs. This part of your responsibilities may be learned largely on the job. Few design courses focus on this less glamorous but equally important skill.

In some cases, material specifications are general in nature, recommending a particular type of material or technology. In other cases you may call for a specific brand name or product model. Regardless, each time you specify a particular material, you are accepting a degree of liability. You are accepting responsibility that the material will perform its intended function in an acceptable manner and that it will not be

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harmful to the health or welfare of those who work on or occupy the building, highway, etc.

A Clear, Present and Long-Term Danger

The liability related to specifying materials is both extensive and long term. Often, it is not until years have passed that a material fails or proves harmful, by which time damages and the cost of a remedy can be astronomical. What's more, it's a professional liability that can put a designer in a precarious position even if he or she followed the prevailing standard of care when specifying a material.

Consider that some materials that were widely used in the construction industry just a few decades ago – asbestos, PCB, fiberglass and lead-based paints, for example – were eventually determined to be hazardous. Like everyone else, architects and engineers were largely unaware of any potential for serious risk and commonly specified these materials for their projects.

Who knows which of today's new and untested synthetic products might eventually be found to be harmful to health – or simply fail to live up to expectations? Green design, for example, is a relatively new concept that calls upon new materials, technologies and systems to deliver long term cost-savings while promoting a healthy environment. Who is to say whether each new green technology will truly deliver on its promise?

Once a material is ultimately deemed ineffective or hazardous, clients and their team of lawyers will often try to hold design firms responsible for any financial damages or injuries that result. Never mind that these materials were widely considered safe, effective and the standard of the industry at the time they were used. These claims seem to imply that designers need to be able to predict the future. Such

claims discourage architects and engineers from specifying new products in their search for more effective and economical materials.

When specifying materials, you cannot simply rely upon word-of-mouth recommendations or manufacturer claims of quality and effectiveness. The prevailing standard of care calls for you to have personal experience or knowledge that a recommended material will perform its intended function successfully under prevailing conditions. While design firms are not expected to conduct their own physical tests of a new material or system, they are required to keep up to date of the physical properties of the materials they specify and properly apply them in a generally accepted manner.

Court cases demonstrate how relying on second-hand information can prove expensive. In one case, an architect was hired by a school district for a renovation project. Part of the project called for the architect to replace windows with insulation panels to help improve the school's energy efficiency. The architect specified a particular brand of insulation panel and the project was completed. Within two years, the panels began to warp, bow and deteriorate, allowing water and cold air to penetrate the building, resulting in \$300,000 in damages.

In a 1998 appellate court ruling, the architect was found liable for specifying the unproven type of insulation panel. During the trial, the plaintiff presented the testimony of a licensed engineer who

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Substitutions for Specified Materials

You put your reputation on the line every time you specify materials to be used in executing your design. But what if the contractor, a subcontractor or other party to the construction suggests a substitution for your original recommendation?

Here are some tips for minimizing and, when necessary, handling requests for substitutions for your specified materials:

- Develop and regularly update specifications that clearly define performance characteristics and other project requirements.
- Use a "Substitute Request Form" that must accompany any proposed substitution. Set forth the criteria that will be used in reviewing the acceptability of a substitution.
- Include in your contract steps that must be taken to request substitutions. Spell out the approval process. Also specify that you have the right to back charge the contractor for services related to the review of proposed substitutions.
- Be responsive to any substitution requests received. Should a dispute arise, courts do not look kindly upon designers who fail to respond to or arbitrarily reject reasonable requests for substitutions.
- Address the issues of specifications and substitutions in a pre-construction review of the construction documents. Include the client and all design professionals, contractors and major subcontractors. This will help identify those specified materials that may cause concerns among one or more parties. Calls for substitutions can then be addressed before construction begins.
- Do not allow shop drawings to become quasi-substitution forms. Such attempted uses of shop drawings should be rejected and returned as not in compliance with the contract.

Marketing Systems

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Furthermore, taking the time to plan and develop focus for long term marketing is even harder.

Because successful marketing programs require these essential ingredients, we often find ourselves in a reactive mode rather than a proactive mode to keep the pipeline filled.

How do you break this cycle?

- Know where you want to grow.
- Develop annual, monthly and weekly activities to support your growth plan.
- Track your activities so you can recall the history of your efforts and measure results.

Tips:

All markets cycle. As part of your long term plan, balance the work your firm does for various client sectors to help even out revenue cycles .

Marketing a long term client during a down cycle, when there is no pressure of a pending project, is an excellent time to build relationships for future projects.

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stated that the panels were inappropriate because of their “dimensional instability” when exposed to the extreme weather conditions of upstate New York. The expert witness also testified that the architect deviated from the applicable standard of care by relying almost exclusively on the manufacturer’s product literature.

Affirming an earlier court finding, the court of appeals found that the panels were indeed defective and the architect was held liable for failing to meet the prevailing standard of care. The court noted that the architect did not have personal experience with the product, nor had it conducted or requested laboratory tests to prove the new product’s effectiveness. (*Brushton-Miara School District v. Fred H. Thomas Associates*, 692 N.Y.S. 2d 551.)

Avoiding Liabilities

Fortunately, there are measures you can take to help avoid material specification claims. First, whenever possible, specify only those materials and technologies you know will do the job, are time-tested and proven in a particular application. Ask yourself: what would other reasonable design professionals do in similar circumstances? That sets the basis for the current standard of care. Also ask yourself: how would my decision to specify the material play out in a deposition or on the witness stand? Would a judge or jury consider my actions reasonable?

If you decide to specify a new, unproven material, or one with which you are unfamiliar, do your research. Your goal is to be able to demonstrate that you made a reasonable, professional effort to confirm the suitability and reliability of the material. At a minimum:

- Collect brochures, product specification sheets, test results, warranties and guarantees from the manufacturer and keep them for your records.
- Read all application instructions and label warnings carefully.
- Look for collaborating evidence to support the manufacturer’s claims, such as test results of an independent laboratory.

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Health Care Consumer

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local supermarket. However, when it comes to health care—a far more complex and expensive service—we rarely ask questions or consider all the options that could save us time and money.

The following shares ways that you can become a better-informed health care consumer, and in turn save money for you and your employer.

Health Care Costs

Health care costs, and consequently health insurance premiums, are rising at an alarming rate. While this is not a new phenomenon, the extremity of recent increases is cause for concern for both employers and employees.

Making conscientious health care decisions is vital to keeping your employer’s health care costs down, as well as the costs that are passed on to you. The more knowledge you have about your personal health, and the treatments you are receiving, the more you can control your out-of-pocket costs as well.

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... Specifying Materials

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- Document your conversations with the suppliers regarding the product and its application in the specific circumstances, including any reservations you might have raised.
- Require the manufacturers, suppliers and installers to give assurances that the product is suitable for the intended application.
- Go over your findings with your client and seek agreement that your choice of materials is prudent.

Don't hesitate to ask manufacturers' field representatives to be present during the installation to ensure that their material is installed properly and according to manufacturers' specifications. If feasible, ask the field rep to test the product under appropriate conditions.

Conclusion

Contractual protection is a recommended safeguard for shielding yourself from liability for specifying materials that later prove ineffective or dangerous. The best protection, however, is taking every reasonable step possible to make sure the products you specify will perform their intended function in a safe and effective manner. There is no substitute for experience, research and common sense when specifying materials.

A final note of caution: If you have any business association or financial interest with a supplier that could influence your judgment in specifying a material, it is always best to reveal that association or interest to your client. Otherwise, if a claim occurs, a conflict of interest can be alleged with the client claiming that you specified a material for your own interest, rather than in the interest of the client.

Can We Be of Assistance?

We may be able to help you by providing referrals to consultants, and by providing guidance relative to insurance issues, and even to certain preventives, from construction observation through the development and application of sound human resources management policies and procedures. Please call on us for assistance. We're a member of the Professional Liability Agents Network (PLAN). We're here to help.

Health Care Consumer

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Ask Your Doctor Questions

Amazingly, many patients do not ask their doctor basic questions. How much will my treatment cost? Can I be treated another way that is equally effective but less costly? What are the risks? What are the side effects?

Make Careful Decisions About Prescription Drugs

Many people incorrectly think that there is a difference between generic and brand name prescription drugs. The truth is, a generic drug is the same as a brand name drug, with few exceptions.

Seek Outpatient Care

Outpatient care is often a much better alternative to inpatient care, for a variety of reasons. It can provide the same level of quality treatment as inpatient care, and is less costly.

If you need to have surgery, ask your doctor if laboratory tests can be done in a clinic rather than a hospital. Moreover, in many cases, the surgery itself can be performed in a clinic or outpatient surgical facility, often resulting in a better outcome for you.



Keep Track of Your Stuff



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leave the house without our cell phone, PDA or laptop, but yet how many of us take the time to complete a personal property inventory to track all the “stuff” we cannot live without?

Why is it important to keep track of all of our “stuff”? Failing to complete an up-to-date property inventory could mean unnecessary stress in the event you suffer a loss. After the emotional strain of a catastrophic fire, burglary or other serious loss, it is often difficult to easily recall a complete list of personal property... all that “stuff” that we just cannot live without.

The good news is that given today’s technology, keeping track of your personal property is faster and easier than ever. Here are a few suggestions to create a comprehensive personal property inventory:

- Complete an Auto-Owners personal property inventory form, available from your agency.
- Photograph each room in your home—and don’t forget to include those closets and drawers. Remember your garage, basement and storage shed.
- Video record the rooms of your home. Talk during your video tour and mention the price, date and location where items were purchased. It’s virtually impossible to keep receipts for all of your purchases.

The more information you have at the time of a loss, the easier it is to replace your belongings. Which—ever method you choose, it is important to take the time to create a comprehensive inventory of your possessions, and then store this information in a safe place. It’s a good idea to store a second copy of this list either in a fire-proof safe, with another family member or even in a safe-deposit box. You never know when you may have to recall “all your stuff.”

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