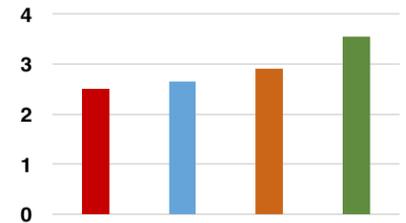


TRENDLINES

Breakeven multiplier



Fast growth firms, at 2.55, have a lower breakeven multiplier, indicating the amount of money they have to generate per dollar of direct labor to cover their overhead costs is lower than that of the other growth categories, like **slow growth**, **stable growth**, and **declining growth**, according to the 2016 *Financial Performance Survey*.

[\(Special discount to TZL subscribers: Use code TZL15FPS to order this survey at 15 percent off on zweiggroupp.com\)](#)

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Whose hero are you?

“The choices you make – how you spend your time and who you spend it with – will determine your ultimate success or failure as a professional – and as a person.”



Mark Zweig

EDITORIAL

My Dad, Fred Zweig, died on August 16. He was born in 1920 – lived a long and, for the most part, happy life. He grew up poor in St. Louis. His mom was married five times, so he was bounced around from place-to-place as a kid. But he was smart and curious. Read everything he could get his hands on. Taught himself to do everything.

His first “real” job was taking cars apart in a junkyard. Later he worked in a stove factory. He eventually became a shop steward there. When WW II broke out he tried to enlist. They wouldn’t let him in because of his eyesight. By early ‘43 they changed their mind. He enlisted and then went to Officer’s Candidate school. Became a 1st Lt. in the 6th Armored Division under Patton. He fought in Belgium, Germany, Luxembourg, and elsewhere in Europe. Barely survived some terrible battles and got his Silver Star for gallantry in action.

After the war he married my Mom, started selling advertising and quickly became a real life “mad man” of advertising. We had a modern architect-designed house my parents built in the late ‘40s. He had a white ‘56 Jaguar with red leather. We got a new Country Squire Wagon in ‘57 and a new “wide track” Pontiac Catalina convertible in 1960. By the mid-‘60s my Dad had grown disillusioned with advertising and moved into broader-based management consulting.

“You can’t solve all their problems with just marketing,” he used to tell me.

He then devoted more time to his other passion – helping people unleash their full

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MORE COLUMNS

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The tilting tower near Transbay

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BUSINESS NEWS

JACOBS EARNS HIGH RANKINGS IN BUILDING DESIGN + CONSTRUCTION 2016 GIANTS LIST Jacobs Engineering Group Inc. earned top three rankings in multiple categories in *Building Design + Construction's* 2016 "Giants 300" issue, which ranks the world's top architecture, engineering, and construction firms by revenue.

In the main categories, Jacobs is ranked No. 2 in both the "Giants 300" of Engineering/Architecture Firms and the "Giants 300" of CM Agent + PM Firms. Jacobs also ranked No. 25 in the "Giants 300" of Contractors.

Jacobs was the No. 1 engineering firm in the top 25 of the following sectors: airport terminal, green building, military, office, reconstruction, retail, and science and technology.

In addition, *BD+C* names Jacobs as the No. 2 engineering firm in the healthcare, data center, and K-12 sectors, and one of the top 10 engineering firms in the university, federal, multifamily, and sports sectors.

Upon making the announcement, Jacobs Chairman and CEO Steve Demetriou stated, "The *BD+C* report illustrates Jacobs' ability to offer fully integrated services for a broad range of clients and project types worldwide, and it confirms the position we've earned as one of world's leading technical, professional and construction service providers.

"We are proud to have achieved high rankings in more than 15 categories this year, which reflects the diversity and strength of our business, and our commitment to working closely with our clients to deliver exceptional value.

"I would like to thank all of our talented people for their contribution to this important industry recognition and our ongoing success."

THE FALCON GROUP ANNOUNCES NEW OFFICE IN TREVOSE, PENNSYLVANIA The Falcon Group, an industry-leading, full-service engineering and architecture firm, announced a new office location to accommodate rapid growth and future expansion plans. On August 1, the new office located at Four Neshaminy Interplex; Suite 103 Trevose, Pennsylvania, began providing capacity for increased customer support, engineering and sales services for the Eastern Pennsylvania, Southern New Jersey and Delaware region.

This is part of a new positioning strategy directly related to foreseen growth in the region for Falcon. "We are excited about providing more to our client base and the Community Associations Institute in the region," said Falcon Group Regional Vice President, Mark McCann. "The new office will allow us to increase our capabilities that align with our current and future growth plans."

COUNTDOWN



WEEK

Until Zweig Group's 2016 Hot Firm and A/E Industry Awards Conference!



GOOD TO KNOW

Conference registration is **OPEN!** Please visit zweiggroup.com/conference/ for more details.

MARK ZWEIG, from page 1

potential to live their lives to the fullest. He believed that a repressed fear of death held people back more than any other thing, and that the fear had to be confronted for them to be able to make decisions and act. He preached this gospel up until the very end.

While this is probably all more than any of you need to know about my Dad, he served as a great example for me on how to live life. "Critics be damned," he never worried about money (even when he should have!), and instead followed his passions and instincts to live according to his own standard. My brothers and sister and I all benefited from that example. We are his legacy.

So the moral of the story is this: Whose hero are you? What are you doing to further mankind? How are you giving back? What kind of example are you setting? Whether it's your children – or your employees – the bottom line is the same. You **CAN** make a difference in the lives of others. The choices you make – how you spend your time and who you spend it with – will determine your ultimate success or failure as a professional – and as a person. We all have to do something – make it something great, something worth doing – and you're bound to create a wake of goodwill behind you. ▀

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

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THE ZWEIG LETTER

1200 North College Ave.
Fayetteville, AR 72703

Mark Zweig | Publisher
mzweig@zweiggroup.com

Richard Massey | Managing Editor
rmassey@zweiggroup.com

Christina Zweig | Contributing Editor
christinaz@zweiggroup.com

Sara Parkman | Editor and Designer
sparkman@zweiggroup.com

Megan Halbert | Design Assistant
mhalbert@zweiggroup.com

Liisa Andreassen | Correspondent
landreassen@zweiggroup.com

Tel: 800-466-6275
Fax: 800-842-1560
Email: info@zweiggroup.com
Online: www.thezweigletter.com
Twitter: twitter.com/zweigletter
Blog: blog.zweiggroup.com

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PROFILE



The West Branch of the Berkeley Public Library in Berkeley, CA. HED designed the building to be Net Zero Energy. / Courtesy, Mark Luthringer

A bowl of clam chowder

CEO J. Peter Devereaux strives to move from good to great as HED continues to forge its reputation as a national firm.

By LIISA ANDREASSEN
Correspondent



J. Peter
Devereaux,
CEO, HED

When J. Peter Devereaux joined the Detroit-based firm in 1985, there were nine employees. Today, **Harley Ellis Devereaux** (Hot Firm #23 for 2016) has 324 employees and has undergone a series of evolutions. After working in various roles that included corporate marketing leader and principal of the Los Angeles office, Devereaux succeeded Gary Skog as CEO in 2015.

Founded in 1908, it was not until 2006 that a merger led to the creation of HED. Devereaux says that the company has just started to see growth through mergers in the last 20 years. When he joined the firm in 1985, it was HarleyEllis, then it became Fields Devereaux. There was already a strategic alliance in place with Harley Ellington Pierce Yee (the name of the firm before it merged with Ellis Naeyaert Genheimer).

“The biggest evolution over that time was seeing the various office locations coalesce into one firm,”

Devereaux says. “We had to build a robust corporate infrastructure of key systems: IT, HR, legal and marketing that served to support rather than control. This has allowed each office to remain nimble and responsive to local conditions. We’re proud that as a firm, we all share the same values, but that the culture in each location is, and should be, a little bit different.”

A CONVERSATION WITH DEVEREAUX.

The Zweig Letter: What are your key strengths?

J. Peter Devereaux: People tell me that I have a pretty even keel. I’m not demoralized when things go badly and not too euphoric when they’re going well.

TZL: What are the key strengths for an effective leader?

JPD: Communication skills; the ability to listen to people; and to express a clear vision of the future

See Q&A, page 4



Q&A, from page 3

that inspires people to participate in the journey.

TZL: What's your leadership style?

JPD: Servant leader. My first priority is to serve the needs of all employees, trusting they will serve the needs of our clients the best.

TZL: To date, what's been your greatest challenge? How did you handle it?

JPD: Currently, I'm tasked with getting a talented group of individuals to realize their talents. I want to show them just how successful we might be if we can remove some roadblocks from within and leverage their full talents as a team. That's the journey from being a collection of local practices assembled through mergers to finally coming together to form a national firm. We've worked hard to promote the culture of "One Firm" and formed numerous working groups to tackle initiatives that involve a representative from each location. We've also worked hard to make it easier to share work across locations and to support staff working on temporary assignments at locations outside their home base. The more time people spend with their colleagues in other locations, the stronger their personal relationships become. In the end that supports our goals for design excellence.

TZL: What's your vision for the future of HED?

JPD: We want to become a great design firm. We think we are a good design firm today and that we can do better. Critical thinking is a process that we follow to deliver value through design and integrated practice reflects the collaborative manner in which we organize our teams to deliver it. We value diversity in our interdisciplinary teams and we believe that by working together, we will contribute to the next generation of great design in this country.

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

JPD: The West Berkeley Library. It's one of the smaller projects we've completed, but it embodies a big message about our firm. It reflects our goals for design excellence in providing value to the community, our client, and project team. It is also a great example of critical thinking. Our team didn't just accept the project as initially put forward, but did research and studied options and then showed the client how the building could achieve net zero energy. It was a pathway they had never considered. This project is also a great example of integrated practice that highlights the collaboration of architects and engineers and what can be achieved. We won our second AIA National COTE award for this project.

TZL: How have you helped your firm to outperform some competitors?

JPD: I can think of three significant projects where we were selected from among a shortlist of the best firms in the country. Why? We fielded incredibly talented teams from across our locations and market sectors. Just a few years ago those groups would not have collaborated, but would rather have kept to their internal silos. In addition, we consistently manage large and complex projects very well – the hairier the better – that's where we really excel today among

the competition.

TZL: Are you married? Children?

JPD: I've been married to Sarah for 29 years and we have two grown daughters. Now that we're empty nesters, it's almost like we're dating again.

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

JPD: In the early days of the firm in Los Angeles, I designed a home for the fashion designer, Alan Austin, one of O.J. Simpson's regular golf foursome at the Riviera Country Club. That led to the design of a new home for O.J. and Nicole at their Rockingham estate. That design was never built because he put everything on hold after she left him following another domestic violence episode. The arc of that story carried forward a decade later when we won a competition to design the \$100M Los Angeles Crime Lab which is often called informally, "the O.J. Lab" because it was the botched evidence issue at the famous trial that gave birth to the project.

TZL: What's been a favorite vacation?

JPD: We recently took a trip to Spain. I hadn't seen Sagrada Familia in 30 years and had never visited the Guggenheim Museum in Bilbao. Both were great, but the big surprise was the delightful time we spent in the old city district of San Sebastian.

TZL: What's the last book you read?

JPD: I'm usually reading a print and a digital one in tandem. The last digital was *Truman* by David McCullough. The last print was *The Outstanding Organization* by Karen Martin. I really appreciated the concept of taking on "self-inflicted chaos."

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

JPD: Over 30 years ago, the late Anthony Athanas, a client and the owner of the famous Boston eatery, Anthony's Pier 4 Restaurant, at the time told me, "I'm only as good as my last bowl of clam chowder." I never forgot that. It impressed on me that you can't rest on your laurels; you need to bring it – every day.

TZL: Who is a leader you admire?

JPD: Max De Pree. He built a great company culture at Herman Miller. It continues on well after he retired. His book, *Leadership is an Art*, is one of the best on the topic that I have read.

TZL: What types of activities do you enjoy?

JPD: Long walks in the park frequently interrupted by errant golf shots. Maybe I'll master that game when I retire.

TZL: What's your favorite lunch?

JPD: It's not the food (I like all kinds), it's good company that I value most. ▀



Paid time off. Really?

When recruiting big talent, don't let little details in the benefits package get in the way of making a winning offer.



**Randy
Wilburn**

RECRUITING NOTES

I'm amazed at the need that exists out there for great talent. Firms in the design industry seem to be ramping up on bigger and better projects all over the country. Every firm that we speak with has a tremendous need for gifted engineers, architects, environmental consultants, and planners. Given the current state of affairs it always surprises me when a client, who desperately needs to hire excellent people, is willing to draw a line in the sand on benefits that could easily be modified to attract and hire top candidates.

I'm reminded of a recent situation with one of our clients. They asked us to find a good project engineer for their growing site development practice. They are in a competitive part of the country when it comes to engineers, and we told them they would probably have to pull out all the stops to bring someone on board. We found a great young woman who works for a competitor in the same local market as our client. She had all the skills required to do the job, and for all intents and purposes would have been an excellent choice.

But there was one problem.

Our client focused on the fact that this candidate received five weeks of PTO, and they only wanted

to offer her three weeks of PTO to start because, "That's just how they did things." This scenario may sound familiar to some of you reading this. We see this situation all too often. It could be PTO, the employee cost of health care, remote working possibilities, etc.

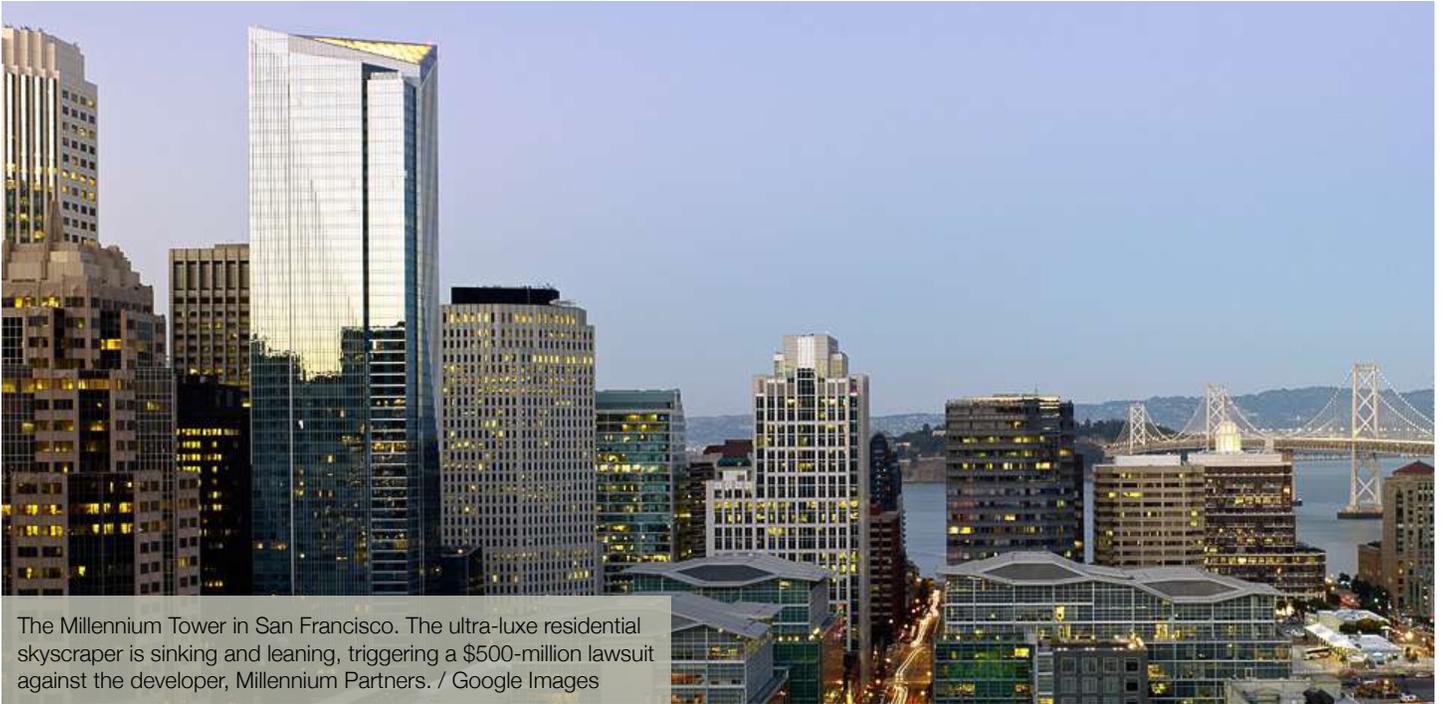
In the design industry, we deal with a finite number of human resource options. When great candidates are sitting in front of you, work hard to not only sell them on your firm and the opportunities that exist there, but also help them overcome any objections that may come up. Some things can be fixed and some cannot.

See RANDY WILBURN, page 8



SPOTLIGHT ON: Millennium

PROFILE



The Millennium Tower in San Francisco. The ultra-luxe residential skyscraper is sinking and leaning, triggering a \$500-million lawsuit against the developer, Millennium Partners. / Google Images

The tilting tower near Transbay

San Francisco's tallest and most luxurious residential skyscraper is sinking, leaning, and setting the stage for an epic, and even precedent-setting, bayside court battle.

By RICHARD MASSEY
Managing Editor

When it was completed in 2008, the 58-story Millennium Tower in San Francisco was the toast of the town – ultra luxurious condos, exorbitantly expensive, a symbol of the city's emergence as the center of the venture capital universe.

By 2013, the building had sold out. Penthouses went for nearly \$10 million, and at one point, NFL icon and former 49er Joe Montana owned a condo there. According to press accounts, the project netted a healthy 25-percent profit.

But that was then and this is now.

The gleaming tower in the SOMA district has sunk at least 16 inches since it was built, and a tilt at the base has resulted in an alarming 15-inch lean at the top. Pavement has already buckled in several areas, and there have been complaints of water intrusion. The tower, built on landfill but not anchored in bed-

rock, will continue to sink and shift. Those are the claims behind a blockbuster, \$500-million class-action lawsuit filed against the building's developer, Millennium Partners, by building resident John Eng.

"It's made headlines and people are talking about it. It's a concerning issue."

In the notice of claim, plaintiff's attorney Ron Foreman says, "The subsidence and the threat of future subsidence obstruct Claimant's and the other homeowners' free use of, and interfere with their enjoyment of, their homes, and thereby cause them to be annoyed and/or disturbed."

The suit also names as defendant the Transbay Joint Powers Authority, the multi-agency public entity that dug a 60-foot excavation next to the Millennium as part of the over-budget,





SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

JOHN ENG, an individual; on behalf of himself and all others similarly situated,

Plaintiffs,

v.

MILLENNIUM PARTNERS I, INC., a California corporation; TRANSBAY JOINT POWERS AUTHORITY, a joint powers agency created under California Government Code Section 6500 et seq.; and DOES 1 through 200, inclusive,

Defendants.

Case No. **CGC-16-553574**

COMPLAINT FOR:

- BREACH OF CONSTRUCTION STATUTORY CONSTRUCTION STANDARDS;
- UNFAIR BUSINESS PRACTICES;
- BREACH OF IMPLIED WARRANTIES;
- STRICT LIABILITY; NEGLIGENCE;
- INVERSE CONDEMNATION;
- NUISANCE;
- DANGEROUS CONDITION OF PUBLIC PROPERTY

increasingly troubled Transbay Transit Center. The suit says that Transbay exacerbated the Millennium's foundation problems by installing a buttressing system that failed to halt the Millennium's shift.

The ramifications of the case could be profound, says San Francisco-based Brodie Stephens, general counsel for global architecture firm Perkins + Will. While neither Stephens nor his firm are party to the suit in any way, as a longstanding member of the A/E/P-legal community, and being based in the Bay Area market, Stephens says he's interested in the outcome.

"This is a big case for the country," he says.

Stephens says a high-rise issue of this magnitude has not unfolded since 1978, when famed engineer William LeMessurier undertook emergency welds to keep Citicorp's headquarters in New York from being blown over by high winds.

As the Millennium is the tallest residential tower in the city and the third tallest overall, its troubles are no secret.

"It's made headlines and people are talking about it," says Jens Norman, president of the Golden Gate Branch of the ASCE. "It's a concerning issue."

In the filings, Foreman, citing the \$500 million claim, says the "actual amount of damages is unknown at this time, but will likely exceed the estimate."

Foreman's filings also suggest that more defendants will eventually be added to the suit.

Referring to as-yet-unnamed defendants as "Does 1 through 200," Foreman writes, "Plaintiff will seek leave to amend this complaint to allege the true names and capacities of said fictitiously named defendants when their true names and capacities have been ascertained."

"Any engineer or architect involved with this project or the neighboring project is likely concerned that they will be dragged into this suit."

Handel Architects designed the building, **DeSimone Consulting Engineers** was the structural engineer, and the contractor was Webcor Builders. The Millennium, the tallest reinforced concrete structure in the Western United States, won a raft of awards, including the 2008 Outstanding Structural Engineering Project of the Year by the ASCE-San Francisco.

But those awards will mean little to nothing in the courtroom. And citing a 2014 ruling out of the California Supreme Court in the Beacon vs. SOM case, Stephens says Handel, and even DeSimone and others, could end up in court for a long time.

"In California, the duty of care potentially expands to a lot of parties," Stephens says. "As a consequence, the plaintiff is going to be incentivized to add as many wallets to the party as they can. But

See MILLENNIUM, page 8



The Millennium Tower has already sunk 16 inches, and could sink another 15 in the coming years.

RANDY WILBURN, from page 5

Another issue that came up with our client was that they compared this candidate's situation to a family member of one of the principals who was seeking a job moving from one company to another in a totally different industry where the supply of workers was plentiful. He said, "She was willing to take a cut in vacation time to work at the new firm!" We acknowledged this but had to remind our client that his family member was looking for a job, and this good project engineer was at her firm for more than a decade and was not currently looking for work. Big difference!

"When great candidates are sitting in front of you, work hard to not only sell them on your firm and the opportunities that exist there, but also help them overcome any objections that may come up."

At Zweig Group we deal with candidates that are not actively looking, and this raises the bar in the recruitment process because firms have to remember that you can't just

MILLENNIUM, from page 7

just because a case gets filed doesn't mean that any particular person or entity actually did anything wrong."

Millennium, of course, says it's not at fault. Instead, the Transbay authority is to blame.

"They built a half-mile tunnel 60 feet underground and next to our building, and they were supposed to [protect the Millennium] – and they just didn't," a Millennium spokesperson said to the *San Francisco Chronicle*.

In turn, Transbay denied responsibility. In a statement released before the lawsuit was filed, Transbay says, "The residents' claims against the JTPA are misplaced; as demonstrated by data collected over more than seven years, full responsibility for the tilting and excessive settlement of the building lies with Millennium Partners, the developer of the Tower."

"Someone is likely to raise an issue as to whether or not there was a design error. In any event such a claim is likely covered by the design firm's professional liability insurance. The only issue there is that most firms only carry \$1-5 million, or maybe \$10 million, in coverage."

With all the finger pointing, drilling down to the true cause of the problem will take time.

"They'll bring in experts," Norman says. "It's hard to say how far it will go. It will take a while to figure out who is at fault."

throw any old offer out there and expect it to be accepted because your company is so great. You have to take into consideration any leverage that the candidate may hold based on their current work situation.

Now, if this project engineer came to us and was looking for new opportunities, then this conversation and negotiation and hiring process may be different. But, that's not the case.

We told our client that if this engineer checks off all of the boxes for them based on the current need they should move forward and make an offer. We didn't want them getting hung up on the PTO issue. You should always make room for negotiation in every offer you make. And, you should take stock of all benefits the candidate currently has so that you can structure your offer correctly.

Whether it's an extra week of vacation, student loan payments, health care co-pays, or timing of the first salary review, it should all be up for negotiation. You just have to figure out a way to make it work. It may sound daunting, but it's not. The more you get creative with your offers, the better chance you have of landing that great talent. ▀

RANDY WILBURN is director of executive search at Zweig Group. Contact him at rwilburn@zweiggroup.com.

Norman says that since the building is situated on landfill, the Millennium will probably prompt building officials to at least look at, and even levy, additional regulations that could add cost to future projects.

"Nobody's panicking except the people who live there. It's a huge deal that they're losing property value."

Meanwhile, those who own condos in the Millennium are in danger of losing out on their multi-million dollar investments.

"Nobody's panicking except the people who live there," Norman says. "It's a huge deal that they're losing property value."

As of August 11, there were nine Millennium listings ranging in price from \$1M to \$3.5M.

Dan Knise, president and CEO at Washington, D.C.-based Ames & Gough, a specialty insurance brokerage with a focus on architects, engineers, and law firms, says a lot of people and businesses will likely be affected by the Millennium case. Unfortunately, in a case this big, the liability is likely to outpace the coverage.

"Any engineer or architect involved with this project or the neighboring project is likely concerned that they will be dragged into this suit," Knise says. "Someone is likely to raise an issue as to whether or not there was a design error. In any event such a claim is likely covered by the design firm's professional liability insurance. The only issue there is that most firms only carry \$1-5 million, or maybe \$10 million, in coverage." ▀

OPINION



The everything firm

Going after any and all jobs lowers probability, thus hampering success, and can damage relationships with established clients.



Chad
Clinehens

BRAND BUILDING

As with most things in life, there is a point of diminishing returns when it comes to going after new work in the AEC industry. This is especially true when times are good, as they are now for many firms. Lots of opportunity does not mean that firms need to be going after everything that comes their way. It means they can now be choosier and more strategic about the work they pursue. Many firms are doing more proposals and interviews than ever, yet they have not increased the size of their marketing and business development support staff proportionately. This is leading to decreased win rates as evidenced by the industry average dropping from 33 percent to 22 percent over the past year.

Going after everything limits the creativity and customization on proposals, interviews, and other business development support activities that set you apart from the competition. I see many firms doing two to three times the proposals they did just three years ago, but without any increase in marketing staff. Thus, higher probability and higher profit potential are being cannibalized by lower probability and lower contribution. Furthermore, the obsession with new work can erode your relationships and focus on older, established clients and the untapped opportunities with them. Here are a few simple business management techniques firms can employ to fight the tendency to go after lots of new work at the expense of better contracts and established clients.

“The obsession with new work can erode your relationships and focus on older, established clients and the untapped opportunities with them.”

1) Be more strategic in every pursuit. Firms need to be strategic about what clients they pursue and who in the firm is tasked with leading those pursuits. This speaks to the need for annual marketing plans that outline what markets the team will pursue, what specific clients, and who in the client organizations the firm will target for development. When firms come to the realization that they are going after too much work and not getting the returns they

See CHAD CLINEHENS, page 10



ON THE MOVE

JAMES HACKETT ELECTED TO FLUOR'S BOARD OF DIRECTORS

Fluor Corporation announced that James Hackett was elected to its board of directors effective August 3, 2016. Hackett's election to Fluor's board raises the total number of directors to 12, of whom 11 are independent.

"Fluor is very fortunate to have an executive of Jim's caliber rejoin our board of directors," said David Seaton, Fluor's chairman and chief executive officer. "His vast knowledge and experience within the global energy sector provide Fluor with a unique and much sought-after business perspective that is key to the markets we serve. We are extremely pleased that he will once again be serving on our board at this important time for our company."

Hackett previously served as a member of Fluor's board for 14 years from March of 2001 to April of 2015. He will serve on Fluor's governance and organization and

compensation committees.

Hackett is currently a partner in Riverstone Holdings LLC, one of the largest private energy investment firms in the U.S. He is also the retired executive chairman of the board and former chief executive officer of Anadarko Petroleum Corporation, one of the world's largest independent oil and natural gas exploration and production companies.

Before joining Anadarko, Hackett served as president and chief operating officer of Devon Energy Corporation following its merger with Ocean Energy where he served as chairman, president and chief executive officer, itself the result of a merger in 1999 with Seagull Energy Corporation, where he was chairman, chief executive officer and president.

Hackett joined Seagull from Duke Energy where he led its Energy Services Division as president. Prior to that, he was executive vice president of Pan Energy when the company

merged with Duke Power to create Duke Energy.

His energy experience includes positions in engineering, finance, and marketing with NGC Corp., Burlington Resources and Amoco Oil Co. He is a member of the Society of Petroleum Engineers and National Petroleum Council.

Hackett is also a director of Enterprise Products Partners L.P., National Oilwell Varco (Fortune 500 companies), and Sierra Oil & Gas. He is a former chairman of the board of the Federal Reserve Bank of Dallas. Hackett is a board member (and former chairman) of the Baylor College of Medicine and Rice University where he served as an adjunct professor for six years.

He holds a B.S. degree from the University of Illinois in addition to a Master of Business Administration and a Master in Theological Studies from Harvard University.

CHAD CLINEHENS, from page 9

want, oftentimes the knee-jerk reaction is to implement a go/no-go process or further complicating the one they may already have. Go/no-go processes can be helpful but they need to be very simple and most are not.

Relying on a long form of if/then statements can limit the one activity that you rely on for growth – the acquisition of new work. Go/no-go processes should focus on adherence to the marketing plan. If proper attention and strategic planning were put into the marketing plan, then decision making for what to pursue becomes easier. At the end of the day, all firms need to be thinking in terms of return on investment: What returns can we reasonably expect compared to the investment needed for each individual client and pursuit?

"Firms need to be strategic about what clients they pursue and who in the firm is tasked with leading those pursuits."

2) It's about matchmaking. When considering what clients to target, pursue those clients that have similar values to your firm. Are you a firm with ambitious growth plans that is trying to create the best place to work for your employees? Then an ideal target client could be all the municipalities that are the more ambitious and dynamic when it comes to attracting residents and investing in the infrastructure that attracts families and businesses. Those shared values can really improve your ability to develop a meaningful relationship and thus your chances of winning work. Also, match your people to the clients in these organizations. Make sure the people tasked with developing relationships have similar values, backgrounds, and other features that drive relationships. This is still all about relationships for many firms!

3) Don't forget your core clients. The euphoria of winning a new client can sometimes eclipse our focus on existing clients. Winning new clients and entering new markets is critical for every firm in the industry. However, we must always

"Don't forget your core clients. The euphoria of winning a new client can sometimes eclipse our focus on existing clients."

consider the opportunity for growth with existing clients as well. Most firms do not fully exploit the opportunities with their existing clients. That established relationship is gold and that could easily offer additional work or may offer another part of your company an opportunity to do work. This is called cross-selling; the action or practice of selling an additional service to an existing client. To be effective at cross-selling, your people must be fully educated on all of your services and have the incentive to sell those services even though it may not directly benefit them or their team. It takes an intentional and intense focus to provide the level of client service needed to both existing clients and new clients.

The bottom line is firms need to be more strategic in their pursuits. This is an age old problem. Firms go after everything and do better when times are good, and then decline when the market sours. Being more strategic and resisting the tendency to go after everything is the first step in diversifying the firm and setting it up to be more resilient in any market. Furthermore, being more strategic allows firms to be more profitable as they focus more resources on the pursuits that have a higher potential for being profitable and have a higher probability of winning. Integrating an ROI-mindset in your culture can revolutionize your pursuit of work and have a dramatic impact on the future of the firm. Stop being the everything firm and start being more strategic in your pursuits today.



CHAD CLINEHENS is Zweig Group's executive vice president. Contact him at cclinehens@zweiggroup.com.



Professional service pitfalls

Even minor changes in contract language can create major liability and insurance issues for design firms, so be aware of what's out there and act accordingly.



**Rob
Hughes**

**GUEST
SPEAKER**

Today's contracts involving design firms and owners, project managers, and other participants, are increasingly subject to the dynamics of how projects are run; in particular, more owners now realize that "minor" changes in contract language may significantly shift risk allocation.

In this context, let's examine some emerging situations and contract language that may create expanded liability and potential insurance issues for design firms. Identifying these issues is the first step; offering your clients possible alternative language is the second step. The third? A successful, profitable project!

MUNICIPAL ADVISOR AND SCOPE OF WORK. Engineers are excluded from the SEC's definition of municipal advisor "to the extent that the engineer is providing engineering advice." The provision of engineering feasibility studies that include certain projections – such as output capacity, utility project rates, project market demand, or revenues based on engineering aspects of a project – generally fall under this exception.

Even so, the exemption may not encompass situations where engineers provide advice to a

"Identifying these issues is the first step; offering your clients possible alternative language is the second step. The third? A successful, profitable project!"

municipal entity pertinent to financial products or the issuance of municipal securities. This raises not only the issue of whether the engineering firm should be registered as a "municipal advisor," but also if "standard" professional liability insurance policies actually will cover any related claims.

For example, an engineer's insurance company denied a recent claim involving the firm and a municipality, deeming the engineer's deficient

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services to be “... outside the definition of professional services ... i.e., financial impact and revenue estimating services.”

In such instances, design firms should ask their legal counsel whether they need to register as a “municipal advisor;” similarly, they should check with their insurance advisors on if their professional liability insurance policy needs to be amended. In its standard Owner-Engineer agreement, one firm uses language disclaiming any municipal advisor status, defining such services as “engineering related analysis.”

“Use common sense in negotiating with clients. No single issue is a ‘walk away’ red-flag; thus, you can compromise on several points and focus on any that create greater risks for your firm.”

“Owner’s” consultants. Owners traditionally hire an architect or a prime engineer to design their project; this firm then hires subconsultants covering various service disciplines. However, some services typically retained by the owner, such as geotechnical engineering and environmental investigations, are outside the prime designer’s responsibilities. Many owners now seek to have the prime consultant retain all subconsultants on the project, shifting all related risk to the prime designer. Here are changes to watch for:

- 1) **Direct hire.** As noted, owners often hired certain consulting firms and then forwarded any resultant reports, etc. to the architect or engineering firm. An example is the owner’s retention of the geotechnical engineer. More contracts now require the prime engineer to retain these consultants, shifting the liability for their work product to the engineer/architect.
- 2) **Designated by owner.** The owner requires its prime design firm to hire certain subconsultants named by the owner.
- 3) **Hired by owner, which “designates” responsibility to the design firm.** The owner retains certain specialty consultants, but the prime design contract stipulates the architect or engineer assumes responsibility for their work product (and, often, for processing their invoices on a “pass-through” basis at no mark-up).

“Keep in mind, you don’t have to win on every word; a good working relationship is often built on compromise.”

There’s a fourth “category” in which the scope of work involves a sort of “mini-design/build” arrangement. An example – during a project an underground storage tank is discovered or a sewer line needs to be moved. The owner then “asks” the prime design firm to hire a contractor for the removal or installation work.

Each situation expands the design firm’s potential liability and should involve a careful review of the contract and any potential insurance restrictions or limitations. While not

likely deal-breakers, each situation should be reviewed and discussed with your client. Keep in mind, these additional fees are now part of your revenues and risk profile; you pay additional insurance for them and should be allowed some contractual accommodation for a reasonable mark-up.

RELIANCE BY LENDERS/THIRD PARTIES – WORK PRODUCT. These situations can be problematic for design firms. Consider the following clause: “Professional agrees that Developer and any Lender who makes a loan to Developer shall be entitled to rely upon the Services, including without limitation any Opinion Letters, Plans, Reports, Inspection Letters, etc.”

If your agreement includes this language, there may be no limitation on the lender’s right to rely, which incidentally is “automatic.” Essentially, the right to rely equates to the right to sue you. So, it’s important to determine whether this right is subject to your agreement’s stated “obligations/limitations,” including limitation on liability, reasonable standard of care, and scope of services. Additionally, design firms should delete the automatic right to rely, and make any such right by third parties subject to your approval.

A related issue involves the owner’s right to assign its rights under the prime agreement to any successor, related company or third party (i.e., an unrelated developer). Many claims stem from a lack of understanding of the design firm’s scope of services, exacerbated by insufficient communication during the course of design and construction.

“Each situation expands the design firm’s potential liability and should involve a careful review of the contract and any potential insurance restrictions or limitations.”

These issues are magnified by assignments to third parties. To keep this process in check insist on language that you be notified and allowed to approve any assignment; although you may rarely object to such assignments (for pragmatic reasons), being involved beforehand lets you engage your “new” client from the outset.

In each situation, use common sense in negotiating with clients. No single issue is a “walk away” red-flag; thus, you can compromise on several points and focus on any that create greater risks for your firm. Another point to track: Is the language really helpful to the owner and are there any unintended consequences? For example, giving you upfront notice of a proposed assignment can actually help facilitate the transition; making a smoother overall project for owners who are selling out, but may want to do “another” deal with their successor. Lastly, keep in mind, you don’t have to win on every word; a good working relationship is often built on compromise. ▀

ROB HUGHES is a senior vice president and partner at Ames & Gough. He can be reached by email at rhughes@amesgough.com.



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Zweig Group's 2016 Financial Performance Survey gives firm leaders a clear view into industry trends and financial metrics that can help firms effectively manage their resources. The best way to manage these resources is to have a strong understanding of the firm's financial position and accounting activities. When and where is revenue recognized, where does that money go and how can cash flows be optimized? Is taking on debt counter-productive to growth or is that a viable resource for growth?

The 2016 Financial Performance Survey shows how firms performed on nearly 100 indicators. Each measure is described in detail so firms can better understand the implications of being excessively high or low on any one measure. Firms can use this to target internal initiatives, investment opportunities and improvement efforts to match their best performing peers, or simply to determine if their metrics are moving in the right direction.

EBITDA margin on NSR (medians)

