

Design Professional Newsletter



GREAT AMERICAN 2023 RESOLUTION CHALLENGE TAKE 2: A BETTER CONTRACT

BY: ROSEANNE DEBELLIS

Drink more water. Spend less money. Establish an exercise regimen. We all made these cliched New Year's resolutions to better ourselves as we entered the new year (present company included)! We are nearly twelve weeks into 2023, have these resolutions held up so far? Probably not. Here is your second chance to take on 2023 with a different perspective on resolutions and make one or two that are easy to follow, who wants to guzzle 120 ounces of water anyway? The Great American Design Professional Team challenges you to pick one or more of the following "resolutions" to get your risk management practices back on track. Here are our top 10 suggestions:

1. Enter into a written and completely executed contract for each and every project. Do not rely on a handshake. We recommend using an industry standard contract.
2. Consider adding a limitation of liability provision to your contract, limiting your liability to your fee or an amount in proportion to the project budget. Ask your agent about Great American's policy credits.
3. Carefully review the indemnification provisions and ensure that you do not agree to take on the defense of your client or any other project participant. In this vein, ensure that the indemnity obligation is based in negligence only.
4. Consider adding a mediation clause in the contract as a condition precedent to litigation. Deductible mediation credits may apply!
5. Aim to specify your scope of services to include what you are being retained to do-and NOT to do.
6. Ensure that your contracted standard of care is industry standard-nothing more, nothing less.
7. Contemplate adding a Force Majeure Clause.

8. Review and ensure your waiver of consequential damages provision is mutual in nature.
9. Safeguard your termination provision to ensure that it is equitable to both you and your client.
10. Review billing and payment provisions to establish a payment timeline and penalties to avoid potential fee disputes.

About the Author: Roseanne DeBellis is a Divisional Vice President at Great American Insurance Group. In her role as a Divisional VP, Roseanne is the lead on Design Professional and Real Estate Claims and also provides risk management services to agents and insureds. Roseanne has more than 17 years of professional liability experience, beginning her career in private practice defending design professionals against errors and omission claims. She is a licensed attorney admitted to practice law in New York and Connecticut. In addition, she holds adjuster licenses in various jurisdictions.