

BASS

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Flood Recovery Alert

May 12, 2010

We are humbled by the response of people throughout Middle Tennessee to the devastating floods that have impacted our region. The floods have caused much damage to many businesses in Middle Tennessee, as well as damage to many homes and families. If your business has been impacted, following are some of the legal issues that may affect your efforts to recover and rebuild as you go about the business of getting back to business.

Insurance Coverage: Prompt notification is important, but how that notification is worded is equally important. Claims can be lost if the wording of the claim does not properly invoke coverage or inadvertently triggers policy exclusions.

FEMA: The potential for available aid from FEMA, and/or other Federal, State and local agencies, should be assessed and, if available, applied for promptly.

Other Parties: It is possible in some cases that the damage from the flood may have been exacerbated by things such as the design or construction of your facility, or by the storm water management of others near you. Although such claims may not need to be asserted immediately, a prompt analysis of whether you have such a claim (and/or others may have such a claim against you) is advised to ensure that relevant evidence is preserved and bars to recovery are avoided (e.g. statutes of limitations).

Environmental: Several environmental issues may affect your recovery efforts, including:

- Asbestos-containing materials – avoid exposure to workers and ensure compliance with asbestos removal requirements and the proper disposal of asbestos-containing material.
- Air quality – consider exposure to mold as well as asbestos and any other chemicals that may have been released as a result of the flood.
- Water supply – water supplies should be checked to be sure they have not been adversely impacted.
- Waste disposal – all waste materials, including raw materials and products that are being discarded, must be characterized and disposed of properly.
- Fill material – ensure that any fill material is clean and not contaminated.
- Mold – ensure that all water damage is properly remediated to avoid the growth and proliferation of mold.
- Compliance – consider whether it's necessary to seek relief from EPA, TDEC or local authorities for non-compliance with environmental requirements due to the flood. This need may arise from cleanup and restoration activities and/or from waste treatment, air emissions and water discharges from re-started operations. We have discussed these situations with TDEC officials and have helpful guidance information and tips.

Renovation/Restoration: As the restoration process commences, do not fail to consider certain construction contracting basics, including:

- Contractor Licensing – beware of unscrupulous contractors (e.g. contractors demanding payment up front) and contractors not licensed in Tennessee (to confirm license status and for more information, visit <http://licsrch.state.tn.us/>).

- Contractor Bonding & Insurance – verify that your contractor carries proper insurance coverage with adequate limits applicable to your project, as well as any required bonds.
- Written Contracts – insist on written contracts with your contractors that, at a minimum, adequately address the scope of work to be performed, the time within which the work is to be performed, warranty obligations, termination rights, and the other issues discussed herein.
- Ongoing Business Concerns – contracts should specifically address obligations and expectations with respect to life safety and business interruption, including the responsibility for consequential damages that may be incurred in the event of contractor default.
- Pricing and Change Orders – the price to be paid for the work and the method of payment should be in writing with clear limits on total costs (e.g. lump sums, unit pricing, allowances, guaranteed maximums, etc.), including procedures for pricing and approving change orders and work necessary to address concealed or unknown conditions that may be uncovered during demolition (e.g. code violations, mold and other life safety concerns).
- Financing – carefully review and confirm that any construction contract is consistent with applicable insurance coverage and other financing arrangements.
- Code Compliance – be aware of, and insist that your contractors and designers comply with, all codes and inspection requirements (these requirements are typically applicable to all property improvements, including repairs and renovations to pre-existing structures).

Please contact us if we may be of assistance during this process.

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