



# BIM Without Adequate Communication = DANGER

## LEGAL LOG

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As Building Information Modeling (BIM) has developed and become more prevalent, many discussions have focused solely on its benefits, ignoring the significant legal consequences that its misuse can bring. BIM—defined by the U.S. General Services Administration as “a data rich digital representation cataloging the physical and functional characteristics of design and construction”—has gained significant traction in Europe and on major projects in the U.S., such as construction of the “Freedom Tower” at Ground Zero. However, for all the praise this latest “wave of the future” has received, BIM has its dark side. Recently, the reportedly first BIM-related lawsuit settled for millions of dollars, highlighting the costly, potential legal problems lurking in BIM’s shadows.

The lawsuit stemmed from construction of an academic building at a major university. Most of the parties to the dispute have kept their identities and many details of the settlement private. What is known is that the architect and mechanical-electrical-plumbing engineer utilized BIM in designing the placement of the building’s HVAC systems into the ceiling plenum. However, the installation of the system was an extremely tight fit, dependent on a specific installation sequence that was not properly communicated to the contractor. With seventy percent of the assembly process completed, the contractor ran out of space. As the insurance carrier for the design professional stated, “everything fit in the model, but not in reality.”<sup>1</sup> The contractor sued the owner, the owner sued the architect, and the architect’s insurer sued the MEP engineer.

The parties settled out of court for unspecified amounts reportedly in the millions of dollars. The insurance carrier, XL Insurance, specializes in professional liability insurance for design professionals. It no doubt was eager to reach a settlement to keep the circumstances confidential and avoid setting a problematic precedent. Life can be challenging in the “brave new world” of BIM.

### G&C Commentary

This case should serve as a wakeup call to designers, contractors and sub-contractors. Based on the problems encountered in this lawsuit, the obvious lesson is that effectively using BIM depends on adequate and effective communication between all members of the project’s team: designers, general contractor, sub-contractors (at all tiers) and suppliers. A computer’s spatial projection is still no replacement for the “draft board” type discussions that have traditionally kept all parties on the same page from the outset of a project. It is also imperative that communication focus not only on design, but also on scheduling and sequencing. Effective and continuous communication can avoid many of these types of problems; blind reliance on BIM will not.

In addition to effective communication, equally important is ensuring that all the parties utilizing BIM on a project are properly trained. As BIM shifts from a design tool to a comprehensive construction-site management tool, its capabilities and limitations will become all the more apparent. Although some sophisticated parties already have significant training

<sup>1</sup> Nadine M. Post, *A Cautionary Digital Tale of Virtual Design and Construction*, ENR, May 23, 2011 (quoting Randy Lewis, Vice-President, XL Insurance).

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and experience with BIM, most contractors and subcontractors do not.

Designers in particular should take note of this settlement, since BIM evidently has the potential to involve them in the means and methods of construction, long the exclusive domain of the contractor, increasing the liability that may land on them. The case discussed above shows that BIM is fraught with the potential for multi-party litigation, likely distributing the costs from BIM-related problems among all of a project's participants, both the guilty and the innocent. Thus, each party must ensure that they and their counterparts understand BIM's value and scope and its very real limitations.

As with so many high tech, computerized solutions (e.g., CPM scheduling programs) BIM is only a tool that is effective when used properly. Like most new innovations, however, BIM possesses all of the classic characteristics of cutting-edge technology: great potential on one side, and a bloody edge on the other.

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