Public Construction Projects: Not Always a Hollywood Ending

Plenary 5: Litigating Public Construction Cases: You Can Handle the Truth

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Cases Against Public Owners are Different

By Their Nature They are Political Animals
Avoid Claims/Suits Against Public Owners

Do You Really Want to Aggravate the King of Beasts?
Prosecuting Claims & Cases Against the Public Owner: How Much are You Sticking Your Neck Out?
Claims Against Public Owners

- Entitlement
- Compliance with Contract
- Political Sensitivity
- Public Perception of Owner
- Venue
- Fact Finder
- Sovereign Immunity
- Collectability
Be Alert to the Hidden Risks in the Contract and the Law
Public Perception of Owner
Venue for the Suit Against the Public Owner
How Receptive will the Jurors Be?
Exhaustion of Administrative Remedies Can be Exhausting...*and Non-Productive*

- What is Required?
- Who is the Hearing Officer?
- Time Limits for Decision?
- Funding Process?
Sovereign Immunity of Public Owners
Collectability?
After Analyzing the Risk-Reward Matrix, What is the Best Course Ahead?
Contingency Fund Availability

• Project Overruns

• Funding Change Orders

• Control of Fund

• Allowances
Don’t Poke the Bear
How Receptive will the Public Owner be to Change Orders?
Strictly Comply with the Contractual Change Order Process

• Time Limits

• Form of Notice

• Form of Documentation and Substantiation
“White Hat” Collaborative Approach
Getting Past “No”
Avoid Public Criticism of Owner

• May Force Owner to Seek Vindication

• Potential Obstacle to Settlement
Lobbyists

- Decision to Use
- Define Role
- Legal Considerations
- Ethical Considerations
- Avoiding Corruption Allegations
Public Owner Response to Claims

- Hyper Inspection of Work
- Excessive Punch Lists
- Non-Acceptance of Project
- Correction Costs
- Liquidated Damages
- Audit Provisions
- False Claims Act
Impact on Future Work

Look at Amount and Likelihood of Recovery vs. Potential Negative Impact on Future Work
The Market Has Shifted From Low Bid to Shortlists & Competitive Procurement

De-Selection Due To Claims or Lawsuits
Mediating with the Public Owner

• Mediator Selection
• Who Selects?
• Desirable Background
• Authority Issues
Dealing with Public Boards
Can You Get to Arbitration?
Arbitration with the Public Owner

- Binding on Owner?
- Selection of Arbitrators
- Construction-Experienced Fact Finders
- Privacy Considerations
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