“VOICE” of an ARCHITECT EXPERT

CONSTRUCTION PROJECT - NEGLIGENT CLAIMS: THREE GUIDING PRINCIPLES FOR AN EXPERT’S OPINION

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Date Line: 2630-2611 BC, IMHOTEP designs the Pyramid of Djoser at Saqqara, Egypt/ (Shutterstock)

*According to contemporary thinking, **Imhotep** was the first Architect to be known by name, in recorded history. He was the designer of the monumental step-pyramid building for the Egyptian pharaoh Djoser including perhaps the first known use of stone columns to support a building structure. Fast forward approximately 4,680 years, Architecture has become so much more than a single building. Present-day Architecture is the art, science, and entrepreneurial business of designing and constructing individual spaces, buildings, neighborhoods, communities, and municipalities to add greater value to societies’ future growth, welfare, and viability.*

Today all Parties, not just an Architect but also Owner and Constructor, initiate a Project together. The expectation is that the Architect’s instruments of service will be of a sufficiently high standard to clearly and accurately illustrate all essential building components and systems enabling the Constructor to satisfactorily complete the Work. The absolute performance of the Parties is controlled by the Contract Documents stipulating the design intent, construction quality, industry standards, applicable State Statutes and Agency of Jurisdiction minimum building code requirements.

NEGLIGENCE FAILURE !

At any stage of the design and construction of a Project, negligence may threaten the original design intent, integrity of the Work, and/or the safety and welfare of its users and the public. After 20 years of opining on “130-plus” construction dispute matters, as an Architect Expert Witness, Arbitrator and Mediator, representing a 50/50 Plaintiff / Defendant professional case mix, although not a lawyer, my operational and deliberative understanding is that negligence is a conduct failure of a responsible Party. Specifically that the Party failed to exercise a duty of care which would be expected of an Architect and/or a Constructor in like circumstances carrying out the Work. Each State and Jurisdiction I practice in may have variations on the performance requirements of Architects and Constructors to protect against negligent acts, and if so, are usually embodied in expanded contractual duty. It is the searching for and factually presenting performance negligence failures by any Party involved in a Project where errors, omissions, defects, and/or deficiencies are alleged, that drives the “**litigation**” bus.

CONTRACTS RULE !

Written or verbal, the documented contractual promises and/or behavioral promises of a verbal contract, becomes the absolute duty of care performance measurement for all Parties to each other. Yes, there will be more likely than not, expanding documents such as copyright stipulations, multiple project use agreements, General and Supplementary Conditions, etc. But in my opinion, the key foundational and factual evidentiary measurement of duty are the primary Contracts...executed between the Owner and Architect and Owner and the Constructor. From these promises, the performance obligations of all Parties, the design intent specified in the scope and quality of Work, financial considerations, and the defined schedule timeframes, are from which my opinions “spring” to determine causations of negligence acts. **This is where to begin**.

CAUSATION CONTEXT !

The end game. When disputed design, constructed errors, omissions, defects, and/or deficiencies are alleged, they more than likely will be complex. The causation responsibility is initially claimed by one Party to involve the design and/or construction of the other Party. My methodology to sort these issues out and finally determine the causation and negligent responsibility is to, (i) record and sift through all available documentation to develop a chronological matrix listing the succession of material events to any issue, in detail and in general. What is the story? This tool is used to understand the Project evolution from design to C of O, and identify relevant tags regarding specific issues and events. Then, (ii) analyze the permitted Contract Documents, Addenda, Change Orders, deltas, shops and product submittals, codes, applicable industry standards, within the circumstances identified in the initial Complaint and extended added claims. Finally,(iii) develop and publish opinions to testify in Deposition and eventually Trial, if this matter gets to Trial. Always in the context mix is the probability that the duty of care was breached by either Architect or Constructor.

QUALITY TEST of DESIGN INTENT !

At the end of the day, when the Certificate of Occupancy is issued and within the first twelve months of Owner use, more likely than not some expectations of the design intent scoping guidelines and Construction Document absolutes, for finished construction quality or system performance requirements, will be questioned. Depending on the intra construction Work relationships during the Project, among the Owner, Architect, and Constructor, contested poor quality, safety issues, and/or workmanship problems may be processed collaboratively without ending up in formal disputes. However, defective and/or deficient quality issues which are not suited for their intended purpose, as defined in the Contract Documents, will obviously become legal Complaints. As any discovery

process unfolds, it is my deliberative process to maintain as the single foundational factor for my opinions regarding all quality issues, a reliance most heavily on each Party's Contractual promises, to evaluate standards of care, duty, and the causation context.

So....for a fair and reliable deliberative approach to any Complaint of NEGLIGENCE FAILURE, my professional opinions will evolve from a reliance on these three guiding principles:

1-**CONTRACTS RULE**,

2-**CAUSATION CONTEXT**, and a

3-**QUALITY TEST of DESIGN INTENT**.