

A blue-tinted photograph of a desk. In the upper left, there is a dark mug and a stack of papers held together by a metal fastener. In the lower right, the back of a black office chair is visible. The background is a light blue surface, possibly a desk or a wall.

# *Designing for Claims Avoidance*

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*Presented by the  
Claims Avoidance & Resolution Committee*

# *Designing for Claims Avoidance*

Perspective of Owners, Contractors and Design Professionals

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# *HORROR STORIES*

*aka* INCENTIVES TO DEVELOP BEST PRACTICES:

## *James Construction v North Allegheny School District*

- District actions “arbitrary and capricious”
- District “acted in bad faith”
- District “forced unreasonable deadlines despite change orders”
- County’s “tardy approval for erosion and sedimentation plans”
- District tried to include design firms as defendants
- Project Manager terminated after advising time extension was due

# *HORROR STORIES*

*aka* INCENTIVES TO DEVELOP BEST PRACTICES:

## O'Brien & Gere v. Fru-Con Paper Manufacturing Complex

- 80 changes in equipment locations
- Foundation drawings “Issued for Construction” 8  
TIMES!!!
- Roof drawings “Issued for Construction” 10  
TIMES!!!
- Inability to agree on what defined the baseline

# Design Documents

## General Comments

Team Approach

Who's in charge

Time Constraints/Milestones

# *Owner's Concerns*

- Goals Addressed ?
- Design Review Process Defined ?
- Request for Info/Clarification Process ?
- A/E Order of Magnitude Estimate/Budget
- Owner or A/E Interface w/Contractor ?
- Target Milestone Dates
- Who Obtains Permits ?
- Owner Supplied Equipment or Material?

# *Design Professional's Concerns*

- Owner's Goals Addressed?
- Design Review Process Followed?
- Request for Info/Clarification Process ?
- A/E Order of Magnitude Estimate/Budget?
- Owner or A/E Interface w/Contractor?
- Target Milestone Dates?
- Who Obtains Permits ?

# *Contractor's Concerns*

- Do the drawings/specifications contain sufficient detail?
- Schedule Concerns?
- Has there been a constructability review ?
- Are my estimating assumptions documented?
- How will progress evaluations be determined?
- Does the contract provide a dispute resolution process?

# *MORE HORROR STORIES*

*aka INCENTIVES TO DEVELOP BEST PRACTICES:*

## *Bilt-Rite Contractors, Inc. v. The Architectural Studio*

Contractors may file suit for compensation arising from faulty or inadequate design documents. In this instance, the design allegedly required special construction means/methods. Previous defense against such “economic loss” claims appears to be closed with this Pennsylvania Supreme Court decision overturning the lower court.

*More detail can be found in the October, 2005 issue of Civil Engineering pg 96*

# *MORE HORROR STORIES*

*aka INCENTIVES TO DEVELOP BEST PRACTICES:*

*Hewett-Kier Construction, Inc. v.  
Lemuel Ramos and Associates, Inc. 775 So.2d  
373 (Fla. App. 2000).*

A/E Potentially Liable to Contractor for Allegedly  
Defective Design Documents.

Florida recognizes a common law cause of action  
against professionals based on their acts of negligence  
despite the lack of a direct contract.

# *Team Approach*

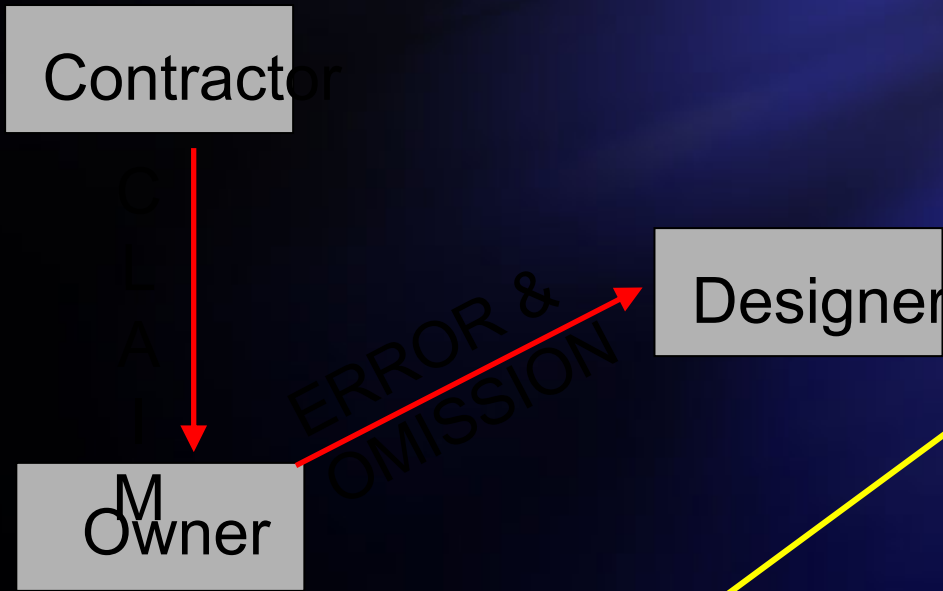
(Transition from Design-Bid-Build to Design-Build)

Does it eliminate claims against Designer ?

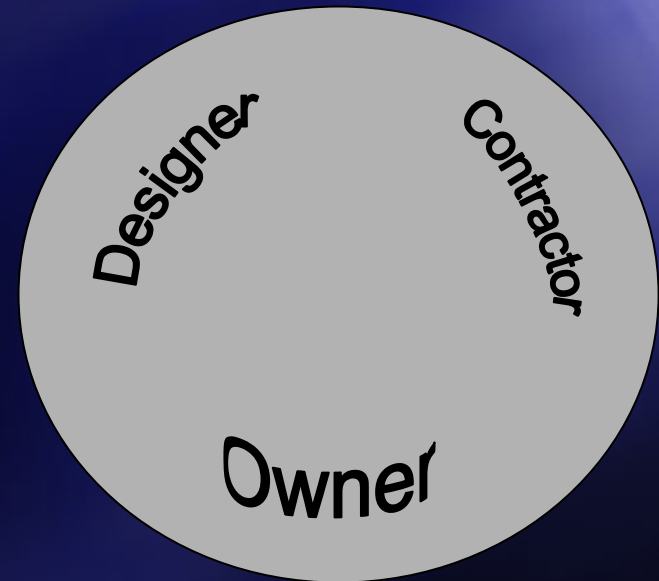
***IT DEPENDS !!!***

# Project Delivery

## Design - Bid - Build



## Design - Build

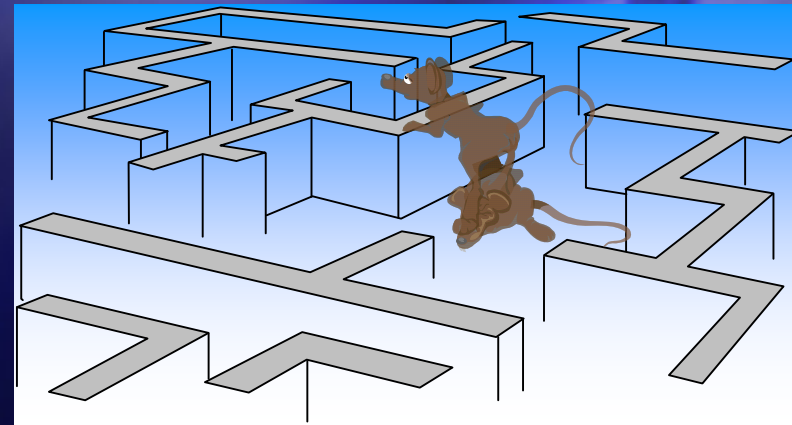


# *Team Approach*

(Especially Design/Build)

## Iterative Nature of Construction Projects (particularly using the Design Process)

- Concept
- Preliminary
- Issue For Construction
- Built



**Demands Communications With Owners & Contractors**  
Re: intent and constructability

# *Design Document Order of Precedence*

- Should Be Defined in Contract Documents
- Do Specifications Overrule Drawings?
- Materials Sufficiently Defined for Procurement
- Spec Conflicts ?

# *Before Bid Submittal*

- Conduct drawing review for mutual understanding & constructability Examine drawing revisions for possible impact.
- Define any code/permit requirements and establish who has responsibility.
- Define how to deal with potential Differing Site Conditions.
- Submittal Review & Turnaround e.g. Shop Drawings.
- Owner Furnished Material/Equipment.

# *After Start of Work (particularly Design/Build)*

Start all Progress Meetings with open impact issues, particularly those identified as potential change orders and those causing delay. Assign responsibility & timetable for resolution of open issues.

**KEEP MINUTES !**

Review all drawing revisions to identify any impact, such as changes from diagrammatic/schematic to “Issue For Construction”

Include activities/fragnets in the schedule which define the effects from drawing revisions or material specification changes

# Whose Schedule Is It Anyway ?

- Activities of All Parties
- Drawings tied to Procurement & Construction
- Schedule Update is Integral to Progress Meeting Agenda
- Requests for Info & Conditions Found fragments
- Inspection Process
- In Other Words – The Schedule Belongs To Project
- As A Whole, I.E. Integrated

# *Payment Provisions/Retainage*

- Change Orders & Disputes e.g. Work done but not yet settled
- Schedule Update for Progress Meeting Agenda
- Requests for Information and Conditions Found may affect Schedule of Values
- ECPs, Value Engineering Proposals and Constructive Changes
- Earned Value Management Process timely incorporate changes

# *WHY THE AS-BUILT ?*

Were Changes Incorporated ?

Basis for future claims ?

*such as*

Differing Site Conditions

# *Risk Management*

- Contingency Allowance for Changes, Variations & Deviations
- Differing Site Conditions
- Weather
- Bonds
- Drawings Detailed Enough for Contractor Estimate?

# *Negotiating The Inevitable Changes*

- Define the Process in Bid & Contract Documents
- Include Change Impact in Schedule
- Segregate Changes From Base Scope
- Don't Defer Settlement Until After Project

# *Negotiating The Inevitable Changes*

- Put Your Cards On The Table – Up Front
- Communicate
- Define The Rules
- Expect Changes
- Deal With Issues As They Arise
- Claims ≠ Fine Wine **DON'T GET BETTER WITH AGE**
- Keep Personalities Out Of Negotiation
- Negotiation As Business Equals
- Reasonable Settlement vs Litigation \$



# *Questions?*