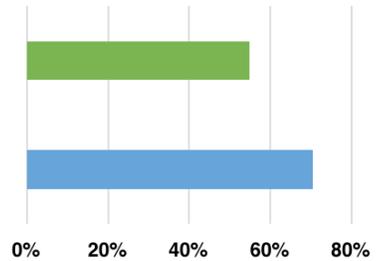


TRENDLINES

Chargeability



Chargeability, also known as the utilization rate, on average is higher for **very high-profit firms** (70.4 percent) than it is for **average-profit firms** (54.9 percent), according to the *2015 Financial Performance Survey*. Chargeability is a good indicator of how well a firm is using the entirety of its staff, professional and administrative. (Special discount to TZL subscribers, use code **SPRINGFIN15** to order this survey at 15 percent off on ZweigGroup.com)

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Traits of unusually successful people

“If successful people accomplish 20 times what average people do, unusually successful people accomplish 20 times what successful people do.”



Mark Zweig

EDITORIAL

There are successful people and then there are unusually successful people. The unusually successful people are 20 times more successful than just ordinary successful people.

I have had the good fortune to get to know a few of these – inside the A/E industry – and outside of it. And here are some of my observations about them:

- 1) They make friends instead of enemies.** You don't want anyone out there shooting you in the back. The unusually successful people get this idea and live by it. That's why they know how to treat other people so others like them.
- 2) They don't throw in the towel easily.** They may get knocked down but they get up again. They just don't give up on anything. That means people, revenue-producing units, or problems. The weak give up but the strong keep on working until they succeed.
- 3) They stay “on.”** That means the unusually successful folks have unusually high energy and can work a lot. Maybe 16-18 hours a day sometimes? But it isn't work for them because they love what they do and if you truly love your work you'll never have to work a day in your life.
- 4) They're considerate.** Unusually successful people think about the other guy. They keep their appointments, don't have their secretaries place their outbound calls and then make the person they're calling wait until they are summoned to the phone, and much more. They ask questions and show an interest in people. And they have good manners.

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ON THE MOVE

NEW WESTWOOD VPS ANNOUNCED: WITTSTOCK AND POWELL Westwood Professional Services, Inc. (Hot Firm #9 and Best Firm-Multidiscipline #32 for 2015), announced the appointments of Corridor Division Director, **Jay Wittstock**, PS, CFedS, and Land Division Director, **Bryan Powell**, PE, to positions of vice president.

"I am pleased to welcome Jay and Bryan to the executive team. They have led and grown their respective offices and divisions with much success," President/CEO Paul Greenhagen says. "Their leadership and management skills are great assets to Westwood as we continue to grow."

Both Wittstock and Powell were appointed leaders of their respective divisions in 2015.

Wittstock managed Westwood's St. Cloud, Minnesota, office operations for four years, after which he transitioned to lead the firm's national survey services and corridor division. As a professional land surveyor in multiple states and certified federal surveyor, Wittstock has more than 30 years of industry experience, working for both public and private clients. He joined Westwood in 2005 and is serving his third term on the board of directors.

Powell is a registered professional civil engineer and was hired to establish Westwood's Dallas-Fort Worth, Texas office operations six years ago. He has more than 17 years of industry experience and a proven track record for driving successful projects, ranging from simple one-acre commercial developments to complex 2,000-acre mixed use communities.

PAUL COSSELL APPOINTED AS NEW CEO AT ISG ISG announced that **Paul Cossell** will take over as

the company's new CEO, succeeding David Lawther who stepped down from the role after a 10-year tenure. Paul Cossell has been at ISG for 20 years, and managing director of ISG's highly-successful Fit Out and Engineering Services business since 2011.

Cossell has overseen the transformation of ISG's Fit Out business to be the market leader in London. He was also the driving force behind ISG's rapid entry into the international data center construction market. Last year, Cossell's business was recognised by the Chartered Management Institute as one of the UK's Top 50 rated companies for productivity.

Commenting on Cossell's appointment, outgoing CEO, David Lawther, said: "I am pleased to leave the company at a time when it faces a new and exciting future as a private entity. Paul has an impressive track record of growing profitable businesses in ISG and I wish him the very best in his new role. I have every confidence that the company will go from strength to strength under his leadership."

Cossell commented: "I feel incredibly privileged to be appointed CEO of this great business as we embark upon the next stage of our journey under private ownership. We are by nature ambitious and innovative at ISG, and under our new ownership we have the opportunity for significant growth. We will build on our market-leading credentials to be recognised as the best brand in the construction sector, offering an unbeatable customer experience.

"I'd like to take this opportunity to thank David for the great contribution he has made to ISG after 15 years with the business and wish him the very best for the future."

MARK ZWEIG, from page 1

- 5) **They are constantly looking to hire.** Unusually successful people know they are no better than the weakest member of their team. So they are constantly trying to bolster their teams. And that means virtually every single person they meet they'll be evaluating as a potential hire. And if the initial impression is good they'll be selling that individual on coming to work with them.
- 6) **They see opportunity everywhere.** The unusually successful people see the opportunities that others don't. They **NEVER** suffer from a lack of opportunities. But they also know which ones to pursue. And which ones not to. By being able to say "No" they save their energies for the things that have the best potential for payoff.
- 7) **They can multitask and hyper-focus.** This takes intelligence but something more. The unusually successful get this better than anyone else. Yes they can juggle a million things – but they can also bear down and get very difficult things fully completed when necessary.
- 8) **They're "real."** The unusually successful people don't have to pretend they're someone else. They are themselves at all times. That helps them get a positive reaction from others as people like real people. And because they aren't putting on an act they can always sustain it. And that is essential to their success.

If successful people accomplish 20 times what average people do, unusually successful people accomplish 20 times what successful people do. Who do you want to emulate? ▀

MARK ZWEIG is Zweig Group's founder and CEO. Contact him at mzweig@zweiggroup.com.

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PROFILE



West Side Dining at Stony Brook University, by KSQ Design.

Cross-pollination

CEO of national architecture firm KSQ Design says that when it comes to clients, leaving a friend behind is a good thing.

By LIISA ANDREASSEN
Correspondent



Armand Quadrini, CEO and Managing Principal, KSQ Design

Armand Quadrini, CEO and managing principal at **KSQ Design** (Best Firm #7 Architecture for 2015), comes from a family of builders and architects, and has a rooted passion for designing practical and inspiring living spaces. As the leader of a 130-person planning, architecture, and interior design firm, Quadrini is known around the office for being a hands-on guy who's happiest when sketching, analyzing, and communicating exciting designs to his clients.

The firm has a rich portfolio in higher education, K-12, multifamily, and healthcare. A signature piece, the Greek Village on the campus of Texas Christian University in Fort Worth, is now under construction.

A CONVERSATION WITH QUADRINI.

The Zweig Letter: Tell me a little about your career path that led to your role as CEO of KSQ.

Armand Quadrini: There were three professional stops along my path to KSQ. They were working with my dad (a builder-developer), working with **Einhorn Yaffee & Prescott**, and **Perkins Eastman**. All three offered great mentorship, rewarded "thinking like an owner," and presented the fertile ground for growth and advancement. It was incredible to be at both EYP and PE while these firms grew from a single office to international enterprises – and to have played a small role in each endeavor. My role as one of the three senior partners in the firm began in October 2004 when I joined KSQ.

TZL: How have you seen KSQ evolve since you have been there?

See Q&A, page 4



AQ: It's both humbling and with awe that we look back on our journey from 17 staff in two offices to a network of seven offices supporting 130 staff nationally. Garret Krishan, David Short, and I are surrounded by an extraordinary leadership team – our vision from about a dozen years ago was to cross-pollinate our respective K-12, student life, and multifamily housing passions. This strategy led to the firm that we are a part of today. The addition of the healthcare and engineering teams in Charlotte, North Carolina, served to amplify the firm's core strengths while broadening our footprint and market reach. Our marketing and communications and IT team have helped us to strengthen our brand, content, and messaging as well. As my friend Chester says: "This is just the beginning!"

TZL: What are your key strengths? What do you feel the key strengths are for an effective leader?

AQ: Truly listening and treating everyone equally and in a forthright manner serves to create a platform of mutual trust and respect. We also work hard to discern the little stuff from the big stuff – and not sweat the little stuff.

TZL: How would you describe your leadership style?

AQ: Listening and empowering others along with a low-ego approach reflects my core values and aim towards successful team building.

TZL: To date, as CEO, what has been your greatest challenge and how did you deal with it?

AQ: When we first emerged on the national scene – leveraging and "cross-pollinating" our experience from respective geographic areas of the country was our greatest challenge. Our core values in client service and engagement ensured that we "always left a friend behind." We cherish our incredible client base that has propelled us to earn the experience, resources, and talented staff that comprise our multidisciplinary firm.

TZL: What is your vision for the future of KSQ?

AQ: To continue to emerge as the national, design thought leaders in the sectors that KSQ focuses on.

TZL: Tell me about a recent project you're especially proud of and why.

AQ: Stony Brook University – West Side Dining. Collaborating closely with SBU leadership, we were able to convert a '50s era "Brutalist" cafeteria building into a national level, retail collegiate dining center. The resultant glass "lantern" is the façade of the building and has become a beacon of residence life on the west side of campus.

TZL: How have you helped your firm to outperform some competitors? What do you feel sets you apart?

AQ: Our firm's mission – the transformative power of community – refers to the partnership we undertake with each client. Our methods in connection with client service and design excellence are the tools we use to help our clients make inspiring spaces that their stakeholders call home. We set out to connect our work directly to our client's mission imperatives and provide added value.

TZL: Is there any news you care to share about KSQ projects or anything else?

AQ: Last year we stepped back to re-examine our work – why we do what we do – and found our ability to bring people together is why design matters. Besides architecture, our firm includes interior design, planning, and engineering. Design is what ties us all together. This process led to our rebrand and the firm becoming KSQ Design (instead of KSQ Architects and KSQ/Peterson).

Led by Tom Hier (president of Biddison Hier), and Monica Roberts (KSQ Design senior associate), our firm is completing a national collegiate research project called, "The Residential Campus of 2025." We are blending our own lessons learned with the most current successes and challenges gained from leading national universities. We will develop a brief to be published in 2017.

We have exciting projects in each market sector right now, including a \$137.5 million bond project at Kingston High School, the continued development of Worth Hills Village at TCU, the largest multifamily residential project underway in Ridgewood, Queens, and an interesting project that combines healthcare and higher education at Western Carolina University.

TZL: Are you married? Do have you children? Pets?

AQ: Maryellen and I have one canine son, Hunter, and three human sons: Dylan, Ian, and Connor. We love them all equally (well, mostly).

TZL: What's one thing most people at the firm don't know about you?

AQ: I love to cook.

TZL: What's a favorite vacation spot?

AQ: Tuscany!

TZL: What's the last book you read?

AQ: *Last Night in Twisted River* by John Irving.

TZL: What's the last movie you saw in the theater?

AQ: *Star Wars: The Force Awakens*.

TZL: What's the best piece of work-related advice you've ever gotten?

AQ: It was from my dad: "Measure twice and cut once."

TZL: Who is a leader who you admire? Why?

AQ: Frank Lloyd Wright. He was a master planner and architectural designer who permitted nature to inspire him and his work.

TZL: When you're not working, what types of activities do you enjoy?

AQ: Hikes with Hunter, Maryellen, and the boys. I also like to paddle-board, ski, read, and cook.

TZL: Do you have a favorite lunch?

AQ: Sushi. 🍣

OPINION



A pattern of inaction

If you are stuck in neutral, break out of the rut by asking questions, altering your approach, and accepting the possibility that there may be a problem.



**Bill
Murphey**

**CONTINUING
ED**

Some of us have a hard time taking action when it's needed. Sometimes we deny that we even have to take action.

I've been a consultant for a retail business for most of the past year and have been frustrated by my client's lack of action. Granted, I'm a consultant and don't have a financial stake in the business, but I treat the company as if it were my own and I don't like to see a company fail. This company is on the path to failure due to the owner's pattern of inaction.

The owner opened the business two years ago with a very small capital investment, no line of credit, and no business plan. As a result, the owner has no financial resources to rely on during the negative-revenue months. The business' gross revenue has increased by less than 5 percent in the past year, but its net revenue has decreased by more than 10 percent. In short, the company is losing money almost every month, but the owner has not done anything to correct the downward spiral.

Like some firm leaders in our industry, this owner acknowledges that significant changes are needed to save the company, but won't take the steps necessary to enact those changes. It's frustrating for me, but even more so for the employees, because they can see where the company is heading.

"This company is on the path to failure due to the owner's pattern of inaction."

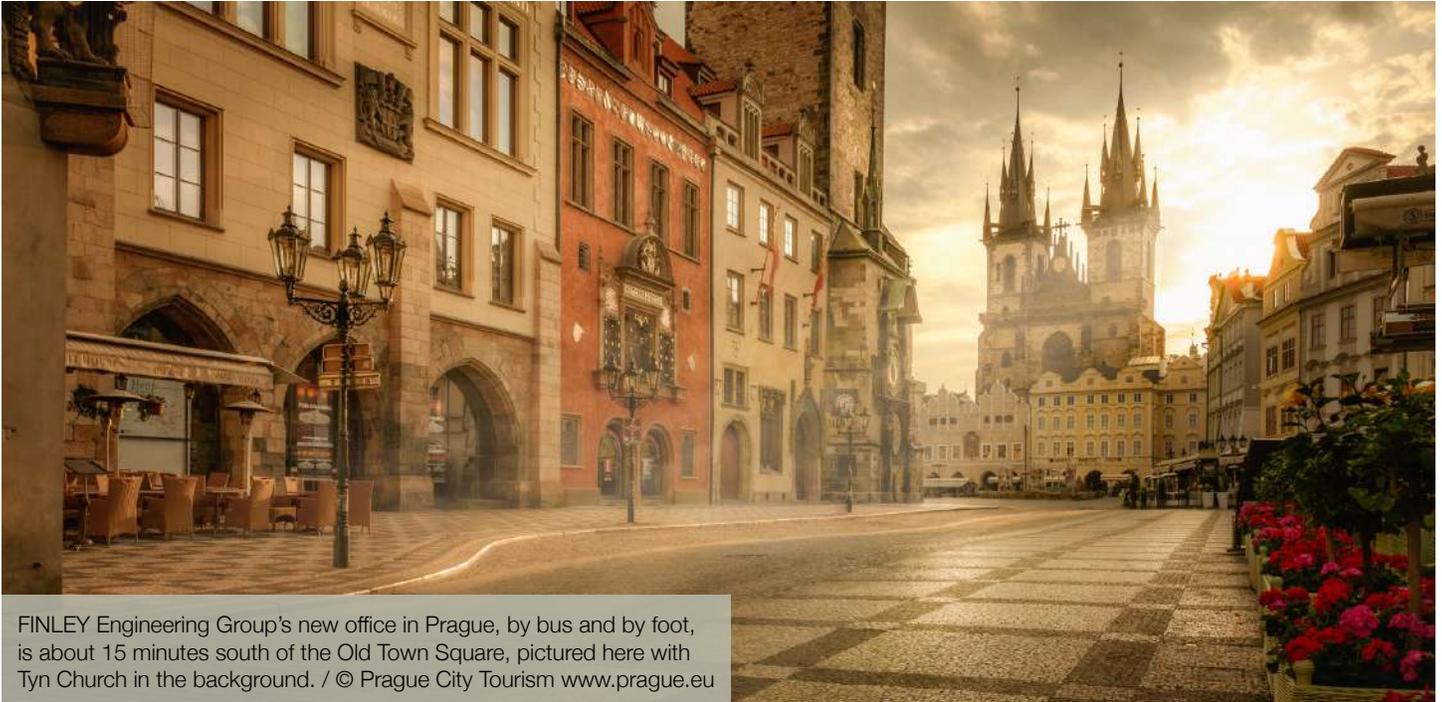
The owner has never had a business class and everything about operating a business has been learned through trial and error. There are some firms in our industry that started the same way. They began with a great idea, but never felt they

See BILL MURPHEY, page 8



SPOTLIGHT ON: F I N

PROFILE



FINLEY Engineering Group's new office in Prague, by bus and by foot, is about 15 minutes south of the Old Town Square, pictured here with Tyn Church in the background. / © Prague City Tourism www.prague.eu

Czeching it out

US bridge-building firm opens office in Prague to be closer to work in Israel, but over time, role of European hub expected to increase.

By RICHARD MASSEY
Managing Editor



Craig Finley,
Founder and
Managing
Principal,
FINLEY
Engineering
Group

There are certainly many reasons why a U.S. engineering firm would decide to open an international office. Not too many of them, however, would set down roots in the enchanting City of a Thousand Spires – Prague, Czech Republic.

But that's what **FINLEY Engineering Group** (#4 Best Firm Civil for 2015), did earlier this year when the firm, an award-winning bridge builder, fittingly hung its shingle in Prague's New Town, not too far from one of the most famous spans in the world, Charles Bridge.

From its outpost in Prague, FINLEY looks to expand into a market where it's been active for 20 years – the Middle East. The move makes plenty of sense. From Prague, it's only a 4.5-hour flight to Tel Aviv, whereas it takes nearly 20 hours to fly there from Tallahassee, Florida, where FINLEY is based.

“We had a very good engineer working with us, Jindrich Potucek, who is Czech. He was starting a family and thinking about moving back home. He had been with us for about five years and we decided that he was ready to lead FINLEY's first international office.”

But why Prague and not Vienna, Budapest, or Warsaw? After a few years of consideration, it all came down to talented personnel, the cornerstone of any successful firm. Craig Finley, the firm's founder and managing principal, explains.

“We had a very good engineer working with us, Jindrich Potucek, who is Czech,” Finley says. “He was starting a family and thinking about moving back



home. He had been with us for about five years and we decided that he was ready to lead FINLEY’s first international office. From our due diligences, we are certain that the Czech engineers are very well educated, the commercial climate favorable, and the cost of structure was very favorable. Prague was a win.”

With a location identified and a trusted engineer in a leadership position, FINLEY had to get down to the nuts and bolts of the move – legal, accounting, and permitting – and ensure that the company’s culture was instilled in the new location. FINLEY went with a “same building-different floors” approach, and is now up to four engineers and looking to add three more, plus support staff, before the summer is over.

“Salary rates are typically lower, along with overheads and operating margin. We’ve found that FINLEY’s reputation and special expertise has been well received and we have not had to compete solely on a ‘price only’ basis.”

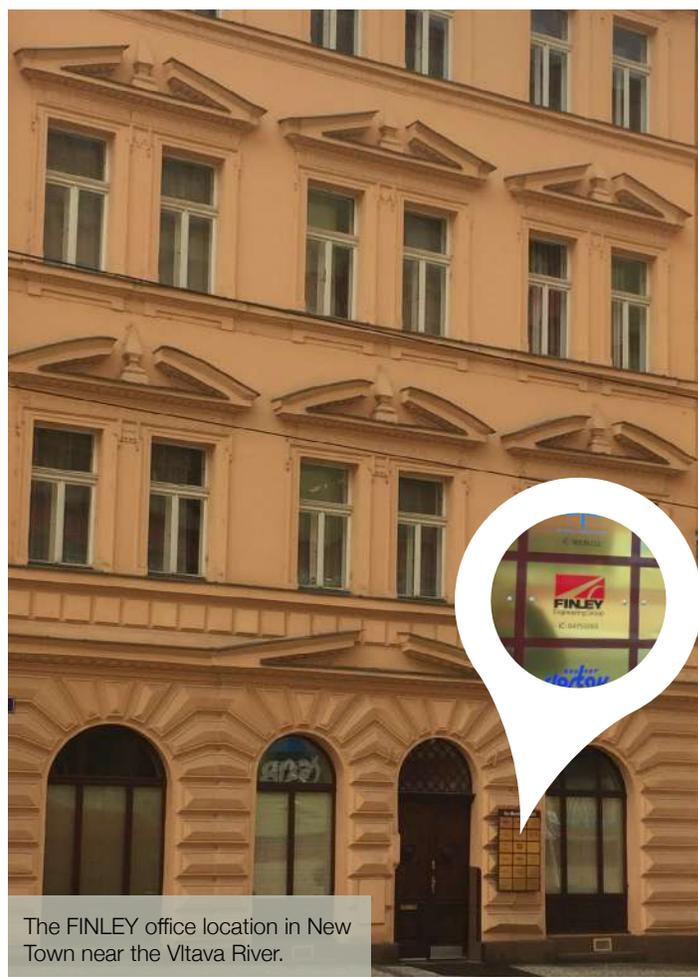
As an American firm, FINLEY arrives in the international market with pros and cons. Competing firms, due to a variety of reasons, can charge lower rates. But Finley, a bridge builder with a long track record, has an established brand, even outside the United States.

“The international markets are tough and more cost competitive than the USA,” Finley says. “Salary rates are typically lower, along with overheads and operating margin. We’ve found that FINLEY’s reputation and special expertise has been well received and we have not had to compete solely on a ‘price only’ basis.”

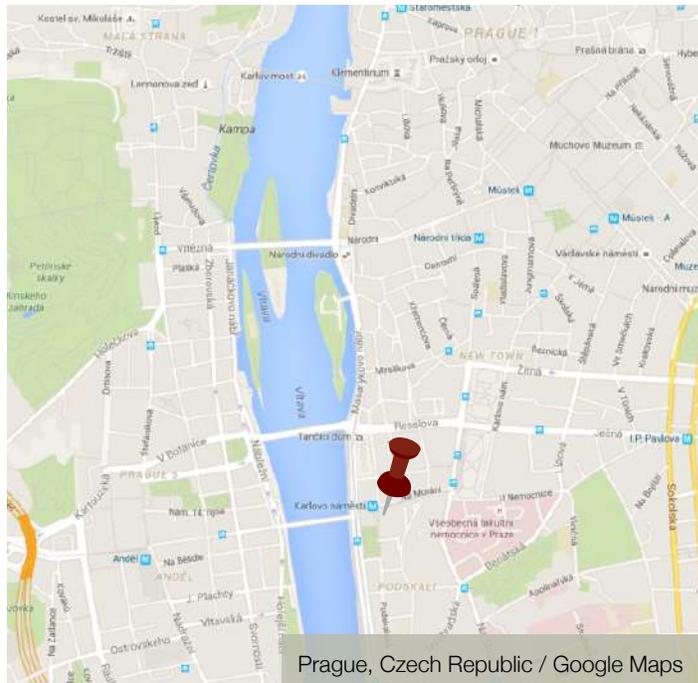
While the United States is recognized as perhaps the most diverse country in the world, due to immigration policies, it’s difficult to bring top engineers into the United States from abroad, Finley says. Meanwhile, the firm is not seeing the same restraints in the Czech Republic, giving the Prague office a chance to be truly international. A deep Rolodex doesn’t hurt, either.

“So far, FINLEY has not had any difficulties in finding great people to join us,” Finley says. “For the most part, they have been known to us or came via a contact from someone we knew. FINLEY’s social media presence seems to be keeping us in front of potential new hires, too.”

Abroad, FINLEY’s bread and butter is bridge construction in Israel, where FINLEY enjoys long-term relationships with important construction companies like Danya Cebus. The



The FINLEY office location in New Town near the Vltava River.



Prague, Czech Republic / Google Maps

See FINLEY, page 8

BILL MURPHEY, from page 5

had the time to obtain formal training on how to actually lead a company. Now, after the firm has expanded, they're too busy to take the time needed to understand how to run a business. They, too, are stuck in a pattern of inaction.

Despite my best efforts to explain basic accounting principles, the owner can't understand where the money is going. There's an antiquated process for analyzing monthly cash inflow, but no accounting of the cash outflow. Some of the accounts payable are in arrears by more than 18 months.

"Doing nothing is easy, but it will lead to problems, much like taking your hands off the steering wheel while driving on the highway."

It's like a train barreling down the tracks and the engineer is ignoring the flashing lights warning that the bridge is out. Hopefully, your firm isn't in such dire straits, but how do you know if you're stuck in a pattern of inaction?

- **Your first response to any difficult question is "I don't know."** The business owner I work with loves this phrase. When asked why a specific action was taken, the response is: "I don't know." Where are your 2015 receipts? "I don't know." How much are you paying for marketing? "I don't know." For the owner, it's easier to deflect uncomfortable questions with a simple brush off, because any other response would require action.
- **You would rather make no decision than to make a bad one.** A bad decision typically leads to bad results, but the assumption is that if you don't make a decision, nothing can go wrong. In reality, quite the opposite can be true. The decision to not make a decision can lead to lost proposals and missed deadlines, resulting in lost revenue.
- **You refuse to accept, or you dismiss, bad news.** Accepting bad news typically prompts people to take some action to correct the problem. If you don't accept the bad news, why would

you have to act? This is the equivalent of covering your ears and shouting: "I can't hear you!"

- **You don't get involved in details when numbers and statistics are concerned.** Looking at "the big picture" and "staying out of the weeds" can be useful tactics if you're trying to avoid becoming a micro-manager, but not if you're trying to keep your firm on track to meet its strategic goals.

Becoming a deliberate leader can help you break the pattern of inaction.

- **Replace the phrase "I don't know" with "I'll find out."** By making this statement, you're committing to others that you're going to look for an answer or solution to an issue, but you have to take action or you'll lose credibility.
- **Start with the premise that there may be a problem.** When you accept that there may be a problem, you've already committed to taking the necessary steps towards improving your business.
- **Don't accept the phrase, "Because that's the way we've always done it," unless it's been documented as the best, most efficient or effective way of accomplishing a task.** Accepting that phrase in any other circumstance is just another way of saying: "I'm too lazy to come up with a better way of doing things."
- **Attend a business management program with other peer company leaders.** These types of events are great opportunities for learning from other peoples' successes and failures. When confronted with a similar situation, you'll already have an idea of what does and doesn't work and will boost your decision making confidence.

Doing nothing is easy, but it will lead to problems, much like taking your hands off the steering wheel while driving on the highway. My client's company has much potential for growth, if only the owner would make some decisions to put the company on track for success. Take a look at the decision points in your business. Are you actively guiding your firm or have you fallen into a pattern of inaction? ▀

BILL MURPHEY is Zweig Group's director of education. Contact him at bmurphey@zweiggroup.com.

FINLEY, from page 7

two have joined forces on multiple projects, including the Road 1 Motza Bridge design-build in Jerusalem.

The \$170-million project, begun in 2013, is still under construction. On the main road into Jerusalem, it is a project that must take into account religious archeological sites. The precast segmental bridge, three lanes in each direction, is about 800 meters long.

In the early stages of Prague, FINLEY will continue to compete for jobs like the Motza Bridge and the Benyamani Bridge, a 417-meter span in Israel. But over time, FINLEY looks to diversify.

"Initially, we're going to focus on FINLEY's client base

"FINLEY's social media presence seems to be keeping us in front of potential new hires, too."

"So far, FINLEY has not had any difficulties in finding great people to join us. For the most part, they have been known to us or came via a contact from someone we knew."

outside of the Czech Republic," Finley says. "But we have clients that have interest in the local markets and we see opportunities working with them in Europe and, hopefully, the Czech Republic. That's a 'next year' goal with an action item for our strategic plans."

While Prague is a big international step for FINLEY, it might not be the only one, as the firm is "optimistic" about its prospects in Central and South America.

"We are pursuing several projects in Colombia and believe that this is a very strong market that is quickly gaining a lot of momentum," Finley says. ▀



It's not you, it's me

The M&A process is like the dating game: There's plenty of fish in the sea, but hauling in the big catch isn't easy.



Jamie
Claire
Kiser

M&A INSIGHTS

Firms close deals every day without engaging an M&A consultant to help them, but does that mean that you're prepared to manage on your own?

Consider this scenario that applies to both buyers and sellers: You identify a list of 60 or so firms that you think would be a good fit for your company. You research them to get a bit more information, and to figure out who the right contact person is at each firm. You reach out to the top 10 or 15 firms on your list – whatever you have time for, you still have to run your own business and do all of the other things that keep you at the office late – and you strike up a conversation. The person on the other end of the phone is subject to every single pressure that you're under as a business owner or decision-maker. After an initial conversation, maybe an email or two that makes you think that this could be “the one,” they drop off the face of the earth. They don't reply to your last email. You wait a week, then you call them to check in. You leave a voicemail. Now what?

to dating is more clear than ever at this point in the M&A process. You met someone interesting, felt a connection, and then – suddenly – they vanish. Is it me? Is it them? Are they seeing someone else? Were they just leading me on? Maybe they lost my number? Maybe they really are just busy with their own stuff right now? How do I remind them that I'm still available and desirable without sounding, well, desperate?

This exact scenario is reason enough to “outsource” the M&A process to a consultant, and this is just step one of the process. All of that anguish – and all of those hours – and we are just talking about the stress of identifying the target firm in the first place and keeping them interested while you reach out to dozens of other potential matches. We have not touched on what happens next – evaluating firms for fit, analyzing

First, it should be pointed out that the comparison

See JAMIE CLAIRE KISER, page 10



BUSINESS NEWS

NEW CONSTRUCTION STARTS IN APRIL SLIDE 8 PERCENT: NONRESIDENTIAL BUILDING, MULTIFAMILY HOUSING RETREAT AFTER MARCH GAINS

The value of new construction starts in April fell 8 percent from the previous month to a seasonally adjusted annual rate of \$608.3 billion, according to Dodge Data & Analytics. Nonresidential building pulled back following its sharp March increase, and residential building also declined due to a slower pace for multifamily housing. Meanwhile, the nonbuilding construction sector showed improvement, with public works strengthening after its lackluster March performance. Through the first four months of 2016, total construction starts on an unadjusted basis were reported at \$198.4 billion, down 12 percent from the same period a year ago. The first four months of 2015 had been lifted by several exceptionally large projects, including three liquefied natural

gas terminals with a total value of \$15.4 billion and three large petrochemical plants with a total value of \$11.9 billion, which substantially increased last year's January-April amounts for the electric utility/gas plant and manufacturing building categories. If the electric utility/gas plant and manufacturing building categories are excluded, total construction starts during the first four months of 2016 would be down a modest 4 percent from a year ago.

April's data lowered the Dodge Index to 129 (2000=100), compared to 140 for March. The Dodge Index had registered improved activity during February and March, averaging 141. April's decline returned the pace of construction starts to what was reported during the July 2015-January 2016 period, when the Dodge Index averaged 129.

"The construction start statistics on a month-

to-month basis are subject to frequent ups-and-downs, so April's decline after two months of improved activity was not a surprise," stated Robert A. Murray, chief economist for Dodge Data & Analytics. "The elevated volume for nonresidential building in March was not expected to be sustained in the near term, yet the strength shown by its institutional segment in March does provide an indication of where growth is likely to come over the course of 2016. The prospects for the commercial segment of nonresidential building, while still positive, have grown more tenuous given signs that banks are beginning to take a more cautious approach towards commercial real estate loans. Residential building is still deriving some benefit from this year's low interest rate environment, and increased funding under the new federal transportation act should provide support for the public works sector."

JAMIE CLAIRE KISER, from page 9

financials, critical review of operations, determining a value, drafting term sheets, due diligence, negotiation, and planning for integration!

A few points about this process:

■ **Time is even more valuable than money.** It is not uncommon to approach 100 firms in an M&A search. Is it really the CEO's highest and best use to search for these companies and to manage this part of the process? Selling firms, especially, always need to be aware that every hour that they spend not out there developing new jobs or otherwise continuing business as usual is risking the value of their firm. Our Valuation Survey shows that the single greatest distinction in a valuation obtained for an actual or potential sale or merger (versus any other reason for a valuation), is backlog. Buyers want to know that they understand what they are buying and that the revenue is predictable in order to minimize risk.

"It should be pointed out that the comparison to dating is more clear than ever at this point in the M&A process. You met someone interesting, felt a connection, and then – suddenly – they vanish. Is it me? Is it them? Are they seeing someone else?"

■ **It's not what you say, it's who says it (and how long it takes).** A consultant acting on your behalf can "follow up" with the target that's gone MIA many (many!) more times than a firm can on their own. The consultant, although always professional and courteous, can be perceived as pushy, at worst. The firm that leaves five voicemails? Desperate. No other options. In addition, the first-date jitters are only exacerbated when it takes two business days to hear if there will be a second date. Having someone whose job it is full-time to manage the communication process and to be one step ahead

of the conversation helps relieve that burden. The more time spent between a conversation and an "action item," the more likely someone is to get distracted by work or other prospects. M&A is about clear communication and decisiveness, and that's hard to do well when it is not your focus.

- **Breaking up is hard to do.** It's just as unpleasant to be the one that gets cold feet ("It's not you, it's me"), as it is to be the one left wondering what went wrong. It is hard to tell a firm owner – whether the firm is one that you initiated the conversation with through research, or one that you have worked with on projects for years – that you just don't want to try to make this deal work. I worked with a client that felt that the right thing to do was to end the discussion with the target firm directly (versus asking us to help). The client was so complimentary of the target that the target didn't even realize that they had just been dumped. I got a call the next week from the target to discuss deal structure! They had no idea the wedding was off.
- **The risk of "falling in love" with the wrong target is minimized when you incorporate a level of objectivity.** The CFO is often a voice of reason in these circumstances. So can a board member who sees the train wreck up ahead before the first-class ticket is bought. The right level of push-back is important in M&A, whether you have assembled an internal or external deal team. There is a fine line between "over engineering" the target firm profile to the point that you have excluded plenty of great options, and having no idea what you're looking for when you start the process. Firms in the former category never find what they're looking for, or they get exhausted from the pursuit of perfection and end up overpaying. Firms in the latter category are at higher risk for wasting time with firms that don't make a lot of sense for them.

Although it might sound like it, this article is not necessarily a plug for hiring a consultant. Instead, the purpose is to make sure that firms enter into M&A with their eyes open as to the unique challenges that arise in transactions, and that they are honest with themselves about their own skillsets. ▀

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OPINION



The building code

Is it enough to just comply with a building code? Courts say compliance is not an absolute defense.



**William
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Courts distinguish between types of negligence. There is ordinary negligence (failure to use reasonable care), gross negligence (conduct that is akin to intentional wrongdoing, and shows a reckless indifference to the rights of others), and “negligence per se” (violation of a law).

In the latter situation, some courts have found that building codes adopted by local ordinance are “laws,” and that, in absence of a legal justification or excuse, the violation of a code is proof of negligence. We don’t need expert witnesses to testify on the “standard of care” in those cases, since the code is proof alone of the standard. As one court put it, “The jury in a negligence per se case need not decide whether the defendant acted as an ordinarily prudent person would have acted under the circumstances. It merely decides whether the relevant statute or regulation has been violated. If it has, the defendant was negligent as a matter of law.” A willful violation of a building code requirement can have more serious results, and may warrant the assessment of punitive damages against the defendant.

So, if the violation of a building code is negligence, then compliance with a code must mean no negligence, right? Not necessarily. Courts have

stated that compliance with building codes or industry standards is not an absolute defense to a claim of negligence. Compliance may be “evidence” of due care, but compliance with a code does not preclude a finding of negligence where a reasonable person would have taken additional precautions to protect the public from injury, above and beyond the code requirements.

“If the violation of a building code is negligence, then compliance with a code must mean no negligence, right? Not necessarily.”

In a recent Pennsylvania case, an injured pedestrian sued the owner and operator of a bar after a drunk driver’s mini-van jumped a 5-inch

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BUSINESS NEWS

T.Y. LIN INTERNATIONAL WINS PROGRAM MANAGEMENT CONTRACT FOR 4TH BRIDGE OVER THE PANAMA CANAL

T.Y. Lin International announced that TYLI was awarded the Program Management Contract for the 4th Bridge over the Panama Canal. Continuing the firm's legacy in the Republic of Panama for the delivery of state-of-the-art transportation projects, the 4th Bridge over the Panama Canal marks TYLI's third major bridge project involving crossings over the world-renowned canal. Over the last three decades, starting in 1994, TYLI has been assisting the Republic of Panama Ministry of Public Works with the widening and retrofitting of the iconic Bridge of the Americas, which opened in 1962, and facilitating ongoing bridge repair and maintenance. The firm was also responsible for the feasibility study, preliminary design, and final design of the Centennial Bridge, also known as the Panama Canal Second Crossing, which opened to traffic in 2004.

TYLI will provide specialized technical assistance for the 4th Bridge over the Panama Canal project during the design, construction, and commissioning phases, ensuring the implementation of the objectives of the MOP. The bridge, which is surely destined to become yet another historic landmark for the country, will be built on the north side of the existing Bridge of the Americas, connecting west Panama with Panama City. Rising up

from the landscape of the country's urban center, the new crossing will benefit the more than 500,000 residents living in the suburbs of Panama City on the west side of the canal.

The 4th Bridge over the Panama Canal will incorporate the latest in bridge design and construction technologies, and feature two dramatic towers with multiple cable planes in a highly aesthetic configuration. The signature structure, with approximately 1,120 meters of cable-stayed main bridge and 1,500 meters of approaches, will include a 540-meter-long by 54-meter-wide main span across the Panama Canal. The multi-modal bridge will carry six lanes of vehicular traffic, two-way rail lanes to be linked with the future Metro Line 3, and a pedestrian and bicycle path.

TYLI's extensive history with Panama's Metro Rail systems will also be a significant advantage, as this project will require close coordination with the rest of the country's public transportation system.

FLUOR WINS BEST PRACTICES AWARD FOR MODULARIZATION INNOVATION

Fluor Corporation announced that the Construction Owners Association of Alberta named Fluor the 2016 Best Practices Award winner for the company's modularization innovation for the Shell Quest carbon capture and storage project. Fluor was recognized for innovation at the COAA 2016 Best Practices Conference's

awards presentation last night in Edmonton, Alberta, Canada.

The Quest project marked the full implementation of Fluor's innovative, first-of-a-kind modularization technology, 3rd Gen Modular ExecutionSM. 3rd Gen increases the portion of a facility that can be modularized by consolidating equipment and components into the modules, allowing for decentralized electrical and instrumentation distribution. The process also significantly reduces plot plan footprints. The result is improved construction and safety performance and reduced onsite labor, material quantities and capital costs. 3rd Gen helped reduce the plot plan by 20 percent and capital costs by 30 percent from initial estimates on the Quest project.

"The results achieved on Quest showcase the capital efficiency and delivery predictability that 3rd Gen brings to projects," said Jim Brittain, president of Fluor's Energy & Chemicals business in the Americas. "Use of 3rd Gen is not just a technology improvement, but a project execution improvement because it encourages collaboration between the procurement, construction and operations teams from day one, thereby creating more efficient designs and execution strategies. COAA's recognition that 3rd Gen is an industry best practice to improve construction performance further confirms the value it brings to project execution."

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tall concrete wheel stop and struck her while she was on the sidewalk, pinning her to the building. The trial court ruled in favor of the property owner and the pedestrian appealed. The owner argued that his duty is coextensive with the building and zoning codes, and he discharged that duty because the wheel stops complied with the applicable zoning ordinance governing commercial off-street parking. The trial court agreed, stating: "A possessor of land is not the insurer of the safety of his patrons and must only take reasonable measures to control the conduct of third persons."

"Courts have stated that compliance with building codes or industry standards is not an absolute defense to a claim of negligence."

Importantly, no Pennsylvania court had held that a business owner was negligent for failing to install vertical bollards in addition to horizontal wheel stops. The trial court said it was "not inclined to do so here." The trial court agreed that the owner had complied with all applicable codes and said that, "to impose a duty upon property owners above and beyond these standards would defeat the purpose of having such standards in the first place." The injured pedestrian appealed.

The appellate court concluded that the owner had a duty to exercise reasonable care to protect its business invitees from all harmful third party conduct reasonably anticipated due to either the place or character of the business, or the landowner's past experience. Evidence showed that the owner had four painted, concrete post bollards to protect some pipes on the southeastern corner of the same property. This gave rise to an inference that the owner recognized the risk of cars jumping the curb and, therefore, "had actual or constructive knowledge of a foreseeable risk of harm to business invitees walking on the sidewalk." As to the defense of compliance with building codes and zoning ordinances, the appellate court said, "Compliance with a law or administrative regulation relieves the actor of negligence per se, but it does not establish as a matter of law that due care was exercised." The court added that compliance with a legislative enactment or an administrative regulation does not prevent a finding of negligence where a reasonable person would take additional precautions.

Even though this case did not involve a design firm, designers need to be aware that the law may hold them to design for potential areas of greater concern for safety above what is required by the building code, when a reasonable professional would have taken greater precautions. ▀

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