

## I've Been Sued! Now What?

By Jeffrey Cavignac, CPCU, RPLU, ARM, CRIS, MLIS

It's Friday afternoon, it's been a good week, but then your receptionist tentatively drops a legal-looking document in your in-box. Nervously, you pick it up. You've never been sued...until now!

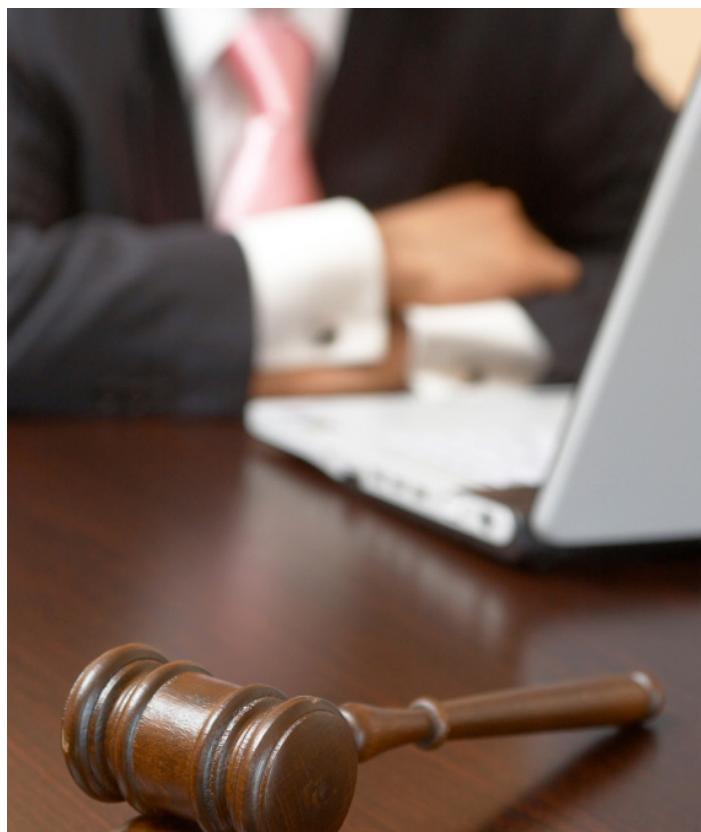
For most contractors of any size, litigation is an unfortunate fact of life. Dealing with our litigation system can be frustrating, expensive, time-consuming and emotionally draining.

The key to effectively dealing with litigation is to understand the process, know what you should and should not do and make certain you are aligned with the right attorney, insurance broker and insurance company.

### How Does the Process Work?

**Summons and Complaint** - The litigation process begins when the plaintiff, or his/her attorney, files a **complaint** (lawsuit) with the court. In the complaint, the plaintiff states (in more or less detail) causes of action which set forth the allegations against the defendant(s), the injury or damage suffered, and the amount of monetary damages or other relief sought. The plaintiff then serves the complaint on the defendant(s) along with a summons. A **summons** is a legal notice to the defendant that a lawsuit has been filed and that a judgment will be entered against the defendant if he/she fails to answer the complaint within the statutory time limit. For example, in the California State court, in most cases, the defendant has 30 days in which to file an answer to the complaint.

An **answer** is a written pleading filed by the defendant(s) and typically includes a general denial of the facts alleged in the complaint and an assertion of the defendant's potential legal defense. The defendant(s) may also file a **cross-complaint**, which is a claim against the other party or a third party who may have some responsibility in the matter. Failure to file an answer with the court could result in a **default judgment** whereby the party loses the right to a defense and may also be liable for the plaintiff's claimed damages and expenses.



If you are served with a summons and complaint, you must immediately notify your insurance agent or insurance company. Failure to promptly notify the insurance carrier of a lawsuit may result in the forfeiture of an insured's rights under the policy. Lawsuits

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often contain multiple causes of action, and not all of them may be covered under the insurance policy. Consequently, there are some situations where there is a duty to indemnify an insured for certain claims or causes of action, but not others. In those situations, among others, the insurance company will issue a **reservation of rights letter** stating that they are reserving their rights to deny coverage in the future if they learn these claims are not covered. Note that, generally speaking, if one or more of the claims or causes of action in the lawsuit are covered, the insurer is obligated to defend the entire case.

**Discovery** - During the discovery phase of the litigation process, each party has the opportunity to gather information regarding the opposing party's case. Some of the major discovery tools in a civil case are:

**Interrogatories** - Interrogatories are written questions served on a party that must be answered within a specified time frame. Your attorney can assist you in completing the responses.

**Deposition** - A deposition is a statement made under oath by a party or witness in response to oral questions. The deposition proceeding is transcribed by a court reporter. Your defense counsel will assist you prior to and during the deposition.

**Request for Production and Inspection** - One party in the litigation asks another party to produce documents and records (including electronic files) or to allow for the inspection of relevant evidence, like a broken pipe or a home that was alleged to be defectively constructed.

**Request for Admission** - One party asks the other party to admit to a fact or to verify the authenticity (i.e., genuineness) of an evidentiary document.

**Independent Medical Exam (IME)** - A physical or psychological examination of the plaintiff by a doctor hired by the defense.

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## Risk Management Seminar Series



### Risk Management Boot Camp: The Triangulation of Safety, Claims and Human Resources

**Note:** This training lasts all day. You may attend certain sessions, or stay for the entire day.

Friday, May 9, 2014

7:30am Registration, 8:00am - 4:30pm Program

### Sexual Harassment Prevention Training

Friday, June 6, 2014

7:30am Registration, 8:00am - 10:00am Program

### Victims, Villains & Heroes - Managing Workplace Drama!

Friday, June 13, 2014

7:30am Registration, 8:00am - 10:00am Program

### Reserve Early, Seating is Limited!

To register, click on the 'register now' button in the announcement email, or contact Bethany Mongold at [mongold@cavignac.com](mailto:mongold@cavignac.com) or call 619-744-0540.

*NOTE: Due to the popularity of our seminars and limited space available, we regret we cannot provide refunds or credits with less than 72 hours advance notice of cancellation.*

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**Trial** - If the case cannot be resolved through negotiation, it will proceed to trial. Most cases are tried in front of a judge and jury. However, the parties can agree to a bench trial, which is a trial in front of a judge, without a jury. Each side has an opportunity to make an opening statement to summarize what they will attempt to establish during the trial. The plaintiff puts on her/his case first by calling witnesses and presenting evidence to support the claims against the defendant(s). Counsel for the defendant has an opportunity to cross-examine the witness after the plaintiff's attorney has completed his/her questioning.

After the plaintiff rests his/her case, the counsel for the defendant has the opportunity to present a case on behalf of the defendant to refute the plaintiff's claims. The plaintiff can cross-examine the defense witnesses. After the defense has rested its case, the plaintiff has the opportunity to present rebuttal evidence before each side makes its closing argument. Most litigated matters are settled prior to the time a judge or jury renders a verdict (some estimate that as many as 19 out of 20 are resolved prior to final adjudication). Cases are settled in part because of the high costs of litigating cases, and because neither side wants to take the risk of losing. Both

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## ***What are the first things you should do if you are sued?***

- Call your broker or notify your insurance company as soon as possible;
- Contact your corporate attorney and seek his/her advice;
- Identify who was served with the lawsuit, and the date(s) of service;
- Do not give statements or discuss the case with anyone other than your insurance agent, a representative of your insurance company, or your attorney;
- If necessary, contribute to a settlement in proportion to what is and is not covered. Some lines of coverage like Directors & Officers liability may require this;
- Secure all evidence, records, and documents that may be needed for the defense of your case;
- Identify witnesses and employees who have knowledge of the incident; and
- Provide full cooperation to your insurance company's claims staff and to your defense counsel.

## ***Internal Communications***

Discussions with your attorney relative to a lawsuit are confidential. All other communications are not! In other words, any communications, written or oral, that do not involve your lawyer can be obtained by the other side during the litigation. Many people will meet internally after a claim is made to discuss the matter. Often things are said and written in those meetings in the heat of the moment; that stuff is all fair game during litigation. Likewise, any emails with staff, partners and the like are also discoverable, and arguably so too are communications with insurance brokers.

You need to stick to the facts and avoid speculation. You also need to make certain you understand the guidance provided to you by your attorney related to the matter and specifically to internal communications.

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parties agree to a resolution which can include a dismissal of the lawsuit in exchange for a payment of money, usually in an amount that is more than what the defendant wanted to pay, and generally less than what the plaintiff believes the case to be worth. In most settlements, a written agreement sets forth the terms of the settlement, and a specific portion of the settlement says that neither side admits that the other side had a good case. An insurance company, within its obligations under the law and its policy, generally has complete control over whether or not a case should be settled. However, the insured's opinion is also important in making this decision.

If a matter doesn't settle, it will go to the judge or jury to render a decision. After the closing arguments, the judge instructs the jury on the relevant law, its applicability, and the plaintiff's burden of proof. The jury then deliberates the case until a verdict is reached, or until it becomes clear that they will not be able to reach a verdict. In California, at least three-fourths of the jury has to agree upon the verdict in a civil case. If it is a bench trial, the judge renders the decision. After a judgment is entered, the losing side may decide to appeal the trial court ruling. Your attorney can discuss appeal issues with you if you are faced with that situation.

**Observations** - Someone once joked that "every American is entitled to their decade in court!" While this may be a stretch, it is not uncommon for litigation to drag on for years. It is estimated that a case that goes through trial will cost the principal dealing with the problem 125 hours of time at a minimum! This doesn't include the time spent by other employees who have to compile the necessary information, be involved with interrogatories and depositions and deal with other legal-related matters. Because litigation is so expensive, time consuming and frustrating, it is almost always in your best interest to try and resolve the matter prior to litigation. If face-to-face negotiation fails, you should consider some type or types of Alternative Dispute Resolution (ADR).

The most common form of ADR is mediation, although there are various forms mediation can take. Mediation is a process in which the parties get together with a neutral third party (usually a retired or active judge) to discuss and hopefully resolve the claim. The key difference between mediation and either arbitration or litigation (collectively known as "adjudication") is that mediation is voluntary and the mediator acts as a facilitator and does not render a judgment. In both arbitration and litigation, a third party (arbitrator, judge or jury) will decide the case for you. Mediation has proven to be quicker and less expensive than either arbitration or litigation. There is one more critical benefit to mediation: while ad-



judication is almost certain to destroy relationships, relationships can survive the mediation process. Mediation is successful over 80% of the time. If it is not successful, the parties can still resort to either arbitration or litigation.

**Final Comments** - The importance of communication in resolving business disputes cannot be underestimated. Litigation is a horribly time-consuming, expensive, emotionally draining and frustrating process. There certainly are situations when two parties simply won't be able to resolve their differences, and some type of adjudication is necessary; however, it is strongly recommended that you make every possible effort to resolve your business conflicts amongst the parties involved. Arbitration or litigation should be your last resort. ■

# Live Well, Work Well

April 2014



## April Is Awareness Month for Autism Spectrum Disorder

April is designated as National Autism Awareness Month, and April 2 is World Autism Awareness Day. These observances are intended to raise awareness about autism spectrum disorders (ASDs). According to the U.S. Centers for Disease Control and Prevention (CDC), 1 in 88 children in the United States have ASD, and the diagnosis is far more common among boys than girls. Despite autism being so common, many people do not know exactly what autism is.

According to the CDC, ASDs are a group of developmental disabilities that cause social, communication and behavioral challenges. "Spectrum" refers to the wide range of symptoms and levels of impairment that those

diagnosed with ASDs can have. The National Institute of Mental Health lists five autistic spectrum disorders: autistic disorder (classic autism), Asperger's disorder (Asperger syndrome), pervasive developmental disorder not otherwise specified (PDD-NOS), Rett's disorder (Rett syndrome) and childhood disintegrative disorder (CDD).

Research has yet to pinpoint the cause of ASDs, but studies suggest that both genes and environment are likely contributing factors.

**Genes.** Although family history does not seem to affect or predict an ASD diagnosis, once one sibling is diagnosed with an ASD, other siblings have 35 times the usual risk of

also developing an ASD.

**Environment.** The environment includes anything surrounding your body that can affect your health, including water, air, food, medications and other materials you may come in contact with. Environmental influences on ASDs are still being researched, but various factors may each play a small role in ASD development.

There has been some concern that childhood vaccines cause ASDs. Although there may be other unknown causes of ASDs, the CDC states that there is no causal relationship between childhood vaccines and ASDs. Several regulatory bodies, including the CDC, continue to monitor vaccines for safety and effectiveness.

Early detection and diagnosis of an ASD is essential for providing the most effective treatment. Make sure an ASD screening is part of your child's wellness checkups.

**Whether you choose an app, online calculator or automatic transfer, budgeting doesn't have to be painful.**

## Budget Tools: Make It Easy

If you don't enjoy crunching numbers and sticking to budgets, there are a variety of budgeting tools available that can help make budgeting—and improving financial health—easy, and maybe even fun.

**Apps** – Easy and convenient, an app on your mobile device can help you track your budgeting and savings goals. Many different apps are available—for example, Mint ([www.mint.com](http://www.mint.com)) tracks expenses according to category, and Check (<https://check.me>) helps you meet bills' due dates.

**Online calculators** – Basic online budget calculators can help you see where your money goes. You can spend a few minutes entering numbers into budget categories to give yourself a good overview of your finances. Simply search online for "budget calculator" to find a calculator that works for you.

**Automatic transfers** – The easiest way to increase your savings is to make it automatic and painless. Simply set up an automatic deposit to a savings account and then check in from time to time to see how a little bit each month can add up to great savings.

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# Rescue Old Produce

The bananas on the counter have turned brown, the apples are no longer crisp and the tomatoes have definitely seen better days. You might be tempted to just throw old, shriveled fruits and vegetables in the trash or compost bin, but pause before you do. Even when they're past their prime, many fruits and veggies can still be put to nutritious use. In some cases, older fruit and veggies might even be better. For these delicious dishes, you won't need any tools that you don't already have sitting in your kitchen.

**Applesauce** – Applesauce is made by cooking chopped apples in a small amount of water on the stovetop. Simmer and mash apples with a potato masher until they reach desired chunkiness. You can add strawberries, pears or other fruits for different flavors, as well as cinnamon or a splash of vanilla.

**Breads** – Bananas, apples and zucchini are just a few of the fruits and vegetables that can be incorporated into bread or cake recipes. Grate or mash and add to a more traditional recipe, or search for a recipe that is built around a particular fruit. Shredded apple and zucchini are also great pancake additions.

**Pies** – Traditionally, pies can be made with any type of filling inside a pastry. Use a pre-made or homemade crust and mix together a fruit filling with those soft apples, berries or other fruits. Check out a cookbook for more ideas.

**Smoothies** – For a cold, nutritious treat, blend a variety of fruits and vegetables into smithereens. Any type of fruit or vegetable can be thrown into the blender and churned into a cold treat. Alter the ratio of different fruits, and try adding milk, yogurt, ice, vanilla or honey to change up the flavors.



## Baked Trout

This flavorful dish takes advantage of seasonal tomatoes and healthy fish. Whether you buy fillets at the store or reel 'em in on a line, here's a great recipe to celebrate spring.

- 2 lbs. trout fillets (or other fish, cut into six pieces)
- 3 tbsp. lime juice (or about 2 limes)
- 1 tomato (medium, chopped)
- 1/2 onion (medium, chopped)
- 3 tbsp. cilantro (chopped)
- 1/2 tsp. olive oil
- 1/4 tsp. black pepper
- 1/4 tsp. salt
- 1/4 tsp. red pepper (optional)

Preheat oven to 350° F. Rinse fish and pat dry. Place in baking dish. In a separate dish, mix remaining ingredients together and pour over fish. Bake for 15 to 20 minutes or until fork-tender.

Yield: 6 servings. Each serving provides 300 calories, 13g of fat, 110mg of cholesterol, 200mg of sodium and 1g of fiber.

Source: USDA

## National Park Week



Are you bored with getting your exercise by strolling around the neighborhood or running at the local gym? The U.S. National Park Services has preserved vast pieces of American land that are the perfect places to get outside and be active, whether it's the majestic Yellowstone National Park in the West or the lesser-known Big Bend National Park in Texas with its hundreds of bird species.

The opening weekend of National Park Week is April 19-20, and both days are get-in-free days. Visit [www.nps.gov/findapark/index.htm](http://www.nps.gov/findapark/index.htm) to find a park near you or to plan a trip. With great scenery and many options, you can choose a park where you can enjoy a quiet stroll, a vigorous hike, a bike ride, or a horse ride. You can also find spots to go rock climbing and swimming.

With more than 400 spots around the nation, the national parks are some of the best pieces of American nature and history. What better way to get your family outside and moving in the spring air than by visiting a national park?

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# Live Well, Work Well

# SPOTLIGHT ON



Cavignac & Associates is proud to support local and non-profit civic organizations, including Fresh Start Surgical Gifts.



## Mission & History

Fresh Start Surgical Gifts transforms the lives of children throughout the world. It all started in San Diego with a plastic surgeon who had a desire to change lives; now they treat over 500 patients a year. Their work consists of:

## Surgery Weekends

Surgery Weekends provide free reconstructive surgery to children suffering from a range of deformities.

## Dental Clinics

Dental care for children is offered through their Dental Clinics. They treat over 250 children annually

and also provide education on proper dental hygiene. Fresh Start's committed volunteer dental team provides all of the services for the clinics pro bono.

## Support Services

Fresh Start Surgical Gifts offers a range of support services for its patients including speech therapy, laser clinics, and no cost transportation to the clinic.

## Volunteer Medical Teams

Fresh Start's Volunteer Medical Team consists of highly talented and devoted plastic surgeons, nurses, anesthesiologists, as well as many other medical professionals.

*For more information about Fresh Start Surgical Gifts, visit: [www.freshstart.org](http://www.freshstart.org)*