University of Texas School of Law
Construction Law Conference
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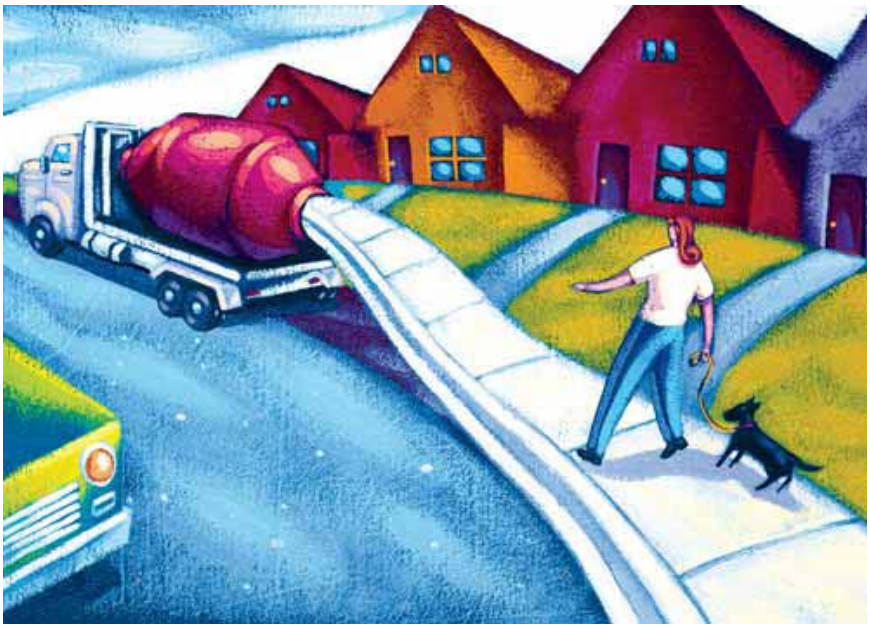

"Construction Industry Basics – What contractors expect their lawyers to know"

(OR AT LEAST THAT WISH THEY DID)

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INTRODUCTION

Construction: The custom manufacture of unique products of high value in a remote location with an uncertain environment under imposed cost and schedule constraints. This definition is from a construction management textbook used at Texas A&M University in the 1980's. When I first read it as part of my coursework, I thought it was an exaggeration. Now some twenty-five years later, I see it as an understatement of the complexity of the industry. The construction process is unique in many ways. It is, in a sense, manufacturing. But it is manufacturing without warehouses, without assembly lines and with little or no constant conditions. A manufacturer goes into a multimillion dollar state-of-the-art assembly plant to construct a product. A contractor goes into an empty field to construct a multimillion dollar state-of-the-art assembly plant. And this assumes the site is merely an empty field. Often they are a quagmire of surface and subsurface obstructions to be removed and disposed of, or even inaccessible altogether without preliminary access work. Appreciating the unique problems inherent in the construction industry is critical to understanding its specific legal issues. The significant risks common to all construction projects and the complex relationships among the multiple tiers of contracting parties makes a basic understanding of the industry important to a construction lawyer, and a basic understanding of the law important for all construction professionals. This paper is intended to address elements of both.

Construction Terminology and Typical Conditions

Representing clients involved in construction disputes is no different than any other focused practice area. Medical malpractice cases require an attorney to become familiar with insurance policies and medical reports. Intellectual property matters require a working knowledge of patent applications. Construction law practitioners must familiarize themselves with the documents that are most commonly at issue in the disputes, or transactional negotiations, that are at the core of the construction industry. This includes naturally includes standard contract forms. But it also includes numerous industry standard documents that are typical to any construction project. In reviewing these documents for your client, you must also learn the industry specific terminology in order to decipher what those documents mean, and how they relate to the legal principles that will govern the disputes. Attached as Exhibit A is a small collection of some of the more common terms. At the end of this list is a photo copy of the cover and publisher's information page from a book that has been on my desk for years, the

Builders Comprehensive Dictionary. I recommend it to anyone planning to delve into this area of law.

Plans and Specifications

Construction drawings are separated into areas of work, largely by the discipline of the design professional responsible for that portion of the design. The drawings are labeled with a letter designating the drawing type, and a progressive series of numbers for reference: C – Civil / Site; A – Architectural; S – Structural; M – Mechanical (includes HVAC and Plumbing); and E – Electrical. There may be additional subsets for specialty equipment or appurtenances, e.g. K – Kitchen equipment or F – Fixtures and Furniture. But the primary drawings are as noted, and typically are organized in the order listed above. The civil drawings include the site plans, topographical surveys, and all aspects of the preparation of the "non-building" construction such as dirt work and site drainage. Structural drawings contain the details of the concrete foundation work (although some portions of this are occasionally found in the civil drawings), and the structural steel and/or wood framing details. The MEP drawings address the inner functioning of the building systems that control the flow of power, water, and air.

The architectural drawings are the most all inclusive of the plans, and essentially detail all aspects of the construction not addressed in one of the more specialized documents noted above. These are the drawings commonly thought of and pictured under the moniker "blueprints". These drawings show the building elevations, component details, and the floor plans on which the structural and MEP drawings are overlaid for a complete picture of the building. The architects not only lay out the floor plans and exterior renditions of what the finished product is to look like, but also detail all aspects of the interior wall construction, roof plans, ceiling details, lighting lay outs, finish details, doors, hardware, glass, millwork, etc. For the newcomer, and even those with more experience in this area, a working knowledge of the architectural drawings is invaluable to understanding your clients' issues and problems. Most of the construction trade organizations offer basic print reading classes in one or more of these disciplines, and it can be time very well spent.

In conjunction with the information contained in the drawings, more detailed information on the technical requirements for the various parts of the work are included in the project specifications. Like the drawings, they are broken down into separated categories that address the individual items of work to be performed, and are created by and for the individual designers and trades responsible for each portion of that work. The specifications are arranged by CSI

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