



Issue Date: May 2005

THE REAL COSTS OF CHEAP DESIGN SERVICES

by JOHN P.BACHNER

“Y’know, Jones doesn’t have the best reputation,” you say. “He’s licensed and insured, and that’s good enough for me,” the owner’s representative responds. “If he screws up, we’ll sue.” Not only is this dialogue nonfiction, it’s repeated every day. In fact, you may have heard it yourself. And, if you have, what did you do about it? If you did nothing, shame on you. Do you actually believe it’s okay to rely on a sub-par professional because the civil justice system will make an owner whole? Wake up! It won’t.

Understand that civil engineering and construction are risky businesses not because of the natural challenges involved, nor because of the materials, products, and processes used. They’re risky because of people, and, in particular, those who continually repeat mistakes of the past because they forget — or never learned — the lessons of history.

“We’ll sue.” Anyone you hear utter such foolishness needs education. If you don’t provide it, experience will, and, regrettably, you’re likely to become part of that experience. Here’s what it probably would comprise.

True to form, Jones submits low-quality contract documents late and asks for an extra. The owner’s rep says, “Not a penny more,” and submits the contract documents to bid. Which contractor does he hire? He hires the one that bids lowest (although far above Jones’ estimate) because its representatives are unfamiliar with local conditions and requirements, or because they regard obvious weaknesses in the plans and specs as opportunities to change order their way to profitability. When they do just that, they blame Jones, and the owner’s rep is predisposed to believe them. Confusing “going over budget” with “being damaged,” the owner retains counsel and slaps Jones with a claim for \$500,000.

Jones’ deep pockets are in his professional liability insurance (PLI) company’s pants, so he gives the insurer a call. As a consequence of that call, the owner’s rep evidently must imagine, an insurance company representative will sprint to the owner’s office with a briefcase full of cash, count out \$500,000, apologize for the insured’s poor performance, and leave.

Not even close. The PLI company receives Jones' call and immediately reviews the policy looking for an escape. While that may sound heartless (because it is), it might work out okay. If PLI was Jones' only deep pocket, the owner's claim would stop right there: Poverty is an awesome defense. The owner's rep would benefit, too, by learning that "insured" doesn't necessarily mean "protected." Assuming that the claim must be defended, the PLI company assigns attorneys and experts to prove its knee-jerk contention: "Jones was framed." The contractor and several of the subs caused all the problems, the insurer says, and some of the other design professionals (including you) are culpable too (just in case). The insurer sues them all, and each one laterals to its own insurer, which, in turn, hands off to more lawyers and more experts, getting everyone wrapped into the web, including, of course, the owner — but not for a measly \$500,000. By this time, the stakes have zoomed past \$1 million and are heading rapidly toward \$2 million.

Discovery gets under way with subpoenas for records, with all the lawyers for all parties claiming that the other parties are going on fishing expeditions, which is kind of true. Nonetheless, weeks and months go by as lawyers file motions, appeal rulings, and otherwise make the wheels of justice grind.

"Why is it taking so long?" the owner's rep moans near-catatonically. The lawyers, who bill by the hour, shrug and say, "Beats us." And the insurance executives, who put their companies' estimated losses into reserves that keep on making money, do likewise.

And in the meantime, the owner learns what it's like to construct a project in Hell. On advice of counsel, each project participant curtails communication, coordination, and cooperation, slowing progress to a crawl. Costs soar and schedules collapse. Cheap can be awfully expensive.

"Sue?" you respond. "Sue?! Look: Design services comprise less than 1 percent of a project's life-cycle costs, but the quality of those services determines what all the other costs will be, and that's according to the U. S. General Accounting Office. You want to save some real money? Rely on the best. Sit down with their representatives and develop a scope of service that considers what you want and what your project needs." And say it with authority. Because not speaking up when you know you're right can make your business far riskier than it has to be. Remember: It's all about people. Especially you.

John P. Bachner is the executive vice president of ASFE, a not-for-profit trade association that provides programs, services, and materials to help geoprofessional, environmental, and civil engineering firms prosper through professionalism. Visit ASFE's website at www.asfe.org.