Refusing to 'Play the Game' Pays Off for Lax & Stevens Clients

For contractors, few things are as frustrating as lawsuits that allege defects in workmanship—particularly on jobs that were completed years earlier. There is a definite pattern in "construction defect" cases. This unnecessarily complex process is referred to as CDM: complaint/discovery/mediation. The owner's complaint names everyone who did work on the project as defendants. In doing this, the owner's attorney wants to bring to the eventual mediation as many parties—and their insurance policies—as possible. This mediation happens only after a year or so of intense and expensive discovery activity, then all the defendants are expected to throw money at the plaintiff/owner.

But Lax & Stevens doesn't play the CDM game. We challenge the notion that this is the only way to handle such cases, and where the facts will support it, we aggressively and proactively represent our clients.

We recently represented a general contractor being sued by a semiconductor manufacturer years after the completion of a plant expansion project. We began by meeting with our client's employees who were the most knowledgeable about the project. Then we focused discovery, on the exact details of owner's allegations and our potential contractual defenses.

By the time the inevitable mediation came along, we knew that many of our contractual defenses were valid, and that the plaintiff/owner had substantially overstated its losses. It was clear to us that there was no basis for liability on the part of our client.

So we, indeed, attended the mediation—but not to throw money at the plaintiff/owner. Early on, we announced our position that the general contractor had no liability, that we would not contribute to any settlement and that we were entitled to be reimbursed for all defense costs by the subcontractor defendants, pursuant to the indemnity provisions in the subcontracts.

Then to make clear our refusal to play the CDM game, we left the mediation. Ultimately, the subcontractors and others did contribute to a settlement. Because our client was not willing to budge from our original position regarding reimbursement of defense costs by the subcontractors, they could not receive a court order protecting them from indemnity claims. As a result, the plaintiff/owner dismissed the suit against our client so that the settlement with the other parties could be finalized.

But then things got even better for our client. Because there was an unconditional dismissal for our client, we submitted a bill for the costs incurred during litigation, and the court ordered the plaintiff/owner to pay our client's costs.