

You are logged in as bweaver: [Manage Account](#) | [Log Out](#)

## INFORMATION

## News

- + San Diego
- + California
- + National

## Water

## Construction

## Finance

## Government

## Law

## Real Estate

## Technology

## Hospitality

## Water

## Commentary



## RESOURCES

## Small Business Center

## Business Directory

## San Diego SourceBook

## Attorney Directory

## Online Plan Room

## SBA News Notes

## San Diego Newsmakers

## Special Reports

## Soaring Dimensions

## Media Center

## RESEARCH

## Site Index

## Public Notices

## Source Sales Tools

## Classifieds

## COMMUNITY

## Locales

## Landmarks

## Arts and Entertainment

## Events

## Movies

## Restaurants

## Travel

## Weather

## Traffic

## CORPORATE

## Advertising

## Editorial Calendar

## Company Info

## Feedback

## Contact Us

SEARCH  

Tuesday, February 19, 2008



## NEWS | SAN DIEGO

## Where there's construction, there's litigation -- how to survive the battle

By Pamela J. Scholefield

Thursday, February 14, 2008

Print E-Mail

This may not be true with every project, but the construction industry is -- and always has been -- a hotbed of litigation. This is an unfortunate aspect of construction in America. Once a construction dispute starts to snowball downhill, it tends to take with it any and all persons that touched the project, even the engineers and architects.

Heading towards litigation is almost a guarantee that the road will be rough and loaded with traps for the unwary.

### Three-way tie

Regardless of the type of project -- a custom home, commercial building, wastewater treatment plant, power distribution system, or a highway system -- there are three common levels of participation: owners, design professionals, and builders/contractors.

What ties them all together are the contractual relationships and legal obligations between the parties. From an overall project standpoint, each player's input has a direct affect on the other two. An owner provides funding. A design professional creates detailed and buildable plans. A contractor turns the vision into reality. If any of the three participants do not perform, they can doom a project. It is truly a symbiotic relationship.

### Red flag warnings

The first clue that something may be going wrong is that one of the parties starts documenting everything. Red flags should go up when notices start appearing frequently. Don't ignore them. It may just be a sudden surge in project management discipline, but be skeptical and expect the worst, here's why:

He (or she) with the best documentation wins

With the ease of email, there is no excuse as to why you can't shoot off a quick email to confirm an oral decision that is made at a meeting or during a teleconference. Don't rely on other people or requests-for-information to document the story. There are too many decisions that are made on the fly, at job site meetings, and in teleconferences that are not tied to any specific RFI. These meeting notes and e-mails may end up being critical pieces of evidence if something is delayed, built wrong, or costs more.

Just the facts

It is extremely important to remember when sending emails to avoid making personal opinions, such as the state of the project or frustrations with workmates, contractors, etc. Your personal opinions often become your professional opinions by opposing parties. Don't expect privacy, and write as if your emails will be reviewed by a judge -- no sarcasm, no derogatory remarks, no slamming the owner, engineer or contractors, and -- above all -- no admissions that you, or anyone who works with you or for you, have done anything wrong! These rules should apply even with your own internal emails. We have heard how internal emails can provide the "smoking gun" that wins or loses a case.

This goes beyond e-mails and other written communications, so think before you speak as well. The rules for emails should also apply to any oral communications or conversations you have with anyone throughout the project. Remember, your litigation opponent-to-be may be documenting these impromptu meetings as well.

The best defense is a good offense

The bottom line is that a good defense begins with a good offense. And, you may find yourself taking the stand and answering questions about a project 2 or 3 years after the project's completion. Knowing this now may make your life easier when you are testifying. So, as a minimum, you should adopt the following as standard procedures for

Advertisement

the Ernst & Young  
Entrepreneur Of  
The Year® award.

## ADVERTISERS

Insurance  
Industry  
Reports 2008

"I'd rather  
be doing  
my  
take-offs  
from  
here..."



Online  
Plan  
Room

## FEATURED LINKS

- [Weather](#)  
Get your forecast
- [Movies](#)  
Find Showtimes
- [Travel](#)  
Search, Book, Fly!

doing business:

1. Document all meetings and then forward to all attendees for review. If you are an attendee and you receive meeting minutes that you believe to be incorrect, make your changes known in writing and forward to all attendees.
2. Document all informal meetings, such as jobsite walks or impromptu discussions. All you may need is something as simple as an email summary of what was discussed.
3. Keep a paper copy of all electronic correspondence. Don't let emails get deleted before printing out copies.
4. Take plenty of photos when you walk the site. Note the dates when taken. Copy them to CD's for archiving.
5. Handle RFI's promptly. Keep an accurate and updated RFI log.
6. Handle submittals promptly. Keep an accurate and updated submittal log.
7. Date-stamp all correspondence you receive, from any source.
8. Document communications with engineers, utility personnel, suppliers, consultants, construction managers and project managers, etc.
9. Document all attempts at communications; use phone logs for conversations, sent and received, and voice messages. Set your fax machine to print out confirmations and keep failed fax transmissions. Keep a copy of returned email deliveries.
10. Document the dates that plan revisions are issued and request a delivery receipt from all recipients if you are the issuer. Require that all revisions on plans be noted and clouded in.
11. If appropriate, keep a daily jobsite journal with as much detail as possible even if not required.
12. Document and retain all calculations used for the project, such as engineering, labor, material, or down-time estimates. This will help support any claims.

- Better safe than sorry

Some of you may think that all this is overkill for smaller projects, but you're going to wish you had done this if you're ever caught in the middle of a construction lawsuit -- regardless of the value of the project. Plus, the better documentation you have, the easier it is for your attorney to represent you. Making your attorney's job easier will reduce your legal bills in the long run. And, most people find that litigation creates quite a bit of unwanted personal stress. So, the better your defense, the less stress you will suffer as you wind your way through the long process of litigation. Nothing you do will make litigation enjoyable, but at least you will know you are in the best possible position to defend yourself when needed.

*Scholefield, Esq., holds an active PE license in Colorado, an undergraduate engineering degree from the University of Florida, and received her JD from the University of San Diego.*

---

[Reprint Rights](#) | [Subscribe](#) | [Sales Leads](#) | [Send a Letter to the Editor](#)

---



**[Bid On Construction](#)**

Get Unlimited Construction Leads.  
Search 1000s of Bidding Projects!  
[www.BidClerk.com](http://www.BidClerk.com)

**[San Diego Civil Attorney](#)**

Personal Injury Business Litigation  
[www.jassoylaw.com](http://www.jassoylaw.com)

**[Construction Services](#)**

San Diego Quality Construction.  
Building America's Finest City.  
[www.ManleyBuildersInc.com](http://www.ManleyBuildersInc.com)

**[Construction News](#)**

Search 1000's of active  
commercial projects up for bid in  
your area  
[www.reedconstructiondata.com](http://www.reedconstructiondata.com)

Ads by Google

[Company Info](#) | [Advertising](#) | [Feedback](#) | [Privacy Policy](#) | [Acceptable Use Policy](#) | [Contact Us](#)

**All contents herein copyright San Diego Source | San Diego Daily Transcript 1994-2008**