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Pyramid, panels and peanuts: When the best plans go awry, legal legions are standing by



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vault.

What do pyramids, panels and peanuts have in common? Litigation, of course. Whether a Ponzi scheme to rob Palm Beach snow birds of their nest egg, falling ceiling panels on a pharaonic Big Dig gone wrong, or fudging lab results when the peanut butter sample is festooned with lethal flora and fauna: when the best laid plans go awry, legal legions are standing by.

And perhaps that is as it should be. I will not argue the necessity or morality of the matter. It is the system within which we operate, and we resignedly accept the fact as grimly as death, taxes, and steroid scandals in sports. Certainly, in the construction industry we know that the final phase of every project is not close-out, but litigation.

Yet it is striking how unprepared most of us are when the inevitable happens. We may not control the litigious impulses of our business partners, but there are ways to parry each tortious thrust, if not to defeat the attempt, at least to minimize its costs.

Instances of litigation in our world involve a search for construction documents. During discovery lawyers on both sides will be digging for the specifications, drawings, addenda, submittals, shop drawings, memos, e-mails, as-builts and who knows what else. Billable hours mount as paralegals pore through banker boxes and rolls of drawings. Boston-style, the document dig quickly adds up to big bucks.

Most of the time, the document that proves or disproves the point is the very one that cannot be found: the receipt, stapled to an invoice; the post-it note placed on the warranty document; the e-mail string discussing a change-order.

Construction document management technology can help. An efficient digital document manager directs all project participants to route all construction documents, not matter how trivial-seeming at the time, through a single digital vault, an unassailable record of "who did what to whom, when." Participants will continue to issue memos, send e-mails and the like, but all of these communications will be routed by design through the digital

A copy will be kept of all documents and their subsequent iterations. Any activity is logged automatically, recording the creator of the document, its consumers, day and time accessed, what actions were taken (viewed, downloaded, printed, edited, etc.) Because the relevance of any information in a future dispute cannot be predicted, the level of detail and obsession with completeness adhered to by the system is absolutely critical.

My firm alone has deployed these systems in close to 3,000 projects since 2002. Dataflow manages the digital vault on behalf of owners, design firms, construction managers and general contractors. Once in a while we are asked to help with a claim by using the information logged in their project portal.

To cite one example from 2008, a GC managing the construction of a college dorm fielded a call from a sub-contractor demanding a re-bid. As the project manager told the story in the site trailer where we talked, the sub claimed he had not received his documents in time, therefore he had not had enough time to prepare his bid.

Had the GC not availed itself of a digital document management system that had built-in litigation support, this call would have spelled trouble. The project already was in danger of falling far behind schedule—when are they not?—and over budget—idem. Re-bidding a whole package would have added time and expense the PM could ill-afford.

At his desk he had an activity report off the project portal. Right on the phone he could tell the sub exactly the day and time his firm—even the individual's name at the firm—had received the ITB, viewed the documents, etc. Thus deflated, the sub meekly asked for an extension, which the PM was willing to allow.

Not a single dispute has gone beyond this stage to my knowledge, or more importantly, never has it reached litigation. When irrefutable data enters the discussion, the bluff, emotions and subjectivity are quickly replaced by a pragmatic desire to get on with the job.

Of course, this is no guarantee that such a thing will never happen again. But as you ponder how the economy will fare in 2009 and beyond, think about the mounting pressures on all project participants. Think of the shrinking margins, the deadlines, and the temptation these engender to cut corners. To ship the peanut butter, if you will. If you find yourself on the business end of a legal dispute, will you be able to find the document that exonerates you from liability? Will you find it quickly? Before legal costs force you to settle just to stay afloat?

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