



# CONSTRUCTION **SUPER**CONFERENCE

2025

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# CONSTRUCTION SUPERCONFERENCE

## Debunking 7 Deadly Myths Encircling Design and Construction Defect Claims

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2:45 – 4:00

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# Myth 1

**After Final Completion  
the Owner Can Remedy  
Construction Defects  
as they Arise**

# Owners' Right to Correct Defective Work and the Spoliation Doctrine

LEGAL ANALYSIS AND PRACTICAL IMPLICATIONS FOR  
CONSTRUCTION PROFESSIONALS

# Overview

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- This presentation examines the legal and practical tension between an owner's right to correct defective construction work and the duty to preserve evidence under the spoliation doctrine
- Focus:
  - Contractual rights and obligations
  - Evidentiary preservation
  - Key case law and practical steps

# The Owner's Right to Correct

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- Construction contracts (e.g., AIA A201 §2.4, §12.2) grant owners the right to correct defective work at the contractor's expense
- Purpose:
  - Mitigate damages
  - Maintain project schedule
  - Protect property integrity
- However, this right must be balanced with evidence preservation duties

# Understanding the Spoliation Doctrine

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- The spoliation doctrine prohibits destruction or alteration of evidence that may be relevant to anticipated litigation
  - Sanctions may include dismissal, adverse inference, or monetary penalties
  - Key Principle: A party must not destroy evidence once litigation is reasonably foreseeable
- See: *Silvestri v. Gen. Motors Corp.*, 27 F.3d 583 (4th Cir. 2001).

# The Conflict Between Correction and Preservation

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- Owners often face conflicting duties:
  - Obligation to mitigate damages and ensure safety by correcting defects
  - Obligation to preserve evidence for potential litigation
- Premature correction may result in claims of spoliation, complicating later disputes

# Legal Standards for Spoliation

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- Courts generally assess spoliation by examining:
  1. Whether litigation was reasonably foreseeable
  2. Whether relevant evidence was destroyed
  3. Whether the destruction prejudiced another party
- See: *Beaven v. U.S. Dep't of Justice*, 622 F.3d 540 (6th Cir. 2010)

# Case Law Illustrations

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- *American Family Mut. Ins. Co. v. Golke*, 768 N.W.2d 729 (Wis. 2009)
  - Homeowner repaired damage without allowing inspection; spoliation found
- *Hernandez v. Starbucks Corp.*, 2018 WL 1135393 (E.D. Cal. 2018)
  - Court allowed repair when reasonable documentation and notice were provided
- Takeaway: Reasonableness and documentation often determine outcomes

# Balancing Reasonableness and Preservation

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- Owners are not prohibited from repairing work but must act reasonably:
  - Provide timely notice to the contractor
  - Document defects with photos, videos, and reports
  - Offer opportunity for inspection
- See: *Kirkland v. New York City Hous. Auth.*, 666 N.Y.S.2d 609 (App. Div. 1997)

# Contractual Risk Allocation

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- Contracts can manage this tension through clear clauses:
  - Require advance notice before correction.
  - Specify documentation standards.
  - Define emergency repair conditions.
- Owners and contractors should negotiate terms that balance efficiency and evidentiary integrity.

# Best Practices for Owners

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1. Anticipate potential claims when defects arise
2. Notify contractors and insurers immediately
3. Preserve physical samples where possible
4. Retain experts to inspect and document defects
5. Maintain transparency and written communication

These steps help mitigate spoliation risks while protecting project interests

# Recommendations for Counsel

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- Advise clients to establish preservation protocols
- Include spoliation awareness in project management training
- Use third-party documentation to ensure impartiality
- In litigation, demonstrate reasonableness of corrective actions
- Counsel play a key role in preventing adverse inferences or sanctions

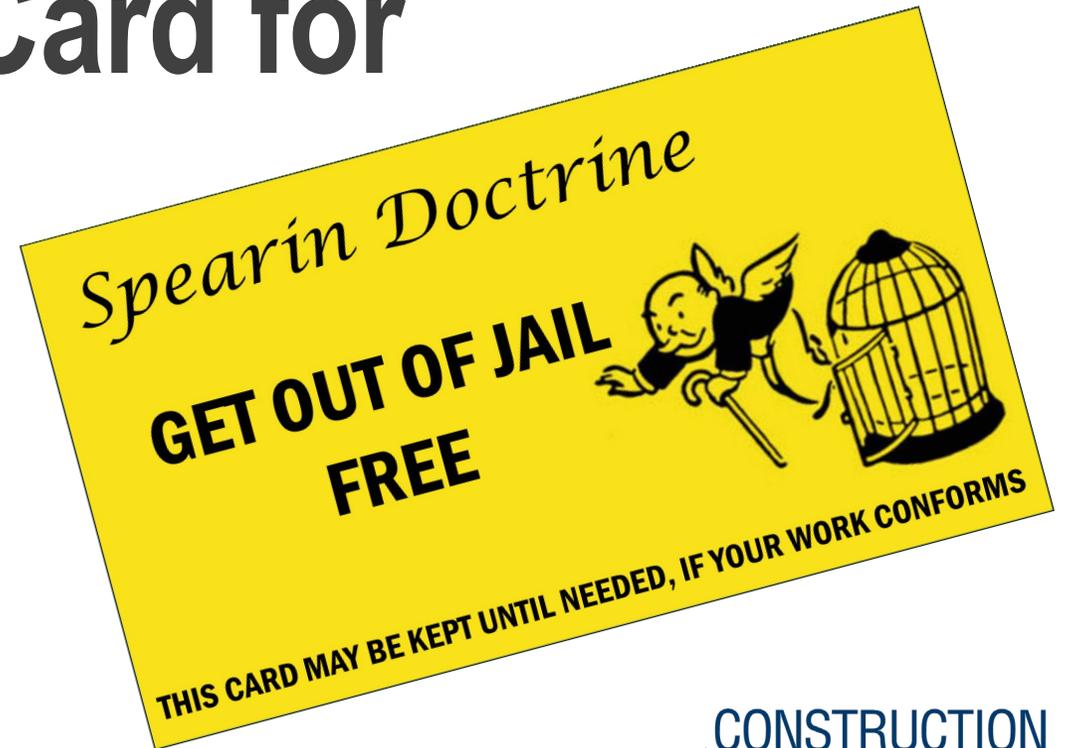
# Conclusion

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- Owners can correct defective work as reasonably necessary, but not without consideration of the spoliation doctrine
- Key takeaway: Reasonableness, documentation, and notice protect both the project and the owner's legal position
- Balancing timely correction with evidentiary preservation is critical to effective risk management

# Myth 2

The Spearin Doctrine is the Contractor's  
“Get Out of Jail Free” Card for  
Design-Related Issues  
Resulting in  
Property Damage



# Spearin Doctrine Is Not A Free Pass For Contractors

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- Myth: Owner always owns the consequences of bad plans and specs furnished to the contractor
- Wrong: Owner can shift liability to contractor for defective plans/specs and other errors/omissions in owner-furnished information
- Spearin is a powerful implied warranty, but not absolute
- Modern contracts and courts create numerous exceptions where contractors remain exposed for defective work caused by bad plans/specs

# Spearin's Core Rule and Its Limits

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- Spearin's enduring foundational principle (*United States v. Spearin*, 248 U.S. 132 (1918)): if the contractor is required to build per owner-furnished, "how-to" plans/specifications, owner impliedly warrants their adequacy and suitability
- Key limits/exceptions:
  - Express disclaimers and exculpatory clauses
  - contractor duty to inquire about patent ambiguities/conflicts and obvious errors
  - performance (vs. design) specs
  - express contractor warranties
  - no-damages-for-delay clauses

# Express Disclaimers and Exculpatory Clauses

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- Courts regularly enforce specific, targeted disclaimers and exculpatory clauses that shift risk to contractor for errors in owner-furnished information
- General boilerplate language that obligates contractor to “visit the site/check the plans” is often insufficient, but careful drafting can effectively shift the risk

# Examples Of Contract Provisions that Can Trump and Defeat Spearin's Implied Warranty

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- Per the contract documents, owner provided the problematic soils report “solely as a matter of convenience and general information”, expressly omitted the report from the Contract documents, and expressly disclaimed “any responsibility for the data as being representative of the conditions and materials which may be encountered”; the contract also “expressly bars claims based on soil conditions differing from those presented in the [soil report]” (*McDevitt & Street Co. v. Marriott*, 713 F.Supp. 906 (E.D. Va. 1989), aff’d in part, rev’d in part on other grounds, 911 F.2d 723 (4th Cir. 1990))

# Examples Of Contract Provisions that Can Trump and Defeat Spearin's Implied Warranty

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- “The Contractor agrees that he will make no claim against the City or the Engineer if, in carrying out the work, he finds that the actual subsurface conditions encountered do not conform to those indicated by said borings, test excavations, and other subsurface investigations” (*S&M Constructors, Inc. v. Cit of Columbus*, 434 N.E.2d 1349 (Ohio 1982))
- Following disclaimer enforceable against contractor claiming extra work and delay due to owner plans that failed to disclose or erroneously disclosed utilities: “...This information is not guaranteed, however, and it shall be this Contractor’s responsibility to determine the location, character and depth of existing utilities.” (*Miami-Dade Water and Sewer Authority v. Inman, Inc.*, 402 So.2d 1277 (Fla. Dist. Ct. App. 1981))

# Examples Of Contract Provisions that Can Trump and Defeat Spearin's Implied Warranty

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- *Spearin* implied warranty nullified where contractor agreed to “verify all...details shown on the drawings...received from the Engineer” and “notify [Engineer] of all errors, omission, conflicts and discrepancies” (*Modern Cont'l S. v. Fairfax Cnty, Water Auth.*, No. CL-2004-225019, 2006 WL 3775938 (2006))
  - Compare with *White v. Edsall Constr. Co, Inc.*, 296 F.3d 1081 (Fed. Cir. 2002) that found a disclaimer too broad to shift risk of design errors to contractor
    - Why? Because the disclaimer did not “clearly alert” the contractor that the design may be substantively flawed and unworkable, and there was no requirement for contractor to verify the suitability of the design

# Examples Of Contract Provisions that Can Trump and Defeat Spearin's Implied Warranty

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- AIA A201-type clauses obligating contractor to study documents, take field measurements, observe conditions, promptly report errors—paired with liability for failure to do so
- But watch for the interplay with a Differing Site Conditions (DSC) clause; courts have enforced DSC provisions over express exculpatory clauses when both appear in the same contract (*Dep't of Gen. Servs. v. Harmans Assocs. Ltd. P'ship*, 633 A.2d 939 (Md. App. Ct. 1993))
- No-damages-for-delay clause, where Contractor's sole remedy for delay is time extension, no monetary compensation, can bar Spearin-based delay claims

# No-Damages-for-Delay Provisions Can Defeat Spearin-Based Delay Damages

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- In some jurisdictions, no-damages-for-delay clauses can preclude recovery for delay damages caused by defective plans (See *Dugan & Meyers Construction Co., Inc. v. Ohio Department of Administrative Services*, 864 N.E.2d 68 (Ohio 2007)) (court also refused to apply Spearin to indirect (i.e., cumulative impact) delay damages resulting from design errors that caused hundreds of RFIs, Fieldwork orders and Architect Supplemental Instructions).
- But see *E. Elec. Corp. of N.J. v. Shoemaker Constr. Co.*, 657 F. Supp. 2d 545 (E.D. Pa. 2009)
  - Finding that indirect damages caused by defective design or specs were compensable under Spearin

# Contractor Duty to Inquire: Patent Ambiguities, Obvious Errors and Unreasonable Reliance

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- Contractors cannot rely on glaring inconsistencies/conflicts or patent ambiguities or errors in bid/construction documents and then claim Spearin protection
- Must show reasonable reliance on the erroneous plans/specs:
  - *Martin K. Eby Constr. Co., Inc. v. Jacksonville Transp. Auth.*, 436 F. Supp. 2d 1276 (M.D. Fla. 2005)
    - Not reasonable for contractor to assume access roads shown on bid plans were adequate to access site located within water and marshes because plans lacked soil reinforcement details
    - This assumption and failure to inquire sank contractor's \$10M claim over site access problems

# Contractor Duty to Inquire: Patent Ambiguities, Obvious Errors and Unreasonable Reliance

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- *KiSKA Constr. Corp. v. Washington Metro. Area Transit Auth.*, 321 F.3d 1151 (D.C. Cir. 2003)
  - Patent ambiguity regarding the number of dewatering wells required for the project in the bid/contract docs; failure of contractor to seek clarification during bidding process meant contractor assumed risk (\$40M) for extra dewatering wells
- *White v. Edsall Constr. Co, Inc.* 296 F.3d 1081 (Fed. Cir. 2002) sums it up best:
  - “The implied [*Spearin*] warranty...does not eliminate the contractor’s duty to investigate or inquire about a patent ambiguity, inconsistency, or mistake when the contractor recognized or should have recognized an error in the specifications or drawings...but [this duty] does not require them to ferret out hidden or subtle errors in the specifications.”
- Practical takeaway: If it looks “off” or seems confusing, ask — or you could own it

# Performance vs. Design Specifications

## (Performance Spec = No Spearin)

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- Spearin implied warranty covers detailed, “how -to” design” specifications (no discretion) supplied by owner, not “performance” specifications (result required; means/methods left to contractor)
- The greater discretion the contractor has to perform the work, the greater chance the spec will be deemed performance-based and not subject to the Spearin implied warranty
- “[T]he mere identification of a product or manufacturer does not create a design specification. Where a government agency identifies a particular product or manufacturer, but permits substitution of ‘an approved equal’, such a specification is ‘performance’ in nature and, as a result, carries no implied warranty.” (*A.G. Cullen Constr., Inc. v. State Sys. Of Higher Educ.*, 898 A.2d 1145 (Pa. Commw. Ct. 2006))

# Express Contractor Warranties Can Override the Implied Spearin Warranty

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- When contractor guarantees the work will be “free from faults and defects” and to replace materials deemed defective (typical A201 warranty language), such warranty language can trump the Spearin implied warranty, even if the defective product was specified by owner

# Express Contractor Warranties Can Override the Implied Spearin Warranty

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- See *Rhone Poulenc Rorer Pharms. Inc. v. Newman Glass Works, et al.*, 112 F.3d 695 (3rd Cir. 1997)
  - “This warranty of specification permits a court to allocate the risk of an inadequate specification, quite equitably, to the party that drafted the specification. Here, though, the parties have explicitly allocated to Defendant the risk the glass would be defective.”
  - The “express [contractor] warranties must prevail” over the implied Spearin specification warranty
  - “We conclude that the implied warranty by Plaintiff based on the specifications of the type and manufacturer of the spandrel glass must yield to Defendant’s express warranties against defective materials.”

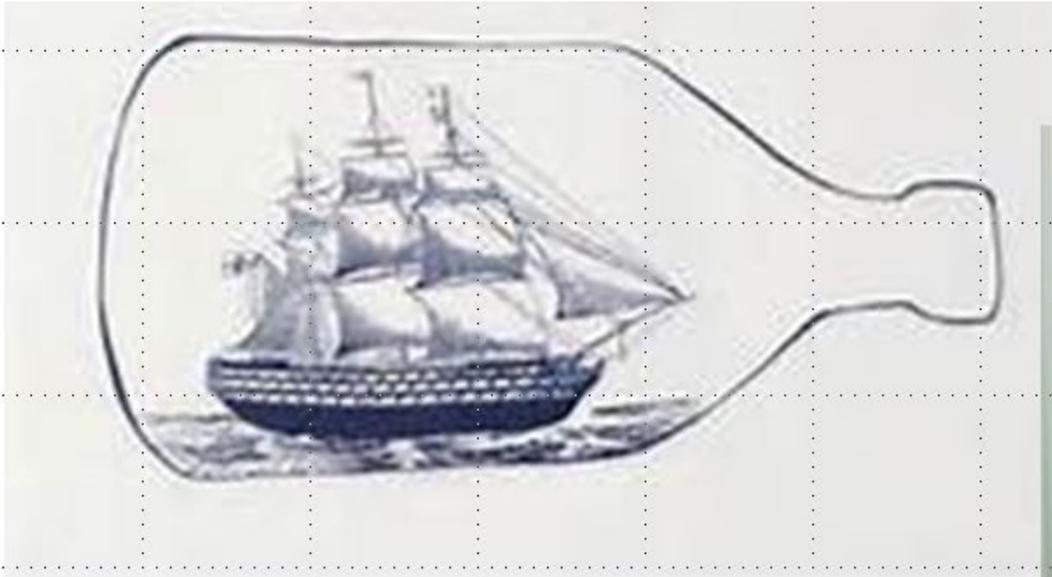
# Express Contractor Warranties Can Override the Implied Spearin Warranty

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- But see *Trustees of Indiana v. Aetna Casualty & Surety Co.*, 920 F.2d 429 (7<sup>th</sup> Cir. 1990) (abrogated on different grounds):
  - “Spearin’s teaching concerning the effect of detailed specifications has been extended to situations in which the ‘defect’ in the specifications was the naming of materials that themselves had a latent defects—including bad bricks.”

# *Spearin* and Design v. Means and Methods

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# Myth 3

Correcting Defects Affords the Owner the Opportunity to Redesign the Project



# The Betterment Doctrine

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- Myth: If the redesign due to design errors makes the project better than my original bargain, I can recover the enhancement costs because it all stems from the original bad design
- Wrong: The Betterment doctrine precludes recovery for what the owner would have paid had the omitted design element been included in the original, non-faulty design, subject to some exceptions
- The principal objective of the Betterment doctrine: avoid a windfall for the owner; can't place the owner in a better position than if the designer had fully performed and designed the project properly in the first place

# The Betterment Doctrine's Core Rule and Exceptions

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- General Rule:
  - Owner must pay what the omitted design item would have cost had it been included in the original design
  - Any increased costs to correct the design error (i.e., rip and tear, additional consultant fees, delay damages, change order premium, market changes making the work more expensive) are non-betterment damages
  - Any elective or avoidable design enhancements are non-recoverable; if contracted to build a Chevy, can't seek costs to build a Rolls Royce

# Betterment Exceptions

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- Representations or express warranties of the designer –
  - What if the design professional represents or warrants that the project will operate properly if constructed in accordance with the designer's plans and specifications?
  - Some courts have rejected the betterment doctrine and enforced the representation/warranty of performance, allowing recovery of all costs to correct (no deduct for betterment costs) (See *Carter v. Wolf Creek Highway Water Dist.*, 635 P.2d 1036 (Or. Ct. App. 1981))
- Owner would never have built the project had it known of costs to correct the design errors. (See *L.L. Lewis Constr., LLC v. Adrian*, 142 S.W.3d 255 (Mo. Ct. App. 2004); *State ex rel. Stephan v. Wolfenbarger and McCulley, P.A.*, 690 P.2d 380 (Kan. 1984))

# Burden of Proof – Depends on the Jurisdiction

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- Some courts treat the betterment doctrine as an affirmative defense, placing burden of proof on the designer or contractor
  - “the party urging [betterment] has the burden to show the repair, as made, resulted in an enhancement of value” (*Hollingsworth Roofing Co. V. Morrisson, 668 S.W.2d 872 (Tex.App.—Ft. Worth 1984)*).
- Other courts require the owner to prove no betterment, and the failure to do so can be fatal to the claim.
  - Directed Verdict against plaintiff (owner) for failing to properly itemize and apportion its damages between non-betterment costs and enhancements (*City of Westminster v. Centric-Jones Constructors, 100 P.3d 472 (Colo. App. 2003), cert granted, 2004 WL 2504512 (Colo 2004)*).

# Myth 4



**The Design-Build  
Delivery Method  
Shifts All Risk  
to the Contractor**

# Shifting of Spearin?

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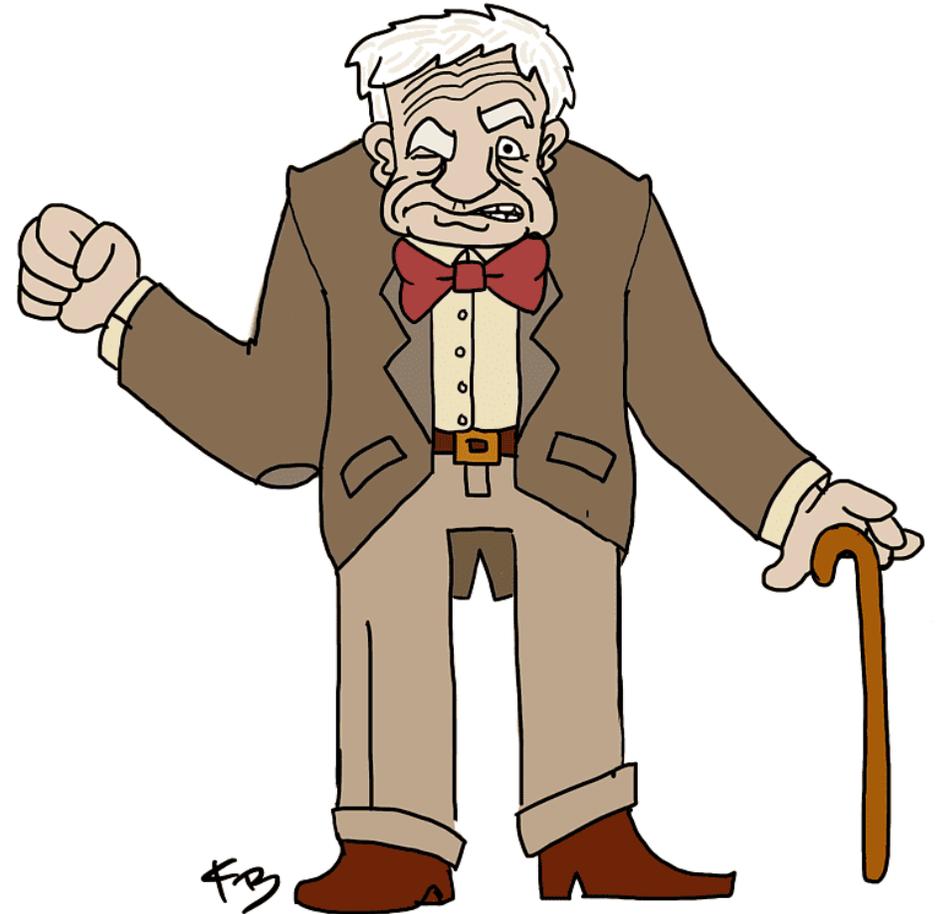
- “As a “design and build contractor,” [the contractor] assumed a far greater responsibility for preparation of drawings than would a contractor that was constructing entirely with the use of prescriptive drawings and specifications. . . . [The government-furnished drawings] were not intended to supersede the design/build contractor’s independent obligation to verify the accuracy of each room’s dimensions ...” (Fire Security Systems, Inc., V.A.B.C.A. No. 5559-63, 02-2 B.C.A. (CCH) ¶ 31,977)
- In D-B, builder generally has no one to blame but itself for defective plans and specifications ... but ...

# Musings of an old man ...

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The advent of the design-build delivery method. ...

The interpretive key concerning responsibility for design is the prescriptive nature of the owner's basis of design ... and conduct thereafter



# Shifting of Spearin?

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- *M.A. Mortenson Co.*, ASBCA No. 39978, 93-3 BCA ¶ 26189, (1993 WL 261019)
  - D-B contractor prevailed on a claim for changes that were necessitated by defects in the Government's preliminary design
  - 35% concept drawings: "may be used to form the basis for pricing proposal. However, the successful proposer is required to verify and validate the accuracy of the preliminary design information and to submit completed design documents including drawings, calculations and specifications."
  - Final design required more concrete and steel than indicated in the Government's conceptual design
  - Unreasonable for the contractor to perform such a thorough investigation so early in the process

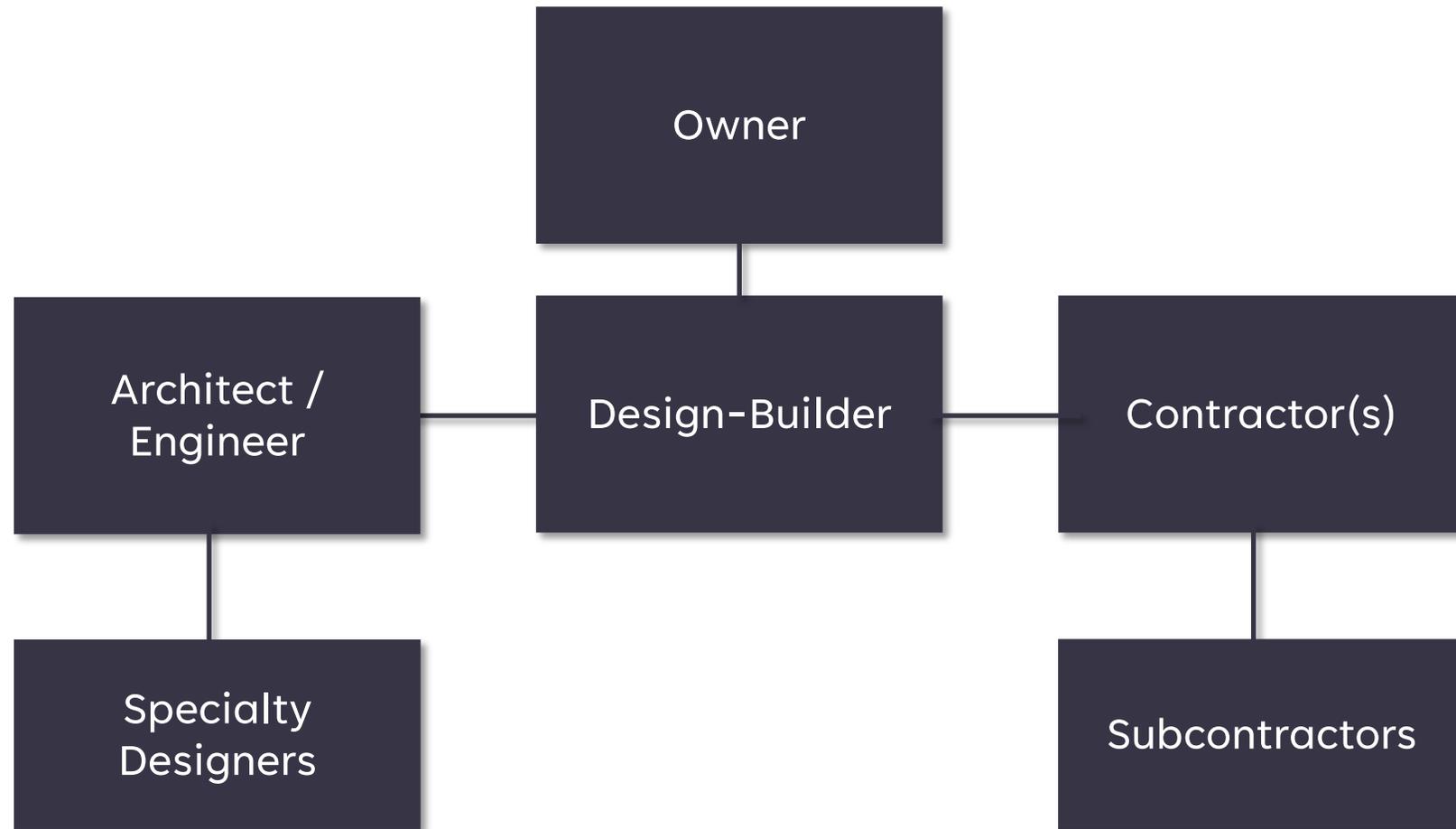
# Shifting of Spearin?

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- *CDM Constructors*, ASBCA No. 60454, 18-1 BCA ¶ 37190 (2018 WL 6113412)
  - Contractor was entitled to an equitable adjustment because the Government had furnished defective conceptual designs
  - By providing the concept drawings, the Government warranted that satisfactory performance would result from adherence to those drawings—despite the contract being design-build
  - Concept drawings created a warranty was even stronger in CDM than it was in Mortenson because, unlike in Mortenson, the contract documents in CDM required the contractor to use the drawings to price its proposal

# Design-Build

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## OWNER

### Advantages:

- Single point of responsibility
- Shorter timelines
- Reduced risks
- Easier to budget
- Value engineering
- Constructability

### Disadvantages:

- Higher prices / no competitive bids
- Requires higher level of trust
- Designer has direct financial interest
- Design creativity
- Less involvement

## DESIGN-BUILDER

### Advantages:

- More qualifications-based vs. price based
- Project logistics / material selections

### Disadvantages:

- Many Owners unfamiliar with process
- Owner difficulty yielding design control
- Designer's initial design efforts are often unreimbursed proposal costs

# Design-Build

# Design-Build and Coordination



# Myth 5

**More Pockets  
Make it Easier  
to Mediate  
Construction  
Disputes**



## **Quick Case Study:**

### **Design-Build SOE**



### **Adjacent Building Subsidence**

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**Hypothetically Speaking Of Course, an Owner was to Evaluate SOE Options in Manhattan**

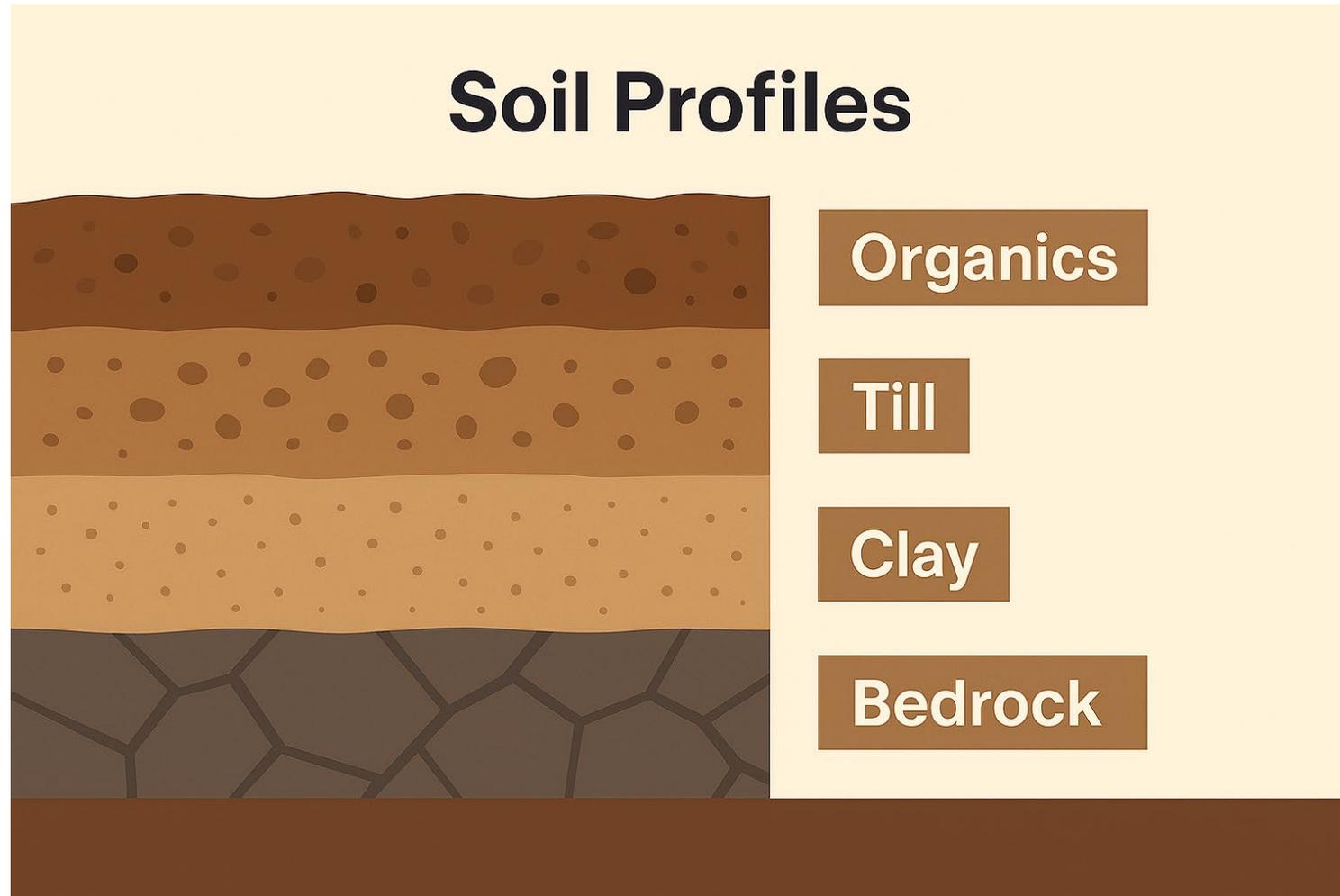
- **Steel Sheet Piling**
- **Pre-Drilled Soldier Piles and Lagging**
- **Slurry Wall**

**Each method requires careful consideration of site factors, and SOE pros and cons, that must be considered by a Design Team, including:**

- **Soil Profiles: organics, clay, bedrock, etc.**
- **Structure Characteristics: building/foundation materials, design, age, etc.**
- **Adjacent Building Foundation Profiles**
- **Vibration/Disruption**
- **Speed/Coordination Considerations and meeting the Project Schedule**

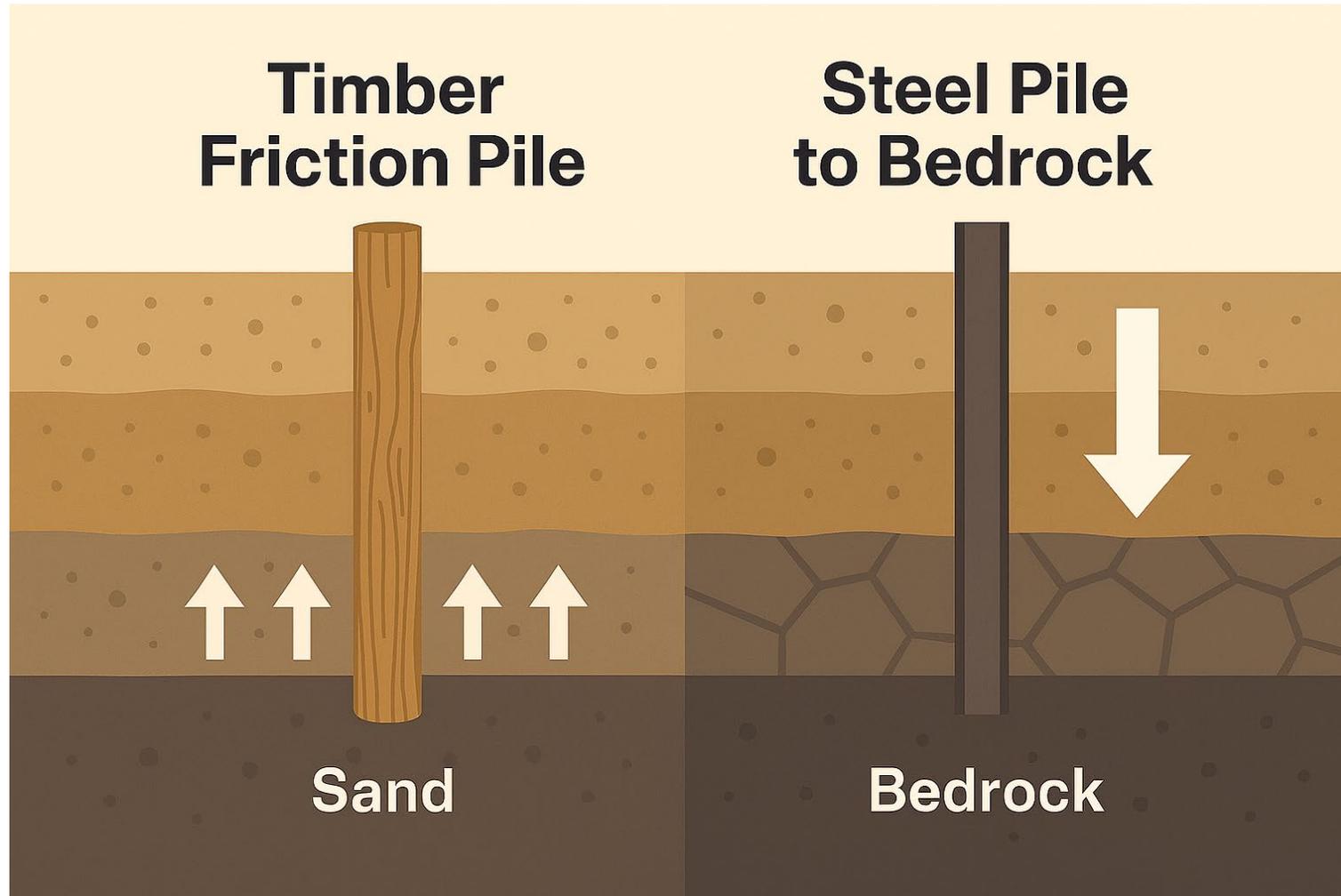
## Case Study:

Design-Build SOE → Verifying Site and Adjacent Soil Profiles



## Case Study:

# Design-Build SOE Verification of Adjacent Building Foundations



## Case Study:

Design-Build SOE



Selection of Proper SOE for site and adjacent site

# Steel Sheet Piling SOE

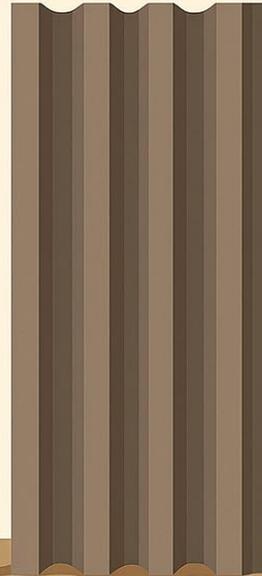
## PROS

- Site Factors
- Speed
- Coordination Considerations



## CONS

- Structure Characteristics
- Soil Profiles
- Value Engineering
- Vibration/Disruption



## Case Study:

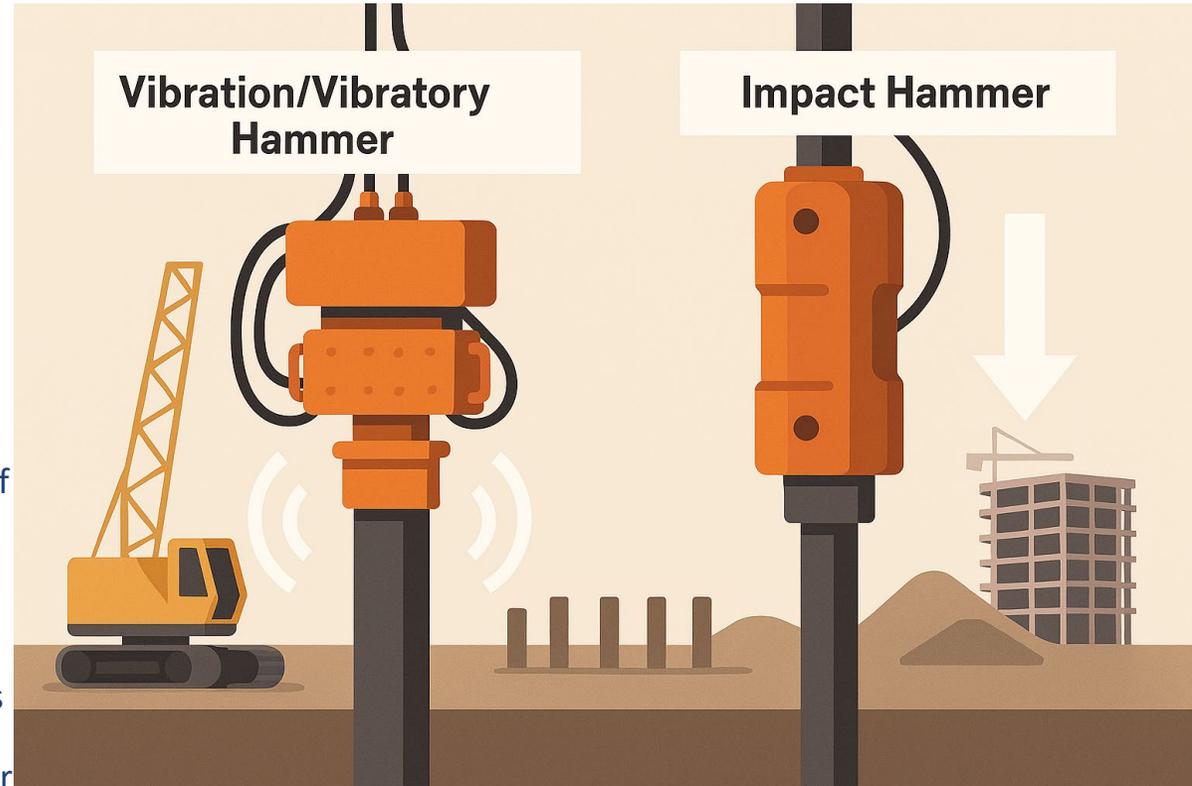
# Design-Build SOE → Specification of Site-Appropriate Equipment

### ▪ Hammer Types

- Vibration/Vibratory Hammer
- Impact Hammer

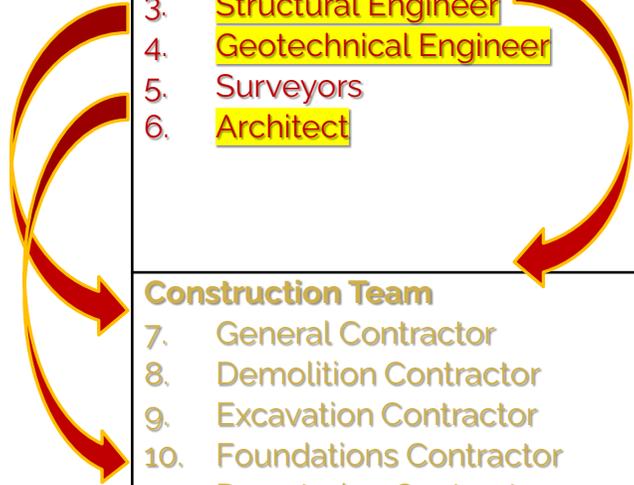
### ▪ Ground Vibration

- **Peak Particle Velocity Parameters:**
  - .04 ips - Human perception
  - .2-.5 ips - Formation of hairline cracks in plaster or drywall
  - .75-2.8 ips - Formation of large cracks, loosening of plaster, or cracks through bricks/concrete blocks. The upper limit of 2 in/sec is often considered a safe threshold for modern, engineered structures at higher frequencies
  - 5.4-7.6 ips - Damage to structural elements, cracks in support columns, loosening of joints. A PPV of 7.6 in/sec is associated with a 50% chance of major damage.



# Finger-pointing Regardless

Players	Roles
<p><b>Owner's Design Team</b></p> <ol style="list-style-type: none"> <li>1. Owner/Developer</li> <li>2. Construction Manager</li> <li>3. <b>Structural Engineer</b></li> <li>4. <b>Geotechnical Engineer</b></li> <li>5. Surveyors</li> <li>6. <b>Architect</b></li> </ol>	<ul style="list-style-type: none"> <li>• (1-6) Site Investigation including surrounding areas, e.g., obtaining adjacent building drawings)</li> <li>• (3-6) Preparation of pre-construction condition surveys</li> <li>• (4) Preparation of geotechnical survey, including test-pits and borings, and report</li> <li>• (3, 6) Preparation of drawings and specifications including for demolition and foundations</li> <li>• (3) Preparation of structural stability report</li> <li>• (3, 4, 6) Preparation of drawings and specifications for support of excavation</li> <li>• (1, 2, 6) Responsibility for selection of foundations and support of excavation</li> <li>• (1, 2, 3, 4, 6) Responsibility for value engineering</li> </ul>
<p><b>Construction Team</b></p> <ol style="list-style-type: none"> <li>7. General Contractor</li> <li>8. Demolition Contractor</li> <li>9. Excavation Contractor</li> <li>10. Foundations Contractor</li> <li>11. Dewatering Contractor</li> <li>12. Foundations Engineer</li> <li>13. Dewatering Engineer</li> </ol>	<ul style="list-style-type: none"> <li>• (All) Superficial investigation of site</li> <li>• (7, 8-11 if prime contractors) Responsibility for coordination, supervision and inspection of</li> <li>• (All) Responsibility for means and methods of construction</li> <li>• (12-13) Responsibility for designing constructible foundations/SOE, including consideration Team surveys.</li> </ul>
<p><b>Third-Parties</b></p> <ol style="list-style-type: none"> <li>14. Inspectors</li> <li>15. Special Inspectors</li> <li>16. Monitoring Professionals</li> <li>17. Soil Data Professionals</li> </ol>	<ul style="list-style-type: none"> <li>• (14-15) Statutory Inspection Responsibilities</li> <li>• (14-15) Responsibility for coordination, supervision and inspection of construction</li> <li>• (14-15) Responsibility for means and methods of construction</li> <li>• (16-17) Accumulation and distillation of accurate material field data.</li> </ul>



# More Pockets = More Money = More Simple?

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- **Does “Risk” Really Shift With Design-Build or Any PDM?**
  - **Construction Risk**
  - **Insurance Risk, Liability Exposure and the MYTH of Streamlined Recovery**
- **Is the Design-Build Contractor Now THE Target?**
  - **As ever (+)**
  - **Could face Design Risk now**
    - **Pass-thru?**
    - **Primacy of Insurance Policies**
    - **Indemnification**
- **Can you Still Invite Everyone to the Payment Party?**
  - **Depends on how case is postured/joinder of “culprits”**
  - **Mediator Style and Technique (Hammer \$\$ v. Substantive strengths/weaknesses)**

# Myth 6

**When it Comes to  
Defects and Damage  
the Culprit's  
Insurance Has  
Got You Covered**



# CGL Insurance Issues

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# Myth 7

**If Its Not Insured,  
It's Got to Be Warrantied**



# Liability Limits

## JOINT INSTALLER/MANUFACTURER GUARANTEE

The following constitutes a guarantee by [redacted] (hereafter "Factory Trained Installer") [redacted] Contractor) and [redacted] (hereafter "Manufacturer") covering the installation of certain materials provided by Manufacturer and applied by Installer at [redacted]

[redacted] (hereafter "Owner"). Installer will furnish labor at no charge to repair or replace at his option any work performed by him proved to be defective and that Manufacturer will furnish materials at no charge to repair or replace at his option materials proved to have manufacturing defects.

The repairs referenced above are Owner's exclusive remedy and as the limit of Installer's and Manufacturer's liability regardless of the nature of Owner's damages, including incidental and consequential damages, and regardless of whether such damages result from or arise out of or in connection with any leaks or other failure of the installation.

The term of this guarantee is **Five Years** from date of completion of installation, such date being noted below.

This guarantee does not extend to, and neither Manufacturer nor Installer shall be responsible for, damage to installation caused by abnormal use, ordinary wear and tear, inadequate or faulty structural design, structural defects or collapse, damage caused by entry of water under the installation-such water having entered by leakage other than through the installation-- or failure of the Owner to maintain the installation following Manufacturer's published Care and Maintenance Instructions, a copy of which is attached. Also specifically excluded from coverage are the following:

- 1) Damage to, or failure of, the product, as applied, due to repair, alteration or modification of the product, which the
- a) narrowest possible
- b) widest possible
- c) narrowest possible
- d) widest possible
- e) narrowest possible
- f) widest possible
- g) narrowest possible
- h) widest possible
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- s) narrowest possible
- t) widest possible
- u) narrowest possible
- v) widest possible
- w) narrowest possible
- x) widest possible
- y) narrowest possible
- z) widest possible

**The limit of Manufacturer's liability under this guarantee shall be the original purchase price of materials for the installation. The limit of Installer's liability under this guarantee shall be the original contract price.**

2) Damage to, or failure of, the product, as applied, due to repair, alteration or modification of the product, the membrane foundation or attachments to or projection through the membrane or structures, furniture or equipment placed on the membrane unless authorized by Manufacturer in writing.

3) Items not part of the membrane are not included within the protection unless provided by Manufacturer. Examples to these items are: roof insulation, underlying roof deck, vapor barrier, metalwork, drains, expansion joints, construction joints, skylights, vents, flashing or any other material not supplied by Manufacturer.

**The limit of Manufacturer's liability under this guarantee shall be the original purchase price of materials for the installation. The limit of Installer's liability under this guarantee shall be the original contract price.**

This guarantee shall be void unless Buyer shall notify Installer of the need for any repairs within ten (10) days of the date the need for repair is discovered or should have been discovered. Any repair work required hereunder shall be commenced within a reasonable period of time after receipt of said notice from Owner, subject to delays by strikes, inclement weather, acts of God, or other causes beyond the reasonable control of Installer.



# QUESTIONS

Christopher Ling ~ Moderator



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December 8, 2025  
2:45 – 4:00

Christopher Brasco



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