

Let's Start with the Basics: Introducing the Construction Law Corner by *Sean Hanlon, Partner* and *Tamara J. Lindsay, Attorney*



The law touches nearly every aspect of a construction project. Feasibility, financing, site acquisition, permitting, environmental compliance, insurance, contracting, tax, labor and employment, dispute resolution. Avoiding the legal landmines hidden at each phase of a project is just as important as having the project properly sequenced.

One way to minimize risk and keep costs down is to **avoid disputes**. The following Q&A provides a few insights based on our experiences with construction projects.



Sean: What's one thing your clients could have been done differently to save themselves hardship and heartache?



Tamara: It is imperative that folks involved in the business of construction **choose the right partners**. While a good contract can offer significant protections, an additional consideration that is often overlooked is each party's culture.

An owner or developer needs to be mindful and select contractors that share its vision and goals. The same holds true for contractors. We have seen numerous issues arise in teaming agreements or subcontracts because one party did not perform sufficient due diligence on their partner. So, do your research and choose wisely!

Tamara: What recommendations have you made recently that helped avoid a dispute?

Sean: **Put everything in writing.** Never underestimate the importance of project documentation. Any changes to the project -- and certainly anything material, such as a change in price or scope of work -- should be in a writing signed by the parties. The costs associated with construction litigation have skyrocketed, in part,

because the projects are so document intensive to begin with. When something goes awry, the instinct can be to devote additional time and resources to correcting the problem, and that's a solid approach for the most part. But, when issues pop up, that is the most important time to double down on project documentation. Many of the cases I have taken to trial would not have been so hotly contested if the project had been properly documented.

Sean: What are your thoughts on early intervention?

Tamara: **Early intervention** breaks down into two categories for me. First, be realistic in the field. We work in the construction industry. Issues and disputes are bound to happen. When the inevitable disagreement occurs, don't just kick the can down the road in hopes that it will go away or somehow resolve itself. Assess the issue and address it directly and thoroughly as soon as possible. Early intervention not only keeps a small problem from mushrooming, but also preserves business relationships that could be crucial for future endeavors.

Second, don't be shy about engaging project counsel from inception through completion. Whether it's an in-house attorney or outside counsel, getting sound legal advice on the front end and throughout a project is proven to reduce cost on the back end and will increase the likelihood that whatever issue has arisen is resolved amicably and efficiently.

Tamara: Sometimes companies do everything right but still end up in a dispute. What are the real costs associated with arbitration or litigation?

Sean: Attorney fees and expert costs may account for a small part of the cost associated with elevating a dispute to arbitration or litigation. The most significant (and often overlooked) cost is **personnel time and business stress**. Our clients are not in the business of litigating disputes; they are in the business of building things. So, every hour an employee spends gathering documentation or participating in depositions is an hour of productivity lost to the business. Employees are often stressed when allegations start flying (or not-so-subtle implications are made) that the employee was responsible for the dispute. This stress can extend beyond the timeframe of the actual dispute rendering employees hesitant to act. While initially understandable, prolonged hesitancy can lead to inefficiency and loss that impacts a company for years to come. It's important to factor these costs in when deciding whether or not a full-blown dispute is correct path for your company.