LEGAL IMPLICATIONS OF BUILDING COMMISSIONING

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May 4, 2005

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When things go as planned, the commissioning process:

• Verifies the proper operation of building systems

• Reduces incidence of IAQ issues and comfort complaints

• Helps designers and contractors deliver a project which meets owner’s needs
When things go as planned, the commissioning process:

• Reduces Change Orders

• Projects delivered on time and within budget

• Reduces contractor call-backs during warranty period

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When things go as planned, the commissioning process:

- Reduces cost of operation and maintenance and equipment
- Improves performance of operations and maintenance staff
When things go as planned, the commissioning process:

• Improves building’s asset value

• Improved occupant satisfaction initially and long-term (perception is reality)
The Project Relationships
The Project Relationships Where a Commissioning Agent is Part of the Project Team
When things do not go as planned on a Project, problems result…
Each Member of the Project Team May Have a Different Explanation of How, Why and Whether the Project Went Wrong…
Flowchart For Problem Resolution

Is It Working?

- Yes
  - Don't Mess With It!
- No
  - NO PROBLEM!

Did You Mess With It?

- Yes
  - YOU IDIOT!
- No
  - Look The Other Way

YOU IDIOT!

- Yes
  - Will it Blow Up In Your Hands?
- No
  - You're SCREWED!

Anyone Else Knows?

- Yes
  - Can You Blame Someone Else?
- No
  - Hide It

Can You Blame Someone Else?

- Yes
  - You're SCREWED!
- No
  - NO PROBLEM!
If Problems Are Inevitable, How Can I Minimize My Risks On Any Given Project???

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RISK MANAGEMENT
Manage Risk:

- Equipment Selection
- Training and disclosure
Manage Risk:

• Contract provisions

• Insurance coverage
Manage Risk:

• Vigilance on Project Site

• Documentation

• Compliance with Industry Standards, References and Guidelines
Manage Risk:

• Compliance with Applicable laws, codes and regulations

• Modified work practices to include back-up or redundant features

• Seek Counsel Where Appropriate

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Contractual Provisions
Understand What Your Contract Says:

• Waiver of Consequential Damages

• Dispute Resolution – Consolidation/Joinder

• Audit Rights

• Attorneys’ Fees, Costs and Expenses
What Does the Contract Say???

- Indemnification
- Limitations of Liability
- Notice Requirements
- Duty to Identify Defective Work and Conduct Inspections As Necessary
What Does the Contract Say???

• Disclaimers of Liability

• Hazardous Materials

• Incorporation by Reference

• Choice of law
What Are the Potential Liabilities?
Understand the Potential Bases for Liability:

NEGLIGENCE

• Duty
• Breach
• Proximate Cause
• Injury
What is Duty?

...To exercise the standard of reasonable care required of members of the profession under similar circumstances...
Where hold self out as a “specialist”, Duty may be higher...

i.e. any failure to perform in a manner consistent with a reasonably prudent HVAC contractor will subject contractor to potential liability

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Standard of Care May Vary By Project:

• State of the Art (slide rule vs. CAD)

• Severity of Damage (sidewalk vs. cancer facility)

• Was Damage Foreseeable? (slip and fall vs. 100 year storm)
To Whom is the Duty Owed?

• To the Owner by Contract

• To any person it is foreseeable may be injured by a failure to exercise standard of care.
Understand the Potential Bases for Liability:

- Breach of Contract
- Breach of Warranty-Express or Implied
Understand the Potential Bases for Liability:

- Products Liability
- Negligent Misrepresentation
- Unfair and Deceptive Trade Practices
Understand the Potential Bases for Liability:

• Personal Injury

• Indemnification
What Damages Am I potentially Liable For?
Know the Potential Damages for Liability:

- Direct and Indirect
- Cost to correct or repair defective work
- Cost to correct damaged property
Know the Potential Damages for Liability:

- Consequential Damages
- Double or Treble Damages
- Attorneys’ Fees
- Expert Fees/Costs
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