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PinnacleOne is a national construction consulting firm that provides sound advice, strategic solutions and peace of mind to its clients. Its diverse, highly trained professionals guide its clients through every step of the design, construction and contract closeout process to help them achieve their goals, and at the same time, avoid and manage risk. PinnacleOne's unimpeachable

DEFUSING CLAIMS
 STRATEGIES FOR DESIGN PROFESSIONALS

The design and construction of capital projects, both small and large, have been likened to minefields. Navigating through this minefield can be perilous for the untrained and uninitiated and challenging even for the battle seasoned veteran. On many projects, the dangers are few and far between. Some can be very explosive.

Having analyzed scores of these bad projects, we have witnessed how very experienced but unwary architects and engineers let small problems become large claims or have been set up by crafty, opportunistic owners and contractors and how these design professionals struggled to show that they met the industry standard of care. That being said, we have also observed the following ways that architects and engineers can guide themselves safely through the perilous minefield of capital construction and defuse explosive, damaging claims.

Be Vigilant and React Quickly

"No method nor discipline can supersede the necessity of forever being on the alert."

--Henry David Thoreau

In the last fifteen years, forward-thinking and proactive professional liability insurance carriers, professional organizations, and others have provided architects and engineers with tools and maps to help them deal with the risks of



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Since joining PinnacleOne, Mr. Holmes has performed many

objectivity, along with a proven approach to planning and attention to detail, has earned the company a reputation as one of the finest consultants in the construction industry.

Headquartered in Phoenix, PinnacleOne regional operations are located in Irvine, Los Angeles, Sacramento, and Hartford.

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their missions. Among other things, these have included better contracts, seminars, books, and incentives to utilize loss prevention techniques. As a result, architects and engineers now generally know the challenges inherent with poor client selection and inadequate fees. They have learned how to recognize an unclear or poorly drafted contract language and have guidelines to drafting better contracts available to them. Design professionals have been taught the consequences of unclear, poorly coordinated or unconstructable plans and specifications. Most also now know that their failure to properly execute construction phase services can result in large, complicated delay claims against them.

For these reasons, it can be generally now said that ignorance is no longer an excuse for bad practice by architects and engineers, but design professionals beware - good practice alone is not sufficient armor in the minefield of capital construction. You must do more.

Recognize and Cope with the "Bad" Project

Most bad jobs should come as no surprise to the design professional as they share many of the same characteristics. Often, the warning signs begin at project inception, long before construction. Were the negotiations with your client over contract terms and fee difficult? Did your client impose unrealistic deadlines for your work or the work of the contractor? Were you, as a result, forced to staff your design team with unproven or under-qualified staff? Did the owner limit your construction phase services? Does the owner have a construction manager? Were you forced to use "owner-oriented" General Conditions in the construction contract documents? If the answer to any of these questions is yes, the design professional should expect a challenging project; be vigilant and prepared to cope with a claim.

Often, there are also clear signs of trouble after the design phase and during construction. The contractor's bid was excessively low. The contractor submits a schedule showing completion of the project months before the contract completion date. The contractor's communications are antagonistic and one-sided. The contractor makes picky requests for change orders; the negotiations over price are difficult; and the contractor insists on reservation of rights language in the change order. The contractor bombards you with trivial requests

forensic analysis of construction defects and deficiencies, and has testified on architect-engineer standard of care issues in a variety of cases, both in Arbitration and in Court.

for information and complaints about your response time. The contractor documents shop drawing approval delays. There is an excessive number of shop drawing rejections, quality problems, delays, and slow construction progress. Each of these is a clear signal of an aggressive, opportunistic contractor who intends to take advantage of any error, omission or misstep of the design professional.

How should architects and engineers respond to these difficult situations to minimize their exposure to claims? We suggest the following:

- | Establish reasonable owner expectations, define your deliverables, and document the basis and adequacy of your fee.
- | Do only what you were contracted to do, do not deviate from the contract document without sound justification, and do not perform services outside your area of expertise.
- | Establish effective early warning systems that allow you to recognize and deal with problems within your control as soon as possible.
- | Focus on recordkeeping to make sure the written record is accurate, complete, and contains your side of the story.
- | Do everything possible to avoid getting behind in construction phase services; particularly, answering design questions, issuing clarifications to your drawings, reviewing shop drawings, and dealing with change order requests.
- | Involve your insurance company and consider seeking expert and legal advice earlier rather than later.

Bad projects generally generate disputes between the owner, contractor, and design professional - - a three front war. Architects and engineers should be wary of the attempts by the contractor or construction manager to drive a wedge between them and the owner during the project. Stay actively involved and constructive in the change order and claims resolution process. Be very concerned and react quickly if the owner becomes curt, refuses to take your calls, stops inviting you to meetings or is uncharacteristically slow in paying your invoices. In these situations, architects and engineers should generally do everything possible to identify and resolve the owner's concerns as soon as possible.

Create a "Quick Response" Corporate Culture

This strategy should be a key component of every design professional's loss prevention program because it will prevent many unnecessary and avoidable claims. Far too often, we have seen architects and engineers look for cover, rather than a solution, when confronted with an apparent problem with their design. Even in situations when the problem has been minor, we have seen this attitude evolve into a protracted defense of tenuous positions that damage the credibility of the design professional in the eyes of the owner and that causes critical and costly project delays.

Principals of design firms should create a corporate culture that minimizes this very human response to problems. This begins with education for everyone in the firm of the potential value and effectiveness of addressing problems when they occur. Teach them that most problems can be quickly resolved when people communicate, work together, and focus on the solution not the problem. Make them acutely aware that disputed costs have a way of growing with time; that is, generally much less expensive to recognize an error and correct it for \$500 or \$10,000 than to pay 10 to 20 times more in an escalated dispute that may also grow to involve the owner. Encourage everyone, if at all possible, to resolve disagreements before tempers flare, personalities take over, and everyone spends a lot of money.

The successful implementation of this strategy requires more than just teaching the benefits of quick and constructive responses to problems. It also requires effective management and leadership by the firm's principals. Specifically, the principals must make sure systems are in place internally to red-flag lingering unresolved project needs or otherwise be vigilant to early warning signs of distress. It is up to the firm's management to facilitate open communication, both internally and externally, by eliminating the fear of admitting mistakes and rewarding constructive solutions. Most important, the principals must lead by example and practice what they preach. If staff sees principals taking the bull by the horns, willing and anxious to address difficult issues with the owner and contractor, they will be more willing to do it.

Capital projects will remain minefields for architects and engineers. With that said, however, there are many mines that can be sidestepped or defused

completely by those that are forward thinking and proactive. Forever being alert and reacting quickly is one of the best strategies design professionals can use to help guide them safely through the perilous landscape of the design and construction of capital projects.

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