

A construction site at sunset, featuring several cranes and workers on a building's steel framework. The sky is a mix of orange, yellow, and blue. Large, semi-transparent numbers '2025' are overlaid in the background.

CONSTRUCTION **SUPER**CONFERENCE

2025

CONSTRUCTIONSUPERCONFERENCE.COM

Walking the Line: Managing Legal Risk Created by Strong Corporate Values

Jennifer Watson, DLR Group
Benjamin Strawn, Kiewit
Ben Wheatley, Duane Morris
Owen Newman, Duane Morris

Walking the Line: When Good Culture Eats Legal Strategy for Breakfast

“Culture Eats Strategy for Breakfast” usually explains how a poorly developed culture undermines even the best strategy. But, sometimes, and particularly once a Project goes sideways, it’s the cultural attributes that make a good company great in the field that present the most unique challenges to a legal strategy.

Walking the Line: When Good Culture Creates Legal Challenges

■ Culture

- Self-critique and performance improvement
- No excuses Project Management
- The customer is always right

■ The Challenges

- Evidentiary issues with root cause and lessons learned documents
- Sacrificing efficient commercial management for “Getting the Job Done”
- Balancing the client relationship with effective claims management

Walking the Line: Root Cause and Lessons Learned

- What is the Law?
 - A continuum of protection (or mostly, a lack thereof)
 - Attorney Client Privilege & Work Product: Control groups and business purposes
 - Subsequent Remedial Measures (Rule 407): Purposes of admissibility and remedial actions

- How can we mitigate the risk while leveraging the benefit?
 - Involving legal and limited control group
 - Be Clear about Scope, Purpose, Limitations, Reliance and Assumptions
 - Make Clear if Additional to Industry Standards
 - Draft and distribution controls
 - Involved legal direction and input

Walking the Line: Root Cause and Lessons Learned

■ Real Life Implications

- “The experts largely derived their opinions [on Gross Negligence] from [Good Company’s] causal analysis/lessons learned documents”
- “The Panel notes that [Good Company] did not pull any punches with respect to being self-critical in the Causal Analyses”
- “The record is replete with evidence of [Good Company’s] intent to put its best foot forward on this Project”
- “...these analyses served multiple purposes (i.e., they were not merely limited to determining the root cause...”

Walking the Line: Getting the Job Done

- Getting the Work Done and the Never-Failing Optimist
 - The Legal Challenge: Lack of strong contemporaneous record, lack of clear issue identification and the overly optimistic schedule
- How can we mitigate the risk while leveraging the benefit?
 - A culture of documentation
 - The art of the well-drafted letter
 - Making commercial success a key project driver
- Real Life Implications
 - Good Company PM: “...we’re not leveraging the pandemic against the owner. We’re going to minimize the impacts of the cost and do what we can.”
 - “[Good Company] effectively and remarkably dealt with the inefficiencies, disruptions and delays caused by Covid-19 ... all done at great expense to [Good Company]”
 - “As explained by [Good Company manager], [Good Company’s] mentality when problems arise is that “[Good Company] goes and fixes it”

Walking the Line: Keeping the Client Happy

- Context: “We can’t send that! The Client won’t Like It!”
 - Risk: Notice provisions, time limitations and unpleasant surprises
- What is the Law?
 - Assume strict compliance
 - Some limited exceptions
- How can we mitigate the risk while leveraging the benefit?
 - Maintain your fence
 - Up-front, day 1 communications
 - It’s also critical to relationship management
- Real Life Implications
 - “The Panel was also influenced by the fact that [Good Company’s] contemporaneous schedules ... did not depict any delays”

Jennifer Watson
Chief Legal Officer
DLR Group



913.685.5639

jshafer@dlrgroup.com

Benjamin Strawn
Assistant GC
Kiewit



720.624.6923

benjamin.strawn@kiewit.com

Owen Newman
Partner
Duane Morris LLP



312.499.6721

oknewman@duanemorris.com

Benton Wheatley
Partner
Duane Morris LLP



512.277.2262

btwheatley@duanemorris.com
