



Show Number: 719

Angela Bajramaj, JD Insights into Restoration Law!

Good Day and welcome to the IAQ Radio+ episode 719 blog. This week we welcomed Attorney Angela Bajramaj for a show titled “Insights into Restoration Law”. Angela dove into the complexities and nuances of the construction and restoration industry from both legal and contractor’s perspective. We discussed common legal issues faced by professionals in the field and she shared her expert insights on how to navigate these challenges effectively, with a focus on what restorers can do to maximize their collections. Whether you're a contractor, a business owner, or simply interested in the subject, this show provided valuable information and tips to help you stay ahead of the legal curve.

Angela Bajramaj is an attorney, licensed contractor, and a passionate advocate for restorers. Prior to joining Ed Cross as his law partner in May of 2023, Angela served as Corporate Counsel for Belfor Property Restoration for eight years, where she oversaw U.S. collections, managed dispute resolution, and designed and implemented solutions to regulatory issues. Following Hurricane Ian, Angela served with Belfor’s first response team, which helped further foster a deep understanding of the unique and profound challenges that restoration contractor’s face.

Angela is a graduate of Wayne State University of Law School with a Juris Doctorate Degree, and holds a Bachelor of Arts in Journalism from University of Wisconsin – Madison. She is one of the few female lawyers in the United States who holds a Residential Builder License. Prior to becoming an attorney, Angela worked in the construction industry in her family’s contracting business for almost 20 years.

Nuggets mined from today’s episode:

Please tell us a bit about your background and how you got interested in construction and restoration? Angela grew up in a family that was in the

construction field. In 1998, Angela and her husband entered the construction field together when they started a painting business. Things went well, customers paid and the business grew until 2008 when the business hit a brick wall due to the housing market collapse. The business took a big hit when their biggest customers didn't or couldn't pay. Angela realized that part of their business problem was inadequate contracts and processes. At that time, Angela realized the need to diversify the family's income sources, and she decided to go to law school. Her husband wasn't confident that she would become an effective attorney because *she couldn't lie*.

After law school, Angela practiced law in a small firm. An employment recruiter approached her regarding an opportunity to work for Belfor, the world's largest restoration firm. Angela went to work for Belfor, where she had the opportunity to work alongside and learn from great people. While at Belfor, she fell in love with the restoration industry, and its culture of people who worked hard and willingly sacrificed personal and family time to help their clients put damaged homes and businesses back together.

What is your area of specialization within the group? Collections. The biggest challenge for most restoration companies is collecting their accounts receivable. While at Belfor, Angela had the opportunity to observe the effectiveness of various legal collection strategies. Some of her takeaways were: 1) you need to know who you are working for and provide them with excellent service; 90% of successful collections depend on what you do between the time you sign your contract and time you complete your work. 2) Many of the collections issues contractors encounter can be avoided through consistently communicating, provide frequent work/progress updates, promptly send invoices, be persistent and follow-up on the payments until money comes through the door.

What are the biggest collection mistakes that restoration contractors commonly make? Poor communication. Identify the MIPs (materially interested parties) and communicate regularly and systematically. Clients are often fearful and traumatized by their damaged property. Restorers need to let the clients know what the restoration process will entail, set realistic expectations, and communicate throughout the course of work. Good communication helps keep customers happy, and happy customers are paying customers. Communications should mention the potential impact of deliverables for which others are responsible on the project, and include updates about the completion timeline.

Frequently mention the expectation that you will be paid, by advising when invoices will be sent out and when payment will be due. Law Offices of Ed Cross has two useful resources to assist restoration contractors with many types of collections issues: Recommends purchase of the Book on Restoration Collections, <https://edcross.com/restoration-collections-book/> and the Restoration Collections Toolkit: <https://edcross.com/product/toolkit>, which provides a blueprint for collecting.

In your experience, how effective have you found mechanic's liens to be? Liens are one of the most effective tools for getting paid. Whether or not to file a lien should be decided on a case-by-case basis. Liening a property is a 2 step process: the first step is to record the lien, and you have a specific number of days after your last day of work to record a lien, depending on which state you're working in. The second step is to enforce the lien, by filing a lawsuit to foreclose it. This step will have a separate deadline. Giving notice to the property owner is also required. In some jurisdictions, the contract will serve as notice. Contractors should be aware of situations where they need to serve additional notice, such as projects where they are subcontractors, or they otherwise do not have a direct contract with the owner.

Liens may adversely affect business credit lines linked to the property's equity. Lien laws vary by state, and the requirements must be followed exactly. States take lien rights very seriously. Contractors should be intimately aware of their state's lien statute and what their state's specific deadlines and requirements are.

Residential lien statutes may require different notification mechanisms.

Can restoration firms who provide cleaning services only put mechanics liens on the property on which they work? This is dependent upon applicable statutes and court interpretations. Liens generally require physical improvement to the property. Structural drying prevents fungal amplification and material degradation, which arguably improve property while janitorial cleaning does not. A lien may be applicable for delivery of materials or creation of architectural plans. Lien may not be applicable for consulting services. The laws differ significantly by state.

Has the volume of mold litigation declined significantly? Yes, this is partially due to advances in scientific research related to the alleged health impacts of mold, and causation being harder to prove.

What recourse does a restorer have when working with independent adjusters who don't have authority to issue drafts or ensure that the restorer's firm name appears on the check? Insurance companies are big, powerful and have the second strongest lobby in the country, second only to big pharma. We recommend that restorers use an AOB (assignment of benefits) and provide notice to both the independent adjuster and the carrier. Notice is the key, notify in writing, be persistent, that we need our name on the check. The laws related to the enforceability of assignments differ significantly from state to state. The Law Offices of Ed Cross has a Book on the Assignment of Benefits available for purchase at <https://edcross.com/aob/>, which includes Assignment forms and template Notice letters that can be sent to the carriers to properly notify them of as Assignment.

Is a Work Authorization sufficient to begin emergency work on a restoration project? Work Authorizations lack important terms and conditions. A proper state compliant contract with clear payment terms, lien rights, AOB, terms and conditions which minimize liability is best. WARNING: The uniform contract provided by your franchisor may be insufficient. Don't piecemeal a contract together. Don't rely on artificial intelligence to create your contract. The Law Offices of Ed Cross has comprehensive contract packages available for purchase on its website, <https://edcross.com/contracts>.

What about the mandatory 3-day contract rescission? States may have an exemption for emergency situations, but these exemptions have specific requirements that must be complied with, so you should check with an attorney licensed in your state.

With your prior experience working for the world's largest restorer of damaged property you've likely seen it all: What event or event or situation did you find most humorous, and why? The accusation that a company disposed of a 50-year-old collection of nail clippings. A client complained that the bulb in recessed light fixture wasn't exactly centered. Bad scammers who have claimed to have sustained injury by tripping over drying equipment *after* all equipment had been removed.

A Czarina is the title of an empress in Russia, how did you become known as the Czarina of Collections? Pete Consigli coined the moniker. Both Ed Cross and Angela like it.

Are environmental claims common following structure fire losses or wildfires due to alleged exposure to smoke hazards or restoration products? Not really, restorers should have provisions built into their contracts that protect them against these types of claims. The most common homeowner complaint is residual smoke odor. See some disputes between restorers, IHs and insurance carriers regarding the scope and the carrier's resistance to payment for additional work.

RoundUp

According to Ed Cross, having a specified dollar amount on a signed contract is more legally defensible than contracts with attached rate sheets.

Ed Cross' first book on contracts was dedicated to Pete Consigli, his second book on AOBs was dedicated to Mark Springer, Pete suggested that the subject of Ed's third book be Dealing with Mortgage Companies. Mortgage Companies who held onto insurance proceeds on large losses threatened the viability of some restoration contractors. In 2012, at the RIA convention in Myrtle Beach there was a panel discussion with 2 attorneys moderated by Patti Harman. One of the attorneys was from general industry and the other was corporate. Pete wrote a recap paper of the Mortgage Panel convention session titled, "Dealing with Mortgage Companies", which captured the key points of the session. The paper was published on the RIA website as part of the conference proceedings and also used for association related educational training for several years. The mortgage panel introduced a legal term called Unjust Enrichment and Pete asked Angela to expand on that legal term for the audience, as well as another important contract term used in restoration contracts called Mysterious Disappearances. The corporate attorney on the mortgage panel, suggested a 3 part strategy he advises restoration contractors employ to increase their chances for mortgage companies to release insurance proceeds that he termed as SAT! The S, stands for get "Set-up" with proper documentation, contract language and assignments authorizing the mortgage company to talk with the contractor. The A, stands for be "Aggressive" from the onset of the project when a mortgage company may be required to sign off on an insurance payment under the insurance policy provisions. The T, stands for be prepared to "Threaten" the mortgage company to force them to release the contractor's funds if they do not comply with requests in a timely manner.

Angela Bajramaj: Mortgage Company holding insurance proceeds due to contractor? Mortgage companies are as frustrating to deal with as insurance carriers. When you call they put you on hold, transfer you to people who don't know and lack authority, etc. TIP: Have a Mortgage Authorization signed by the property owner which authorized you to communicate directly with the mortgage company.

Angela Bajramaj: Mysterious disappearance? TIP: This can be addressed in your contract by having a provision requiring the property owner to remove from the property or declare in writing certain items, and disclaiming liability for items not declared/removed, including the mysterious disappearance of items.

Angela Bajramaj: CAT Loss Crazy! During CAT work, Angela has observed remediation workers disregarding safety practices (e.g. bare feet on water losses, not wearing safety goggles when needed, not using appropriate PPE). Enforce safety, continually.

“Unjust enrichment is usually used to describe benefits that are received either accidentally or in error, but which have not been earned, and ethically should not be kept. Unjust enrichment is typically considered to be unfair, and those who are declared unjustly enriched are required by law to pay the other party restitution. <https://legaldictionary.net/unjust-enrichment/>”

Consequential damages are also known as “special damages’ and are damages that are not a direct result of a breach of contract, but are instead consequences of that breach. Consequential damages include things like damage to reputation, loss of anticipated profits, or loss of customers. A good contract will limit a contractor’s liability for consequential damages in the event of a breach.

Z-Man signing off

Trivia:

Name the insurance policy exclusion which eliminates virtually all coverage for pollution incidents, including those retained under the standard Commercial General Liability (CGL) policy.

Answer: Total Pollution Exclusion