UNDERSTANDING YOUR CLIENT'S CORPORATE AND PROJECT STRUCTURE

Authors:
Levi W. Barrett
Peckar & Abramson, PC
New York, New York

Casey Rahn
Peckar & Abramson, PC
New York, New York

Moderator:
Levi W. Barrett
Peckar & Abramson, PC
New York, New York

Speakers:
Lacee L. Louderback
Hunt Construction Group, an AECOM Company
Austin, Texas

Wilson Nash
Brasfield & Gorrie, LLC,
Birmingham, Alabama

Sandra Roche
Roche Constructors, Inc.
Las Vegas, Nevada

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I. INTRODUCTION

A new client has approached you with a problem or dispute. You're an experienced construction lawyer and you know the issues the client is facing – delays, inefficiencies, notice, termination, liquidated damages, etc. What’s next? Schedule meetings and discuss the substantive issues? Dive into the project documents? Meet with project personnel and request data and records? Certainly these are all important things – but might it make sense to first learn something about the client and how it is organized? A construction attorney who has been dropped in the middle of a dispute is akin to a paratrooper dropped onto a battlefield. The attorney must quickly assess the problems the client is facing, make sure to meet any looming deadlines, reserve the client’s rights, and keep pushing forward – all while developing a full understanding of the dispute. One often neglected aspect of this assessment is the landscape in which the attorney is operating. Put simply, understanding your client’s organizational structure – from both a corporate and project-based perspective – can help guide dispute analysis and provide a road-map for understanding specific claims and related issues. Being dropped onto the battlefield is daunting, but the obstacles you face may be more effectively navigated if you come equipped with a map of the terrain.

When construction companies hire outside counsel, they are hiring particular firms or individuals for their legal and business acumen, industry knowledge and track record of success. However, given the complex nature of construction disputes, outside counsel should appreciate the interaction between external and internal issues facing the client to be successful on the client’s terms.
Our goal is to examine various corporate structures in their operational and project-based frameworks, while offering a practical discussion of the benefits of understanding a client’s organizational structure.

II. APPROACH IN PRACTICE: PRIMING YOUR CORPORATE UNDERSTANDING

Just as every project requires thorough knowledge of the plans, drawings and specifications, the representation of a construction client requires knowledge of its structure and organization. Outside counsel should endeavor to obtain an understanding of the client’s business, its structure, impediments and goals. This, in conjunction with a familiarity with the industry, will allow outside counsel to assist the client with a broader range of concerns and help the client adapt to industry changes. As a foundational matter, how does one get a primer on a company's organization?

(1) Review the Organizational Chart

An organizational chart provides a quick overview of the divisions and departments within a company. The organizational chart can also assist counsel in identifying reporting chains and individuals who function in key roles – for example, those persons who act as liaisons between departments, serve on governing or executive committees, or act as key project personnel. Although it is important to identify these individuals and know that they may become points of contact, special care should be taken to respect the reporting chain. Whether your point of client contact within the legal department is the general counsel or assistant general counsel, you should take care to avoid circumventing them.
(2) **Research the Company and Ask Questions**

It is important to ask questions about the company and its internal dynamics. It is also critical to understand the interplay between subsidiary entities under the same parent company, the public or private nature of the organization, and the nuances of interdepartmental relationships, intercompany conflicts and divisions of responsibility.

Potential questions to better understand the client landscape include:

i. What business sectors does the company serve? Is it a registered M/W/DBE organization? What services is it licensed to perform and in which states is the company authorized to do business?

ii. How has the company performed on past projects? What is the company’s industry reputation? How might past problem projects impact current corporate practices?

iii. Who is the point of contact on the construction site? Does the client have site supervisors and subcontractors? How much work, if any, is self-performed?

iv. How does the insurance program work? How is the risk management program structured and how does the client utilize insurance to mitigate risk?

v. Does the client possess any unique or proprietary systems, practices, or activities?

vi. Does the company use internal engineers and architects or is it outsourced?

vii. Who are the points of contact that counsel should establish a relationship with?

viii. To what extent should counsel elevate questions or concerns to higher level executives? What are the boundaries of communication with project teams, in-house counsel, or executives?

Outside counsel may be able to answer several of these questions through independent research. If not, discretion may dictate that these questions be addressed over
time, as the representation progresses, rather than at the first client meeting. For many construction companies, time is of the essence and every wasted minute has a clear cost component. Thus, time spent doing your homework to answer some of the more basic questions about a client’s organization will be appreciated. Just as the client is investing time and money in obtaining the attorney’s services, the attorney should dedicate time, at the outset, to learning about the client.

(3) Unwritten Rules

It is potentially misguided to assume an organization has everything neatly documented and consolidated in a central location. By working with your client contacts, outside counsel can supplement its understanding with knowledge of the unwritten rules and practices of the company. Asking the client for a rundown of helpful practices can help outside counsel expand their knowledge of the company’s culture, philosophy and challenges. Any information regarding implicit organizational practices can provide valuable insight into the company beyond what is disclosed in the corporate policy handbook. Be patient in this effort – an outside attorney should not underestimate the value of truly knowing a client beyond the superficial level.

(4) Understanding Boundaries and Maintaining Clear Lines of Communication

Knowing the corporate structure is essential for discerning appropriate boundaries to your representation. As previously mentioned, you do not want to by-pass a particular point of contact or elevate issues to the executive level without proper consideration of the chain-of-command. Similarly, it is ill advised to involve the entire project team on
sensitive issues which should be limited to a core group of decision-makers. It is worthwhile to gain a clear understanding of any communication boundaries that you may have during your representation and to carefully avoid overstepping these boundaries. At the initial client meeting, we recommend discussing which parties you can establish direct contact with, and which parties you should communicate with through your point of contact. For example, the client’s general counsel will likely want to be involved before you elevate an issue to the company president. On the other hand, in-house counsel may give you unfettered access to certain project staff during a particular representation. In either instance, it is important to establish and understand the boundaries to your access during the course of a matter.

It is also important to get to know your point of contact within the company and familiarize yourself with their position, job role and expectations. Attempt to identify those subjects that the contact wants to know about, what is the appropriate reporting frequency and what issues do they want to know about immediately? Even more importantly, understand what your contact regards as insignificant or bothersome. This knowledge is essential for long-term client satisfaction.

If you work on separate matters for the same client, or through multiple points of contact, it is a good idea to understand whether the same rules of contact apply to the new assignment. A client’s desire for communication can vary from matter-to-matter based on a number of factors unique to each issue – the amount of money in dispute, internal and external deadlines of the client, reporting requirements, etc. Succinct communication with
the client will relieve ambiguity and fortify client expectations. The underlying goal is to foster a team environment, providing your client with the information they need, when they need it.

(5) **Dispute Resolution Philosophy**

Companies approach legal work differently, and outside counsel should attempt to understand the company’s disposition towards dispute resolution as a whole. Some clients want a hard-charging, take-no-prisoners lawyer. Others may prefer to minimize conflict and favor early dispute resolution. Some may want both depending on the nature of the dispute. Learning these dynamics will better equip you for the negotiation table and help you to avoid undermining or contradicting your client. Ask the client, to the extent it isn’t already obvious, about their approach to dispute resolution, both in general, and in the context of the particular dispute for which you’ve been retained.

**III. Organizational Structures**

To better understand how an organizational structure can enrich outside counsel’s representation of a client, it is worthwhile to examine different organizational structures and strategies used by construction companies. When we say “Corporate Organizational Structure” or “Project Organizational Structure,” we are generally referring to the arrangement of job roles and the reporting/operational relationships within these roles.¹ These structures include marketing, procurement, bidding, scheduling, estimating, human resources, and project management.

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resources, financing, pre-construction tasks and construction operations as well as a board of directors and legal and risk management departments.²

Project management and corporate management structures differ in the timeframe in which each operates. Project management operates within a temporary and finite period (although this structure may be used over-and-over on different projects), with specified resources which they have at their disposal to carry out their individual objectives. Corporate management, on the other hand, is an ongoing function which survives the lifecycle of an individual project, requiring ongoing adaptations based on market fluctuations.

Two important documents which outside counsel can utilize to understand a company’s project-management approach are Project Execution Plans (“PEPs”) and Management Execution Plans (“MEPs”). Generally, Project and Management Execution Plans are governing documents that establish the means to execute, monitor and control projects, while ensuring that project details are communicated to the interested stakeholders of the project.³ While the components of these plans remain similar, they differ in the level of component detail.

Each requires tailoring based on the specific parameters of phase implementation, size and costs of individual projects. While there are common considerations to

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² Id.

incorporate on all projects, (i.e., safety, quality, cost, and schedule, etc.), specific differences will arise from project-to-project (scope, scale, complexity, objectives, etc.). Additionally, behavioral factors are reflected within each project execution plan. These factors consist of individual and group assessments of the working climate, leadership, motivation, role setting, and power structures within a particular team.

Although similar to PEPs, MEPs tend to contain greater detail with regard to individual management operations. Simply put, the PEP addresses the question of “what” occurs on the project and the MEP addresses the question of “how” it will be accomplished. The PEP is a document that plots the plan step-by-step towards the underlying project objective, while the MEP serves as an execution plan, plotting the activities of the project, specifically listing the tools and techniques that will be used to achieve the underlying project objectives. MEPs take the corporate best practices and implement them in particular scenarios to plan the most successful methods of implementation for a given task.

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6 Id. at 2.
8 Id.
9 Id.
Depending on the scope of the representation, MEPs and PEPs can be valuable resources to gain an in depth understanding of the project management structure and plan for a given project. If outside counsel is retained to assist a client in a claim or litigation revolving around project delays, knowledge of the schedule details set forth the PEP will be essential in your representation. On the other hand, a client may ask you to provide support in developing the MEP to ensure compliance with federal or state regulations applicable to a particular project. Regardless of your involvement, it is prudent to be aware of the PEPs and MEPs within an organization and consider how they may help you understand and represent your client. These plans can become especially relevant as disputes arise, specifically because they illustrate how the company operates and how the project work was expected to be executed. In the context of litigation, it is important to examine deviations from the MEPs and PEPs, the cause of the deviation, the responsible party, and the associated cost.

IV. ORGANIZATION OF SMALLER COMPANIES

Most construction companies in the United States have fewer than 100 employees.\(^\text{10}\) Typically, these “smaller” companies have fewer departments and more shared job roles, which can be beneficial – but they come with a host of potential challenges. For efficiency purposes, project managers, administrators, and superintendents

may follow a project throughout the entire lifecycle, performing preconstruction services as well as implementing and executing construction phase activities. Estimating and bidding departments may likewise be assigned to a particular project while also trying to establish relationships with owners to acquire work and/or subcontractors to acquire pricing. These consolidations are justified in order to minimize overhead costs associated with hiring additional staff.

One of the advantages of smaller construction companies is streamlined communication between the project team and corporate departments. Another advantage is the ability to readily react and go to market for bidding and client outreach. Fewer administrative hurdles and less internal “red-tape” can permit smaller companies to remain nimble and make decisions quickly.

These advantages, however, can potentially foster discord. The fact that many employees wear multiple hats in these organizations can result in an overall lack of specialization, burnout, and/or information loss. Greater responsibility concentrated in fewer employees also increases the need for quality control procedures that senior managers must implement. Knowing not only how the employees of your client’s company operate, but also why they work in that way, can provide a valuable understanding of your client’s needs so you can anticipate and prevent issues even before they materialize in your client’s organization.

V. ORGANIZATION OF LARGER COMPANIES
While larger companies possess greater financial resources, they are faced with significant organizational hurdles of their own. Larger companies are able to specialize, both in terms of market sectors and geography, which helps with both business unit specialization and diversity. On the other hand, these companies will typically be highly segmented and contain more corporate stakeholders and reporting requirements.

A. Specialization in Business Units

Outside of the standard departments of a typical construction company (project development, compliance, finance, human resources), larger companies have the ability to divide into specialized business units and focused corporate divisions. For example, instead of having a single human resources department, a larger company may have divisions specializing in communications, investor relations, employment, etc. Further, as LEED popularity has increased, larger construction companies have developed divisions specializing in Green Technology and Sustainable Investment, promoting visibility and allowing them to develop a reputation in new and developing fields. As for legal work, larger companies may spread legal resources across several groups, including, in-house legal, internal auditing and compliance, risk management, ethics, and employment departments. These divisions assist in promoting proactive risk assessment and expediting certain workflows. Accordingly, it may be necessary for outside counsel to cross into several different departments and specialty areas to obtain information or get answers to important questions. Knowing that your client’s organization may be divided into many
different departments and sub-departments will arm you with the ability to know when and where to ask for cross-departmental cooperation.

**B. Geographic Breaks and Market Segmentation**

Larger construction companies also have the ability to develop specific market focuses within a given geographic area. For example, a company's Florida business unit may have a specialized division catering to healthcare and/or retirement communities, while its Texas business unit may have a specialized division focusing on oil/natural gas facilities. It is important for outside counsel to understand that these specialized divisions may not exist across all geographic markets (i.e., there may not be a corresponding healthcare division in a company’s Texas business unit or an oil/gas division in the Florida business unit). These internal inconsistencies within the corporate structure are important to recognize when examining an organizational chart because it is not uncommon for divisions to be created within the company’s legal department to mirror that company’s geographic or market divisions.

**C. Corporate Departmental Segmentation**

Over the long-term representation of the client, outside counsel should look beyond the four-corners of the organizational chart and examine the legal issues that are created by virtue of the company’s organizational structure. Below, we have provided brief descriptions of commonly segmented departments and their respective functions within a typical construction company. Larger companies can be expected to have more specialized departments, with increasingly focused roles and duties. These examples are intended to
provide a breakdown of different roles between different departments; however, responsibilities may differ greatly from company to company. Understanding these divisions will enable you as the outside attorney to better navigate the corporate organizational maze.

**Business Development/Marketing:** Responsible for preparing proposals in response to Requests for Proposals; making formal proposals to owners; and building relationships with potential clients and maintaining relationships with long-term clients. There may be opportunities for outside counsel to aid existing clients by reviewing business proposal documents to ensure that they are narrowly tailored and refrain from over-extending the entity.

**Technology:** Supports and manages information systems for the company, as well as assists in document retention policies in the course of potential litigation. Responsibilities include: adding user accounts to project team members, managing and supporting network infrastructure and remote access options, managing project document inventories and security encryption procedures. Electronically stored information is a hot-button issue that often arises in litigation, and the technology department should be kept up-to-speed on developments and made aware of their data preservation obligations.

**Accounting:** Oversees all financial documents including subcontractor invoices, payroll, expense reports, insurance certificates, payment and performance bond documents, and office and owner invoices. On a project level, this department may not become involved until the contract is signed. In smaller companies, the accounting
function may be integrated into contract procurement or financing departments to evaluate whether a company can afford to take on a project and sustain financing throughout the project lifespan.

**Estimating:** Analyzes project plans and specifications to determine overall estimated costs of a project. Estimators are often tasked with specific architectural, structural, mechanical, electrical or civil scopes of work. Estimators are involved with a project throughout preconstruction and perhaps even into the construction phase. Responsibilities consist of providing qualifications and written assumptions that are discussed with the architect or owner when reviewing estimates; drafting and defining subcontract scopes and bid packages; developing purchasing checklists used prior to awarding work; performing due diligence over estimates when guaranteeing costs of projects; assisting sales and securing geographic target demographics; developing relationships with architects and engineers in the region; reviewing change orders; and performing value engineering and constructability reviews. Valuable information to resolve disputes can be found in the details of the project’s bidding. Often the bidding details can provide insight into what was anticipated by the owner and expected of the contractor.

**Procurement/Purchasing:** Develops and maintains relationships with subcontractors and suppliers. This includes evaluating subcontractor qualifications and financial capabilities; prepares, negotiates and awards all subcontractors and purchase orders. The purchasing department reviews contract drawings and specifications, then
determines how the work should be broken-down and purchased in order to obtain competitive pricing. This department also assists in expediting materials and assisting in resolution of subcontractor issues. Outside counsel may be able to assist this department in updating form subcontracts and purchase agreements to ensure compliance with emerging legal issues relating to anti-indemnity statutes, changing flow-down requirements, lien obligations, etc.

**Construction Document Controller:** Manages document control, imaging and archiving of various contract documents (engineering drawings, inspection instructions, confidentiality agreements, material specifications, mixing instructions, subcontracts, etc.), and conducts periodical audits to ensure accurate and up-to-date information is on record. Outside counsel can offer valuable assistance to this group to ensure proper document practices are followed. Often, the instinct on troubled projects is to focus solely on correcting issues and completing the work. However, it is important to ensure that the project is properly documented in the event litigation arises.

**Finance:** This department is responsible for financial oversight, overseeing the company’s profitability while ensuring timely and accurate financial reporting. The department also monitors job expenses, unapplied contract related costs, general and administrative expenses, financing expenses and investment income. This department may also be responsible for tracking costs of changes and claims. It is important to keep this group well-advised of how to properly track and calculate damages to support claims.
**Compliance and Ethics:** Institutes implementation procedures through the leadership and oversight of the board of directors, compliance department staff, internal liaisons throughout the organization, external counsel and internal compliance auditors; engages staff in education of compliance and ethics procedures and promotes active reporting of issues; creates project management software to track expenses, third-party due diligence and independent reporting procedures to compile fully integrated compliance audits; and performs overall monitoring and risk assessment of business units and industry wide operational matters.

**Human Resources:** Responsible for addressing employment conditions, worker satisfaction and employee relations, dissemination of corporate policies and other similar information, administration of employee benefits programs, managing hiring and reductions in force, and overseeing employee disciplinary action.

**Safety:** Provides training and ensures that proper policies are in place and that personnel are compliant with OSHA regulations and other internal and external health and safety requirements. Outside counsel may provide updates and training on new and emerging safety

**Risk Management/Insurance/Underwriting:** Responsible for evaluating project and operational risks and utilizing owner and contractor provided insurance products to mitigate exposure. Oversees the insurance and bonding needs of the organization and analyzes projects to determine the best strategy to effectively mitigate and manage risk. Manages overall insurance portfolios, general liability, excess liability, workers’
compensation, professional liability, pollution liability, builders’ risk, property, equipment and OCIP/CCIP policies and the insurance coverage contained in each policy. This department is also responsible for closing out insurance and surety issues for projects, responding to inquiries on subcontractor bonding, and conducts prime contract and subcontract reviews for insurance terms and verification. Outside counsel may provide updates and training on new and emerging risk management issues and strategies.

**Preconstruction:** Assists in preplanning of projects and finding solutions to potential problems. Consists of logistics planning (site access, materials deliveries, temporary hoists and elevators); development of master schedules (materials and manpower availability, compliance with local ordinances and considerations of site conditions); constructability reviews; phasing of work; and value engineering.

**Logistics:** Responsible for all aspects of supply chain deliverables, development and workforce management. Logistics departments ensure coordination of project and site deliverables with the on-site and off-site construction managers. Duties may include labor and materials coordination, site mobilization and accommodation, temporary services, material delivery, waste management, hoisting, crane plans, instituting safety and logistic planning meetings with all stakeholders, controlling and tracking on-site and off-site deliver of materials, forecasting deliverable schedules and creating record keeping procedures for documentary purposes.

**Legal:** Provides counsel on laws impacting operations and contract matters, drafts and negotiates agreements, performs pre-litigation work to minimize risks and preserve
legal rights; oversees and manages the work of outside counsel. The in-house legal
department also develops solutions to complex legal questions, supports ongoing projects,
and provides training to company employees on substantive legal and risk management
topics.

VI. CONCLUSION

Understanding your client’s organization is a necessary step in guiding your
representation. With this knowledge, outside counsel can become more than just an
attorney helping a client on a single litigation, contract, or claim. With an awareness and
appreciation of the organization and its various departments, you can place yourself in a
position to provide better, more well-rounded advice that is tailored to the client’s needs
and you can potentially help the client think through unforeseen or previously unaddressed
risks. The outside attorney that can handle matters effectively and also add value by
keeping the “big picture” in mind is a precious commodity. Discovering how to best serve
your client in this way is challenging and takes time, but learning about your client’s
organizational structure and the way it impacts day-to-day operations, business strategies,
and decision making is a good place to start.