

Mitigating Claims from COVID-19 Affected Services



In response to recent inquiries, following is our initial advice to Berkley DP insureds whose access to construction sites is restricted or other services are disrupted due to the coronavirus pandemic.

Communicate to your clients verbally and follow up immediately in writing (email and letter, return-receipt requested or other affirmative confirmation) with a message similar to the sample found on the following page but specific to the status of and impact on your firm's services and response plan being implemented for each project.

We further recommend that design firms that have established crisis management and/or disaster recovery plans should implement those plans including thorough and consistent communication with their staff, consultants, and clients.

Special Notice:

The current coronavirus pandemic is and will undoubtedly continue to impact the design and construction industry. Berkley DP is committed to providing well-sourced risk management advice that is useful to you and your firm during this unprecedented time. We understand that each firm—and each project—is unique and may face different issues; therefore, a “one size fits all” approach isn’t practical.

Berkley DP will strive to provide relevant content that assists you in mitigating your risk through this event. However, it is critical that you understand Berkley DP is offering general advice and recommendations for its broad base of design professional customers, the advice and recommendations do not and should not be construed as legal advice, and your firm should independently assess the advice and recommendations based upon its unique facts and circumstances and consult with its own legal counsel before implementing any actions referenced in the Berkley DP risk management material.

LETTER TEMPLATE FOR COVID-19 AFFECTED SERVICES

DESIGN FIRM IDENTIFICATION

The content of this document is for general informational purposes only. Please consult your attorney for use in any specific circumstance and for compliance with laws and regulations in effect in the location of your practice and the project.

To: [CLIENT CONTACT]

Re: [PROJECT NAME]

Due to the national emergency caused by and in response to the coronavirus situation, the guidelines, restrictions, and directives issued by the CDC, state and local public health officials and governmental agencies, and our company's policies issued during this crisis (collectively "Directives"), we are hereby providing notice that our firm's ability to perform certain contractual duties regarding the project are or may be restricted. These service restrictions are caused by circumstances beyond the control of our firm.

Services affected by these circumstances include the following:

- 1. Construction Administration Phase services.** The ability of our firm to perform certain Construction Administration Phase services including site observations and review of construction progress payment applications at [PROJECT NAME] project, are limited or even prevented due to travel restrictions, recommendations regarding social distancing, and other Directives. Some states and local governmental authorities have mandated shut down of construction projects in their Directives.
- 2. Design Phase services.** Ability of our firm to complete documents for the [PHASE DESCRIPTOR] phase of the [PROJECT NAME] project per the date previously established in the project schedule dated [DATE] due to limitations on access to our office and related Directives.

We are pursuing the following options to mitigate the impact of the above as follows:

- 1. Construction Administration Phase services.**
 - a. We are in the process of seeking and establishing a consulting relationship with one or more (architects) (engineers) who are located near the [PROJECT NAME] project site that would have ready access to the project site, where the project site remains accessible. Our goal is that these consultants will be able to fulfill our firm's contractual duties to perform specific construction administration phase services such as site observations. Per the terms of our professional services agreement with you, we will seek your approval for the use of these consultants to fulfill certain portions of our contractual obligations in the CA phase.
 - b. Consultants retained by our firm to perform these contractual obligations will utilize photo and/or video technology to enhance communication between the consultants and our firm's project team.
 - c. For review and processing of construction payment applications, we recommend that you as the owner retain an escrow agent or other qualified individual of the bank or other involved entity providing financing for the project to supplement the limited services our firm will be able to provide in the review of construction payment applications during the period of time that our firm's access to the construction site is limited.
 - d. Our firm's ability to respond to and process other construction administration phase submittals may be restricted or delayed.

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2. Design Phase services.

- a. Our firm is implementing a response plan consistent with Directives and related recommendations including work from home (WFH) and other remote work strategies.
- b. Our firm's ability to perform internal QA/QC procedures including coordination and review of consultant services and documents may be delayed during implementation of our firm's response plan.
- c. We will advise you of the anticipated impact to our firm's components of the design and project schedule due to the above service disruptions and seek your consultation, advice, and agreement for revisions to the design and project schedule.

Sincerely,

[Project Principal]

About Berkley Design Professional

Berkley Design Professional (Berkley DP) was created in 2013, by a team of insurance professionals with a passion for the design industry and deep roots in Architects and Engineers Professional Liability underwriting, risk management and claims management. The genesis of Berkley DP was the combination of our team's commitment to bring fresh ideas to the products and services design professionals need together with the resources of W. R. Berkley Corporation. Berkley DP's motto is: Better By Design®. By this we mean that our policyholders can become better businesses by leveraging our innovative risk management solutions, fair and experienced claims services and comprehensive architects and engineers professional liability coverage.

BDP Risk® is Berkley DP's state-of-the-art Learning Management System (LMS), which provides 24/7 online access to relevant risk and practice management content, streamlined online learning, and education activity tracking and reporting. BDP Risk® won a coveted Brandon Hall Group bronze award for "Best Advance in Custom Content," which recognizes self-paced, custom-designed online courses related to workplace learning. This award reflects Berkley DP's ongoing successful efforts to help design professionals improve their practices, enhance business performance, earn risk management education premium credits, and mitigate professional liability claims.



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Information provided by Berkley Design Professional is for general interest and risk management purposes only and should not be construed as legal advice nor confirmation of insurance coverage. As laws regarding the use and enforceability of the information contained herein will vary depending upon jurisdiction, the user of the information should consult with an attorney experienced in the laws and regulations of the appropriate jurisdiction for the full legal implications of the information.

Practice management recommendations should be carefully reviewed and adapted for the particular project requirements, firm standards and protocols established by the design professional.

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