



LEADERSHIP IN ETHICS AND INTEGRITY: *AVOIDING LEGAL TROUBLE IN YOUR PROJECTS*

Joshua B. Lane

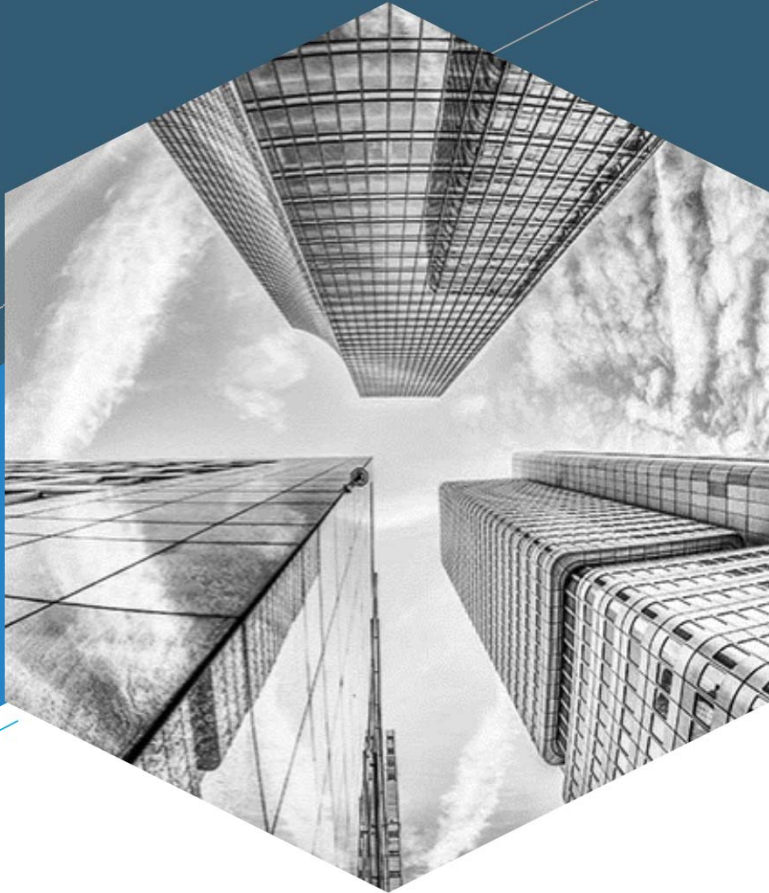
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ACS Ahlers
+ Cressman &
Sleight PLLC

NW **CCC** | NORTHWEST
CONSTRUCTION
CONSUMER
COUNCIL



ETHICS & INTEGRITY: DEFINED

“ETHICS”

- How we choose to live our lives
- Taking responsibility for our choices
- All professionals must be able to demonstrate that they:
 - act with integrity
 - always provide a high standard of service
 - act in a way that promotes trust in their profession
 - treat others with respect
 - take responsibility



• **RULES, rules, & “rules”**

LAWYERS

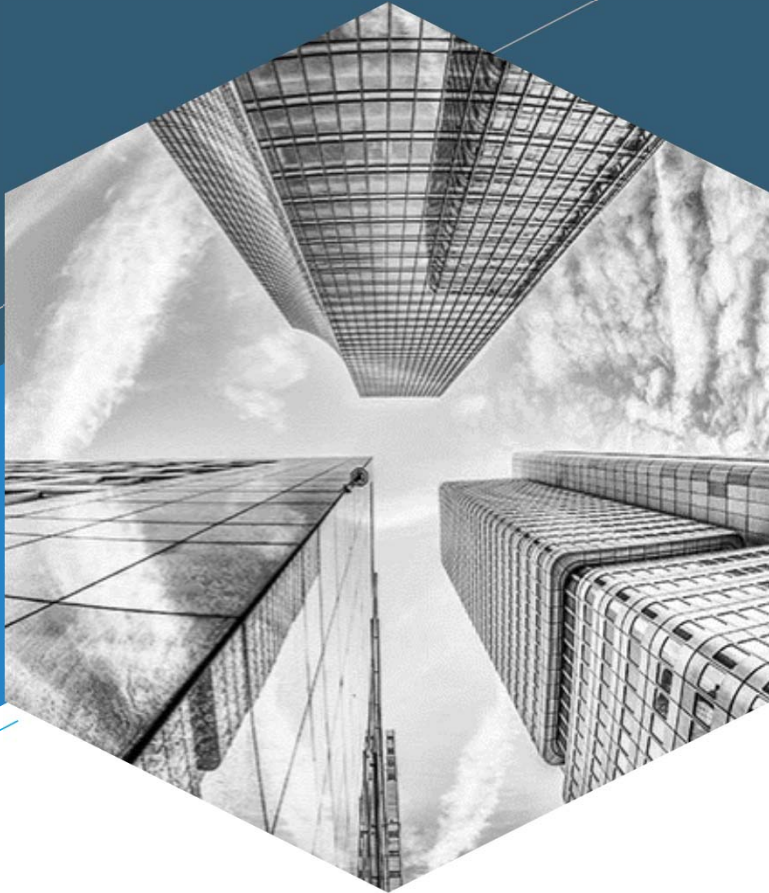
- **RULES:** CR 12(a)(1): 20 days to file answer to complaint
- **Rules:** A standard practice: extensions generally granted
- **“rules”:** How do you respond to an unintended disclosure of privileged information?



• **RULES, rules, & “rules” (cont’d)**

CONTRACTORS

- **RULES:** “Pay-if-paid” v. “pay-when-paid” clauses
- **Rules:** A standard practice: meeting before default
- **“rules”:** These are the sticky scenarios that often lead to lawsuits.



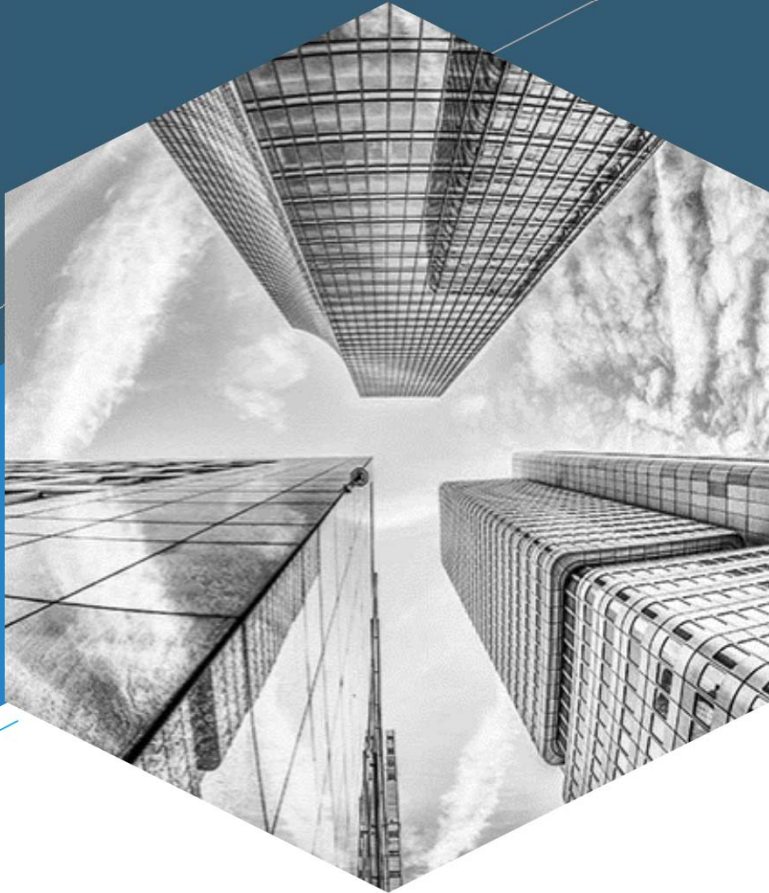
COMMON ETHICAL ISSUES IN CONSTRUCTION

Contractors

- Charging for superior materials, but using sub-par materials
- Padding timesheets
- Skimping on safety, for employees and clients
- Changing salary terms
- Bribing inspectors and potential clients/representatives
- Failing to guard proprietary information
- Not following environmental regulations

Owners

- Terminating for “cause” instead of for “convenience” without a viable “cause”
- Failing to pay on time/withholding portion of payment due
- Changing scope of work without modifying contract amount
- Blaming contractor for owner-caused delays



**CASE STUDIES:
*CHANGING SCOPE OF
WAIVERS/RELEASES***

CHANGING WAIVER LANGUAGE - CONTRACT

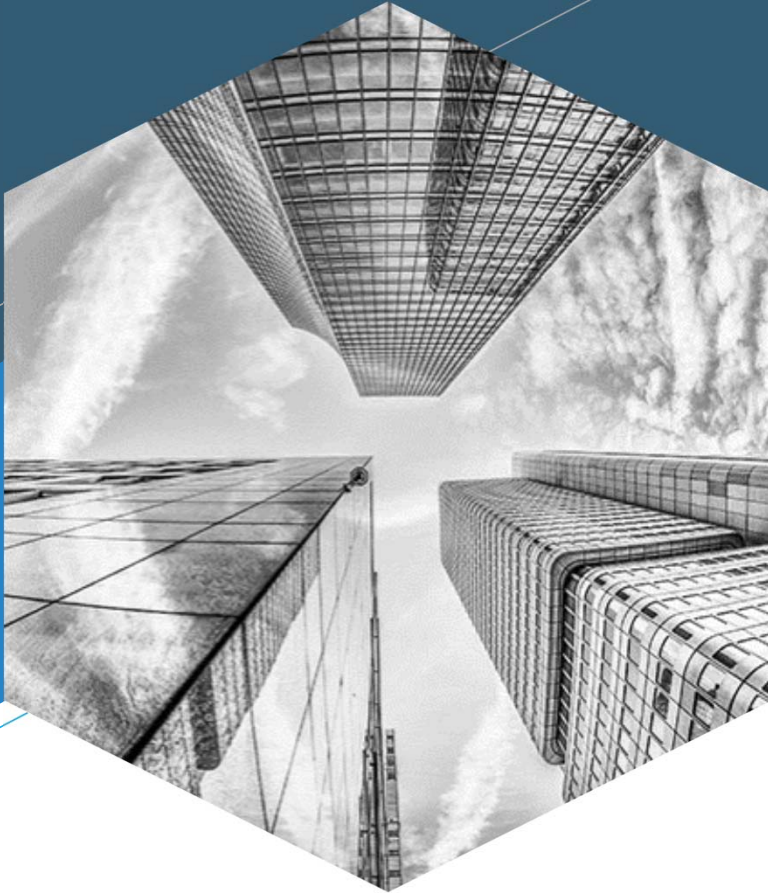
8.9 PARTIAL CLAIM WAIVERS AND AFFIDAVITS As a prerequisite for payments, Subcontractor shall provide, in a form satisfactory to Owner and Contractor, partial claim waivers in the amount of the application for payment and affidavits covering its subcontractors and suppliers for completed Subcontract Work. Such waivers may be conditional upon payment. In no event shall Contractor require Subcontractor to provide an unconditional waiver of claim, either partial or final, prior to receiving payment or in an amount in excess of what it has been paid or for which it is applying to be paid.

CHANGING WAIVER LANGUAGE - SIGNED

INTERIM LIEN, BOND, AND CLAIM RELEASE

Upon receipt by the undersigned of payment by check from [REDACTED] in the sum of \$ 693,751.25 payable to [REDACTED] when the check has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any claim for monies, claim of lien, stop notice, or bond claim right the undersigned has against [REDACTED] and any property owned, whether in whole or in part, by them upon or for which the undersigned has performed work or provided labor, services, equipment, materials for the [REDACTED] relating to all work performed, materials provided, or labor rendered, through September 30, 2019 except for those items (a) for [REDACTED] previously, and in accordance with all applicable terms of the contract, placed [REDACTED] and any other required party on notice and (b) which are specifically listed below:

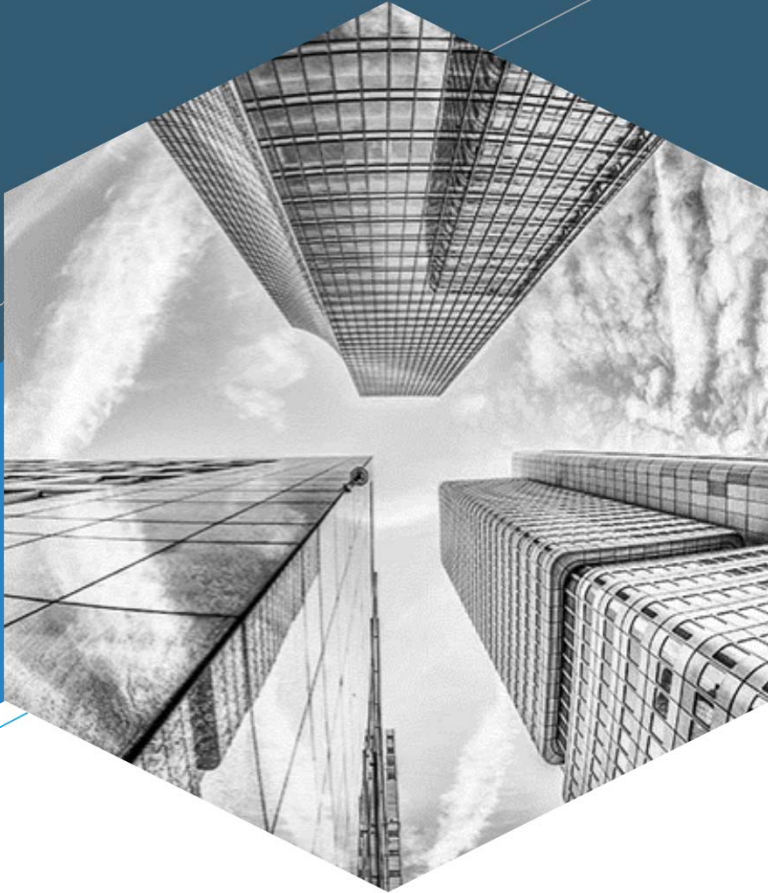
na, unless otherwise listed



CASE STUDIES:
WITHHOLDING
PAYMENT

WITHHOLDING PAYMENT – EVIDENCE OF FINANCIAL ABILITY

(k) If at any time the Contractor shall determine that the Subcontractor's financial condition has become impaired, unstable or unsatisfactory, the Subcontractor shall furnish evidence of the financial ability to complete the Subcontract to the Contractor within three (3) days after written demand thereof is mailed or delivered to Subcontractor and in default of furnishing such evidence satisfactory to Contractor, **the Contractor shall have the option to terminate this Subcontract** or to initiate such other action as the Contractor may deem necessary for the protection or preservation of its interests and/or the prevention of delay in the efficient and orderly progress of work on the Project, including but not limited to that portion of the work to be performed by Subcontractor hereunder. In the event of such termination, the rights of the Contractor shall be the same as provided in Article 19 of this Subcontract.



**CASE STUDIES:
*DISCLOSURE
OBLIGATIONS***

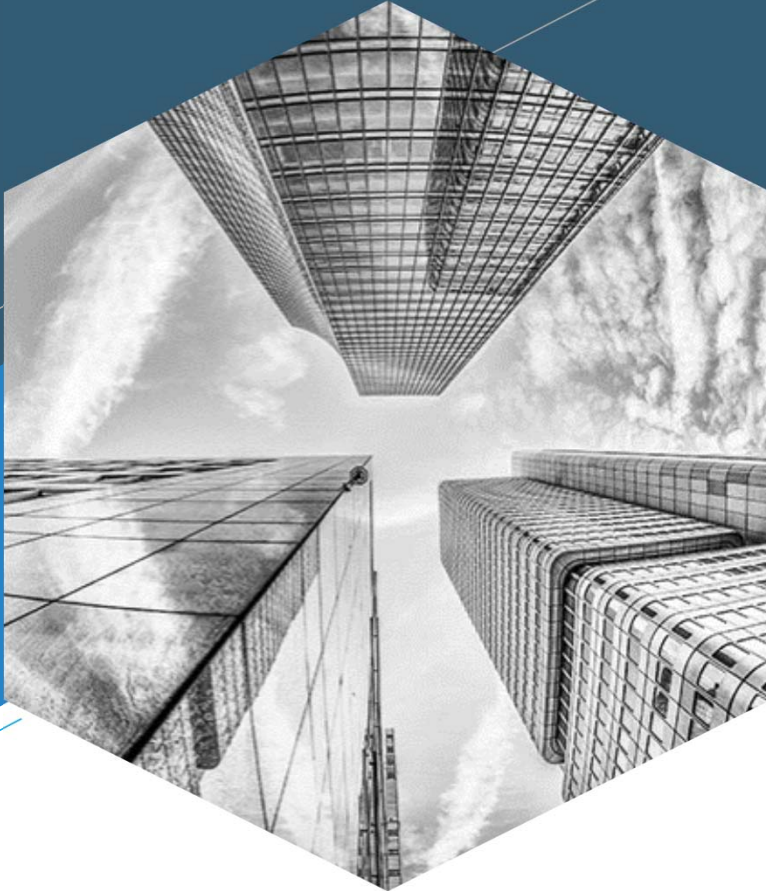


DISCLOSURE OBLIGATIONS – CONTRACTUALLY COVERED, BUT ETHICALLY?

EXCLUSIVE TERMS AND CONDITIONS OF SALE:

No warranty, testing or engineering included.

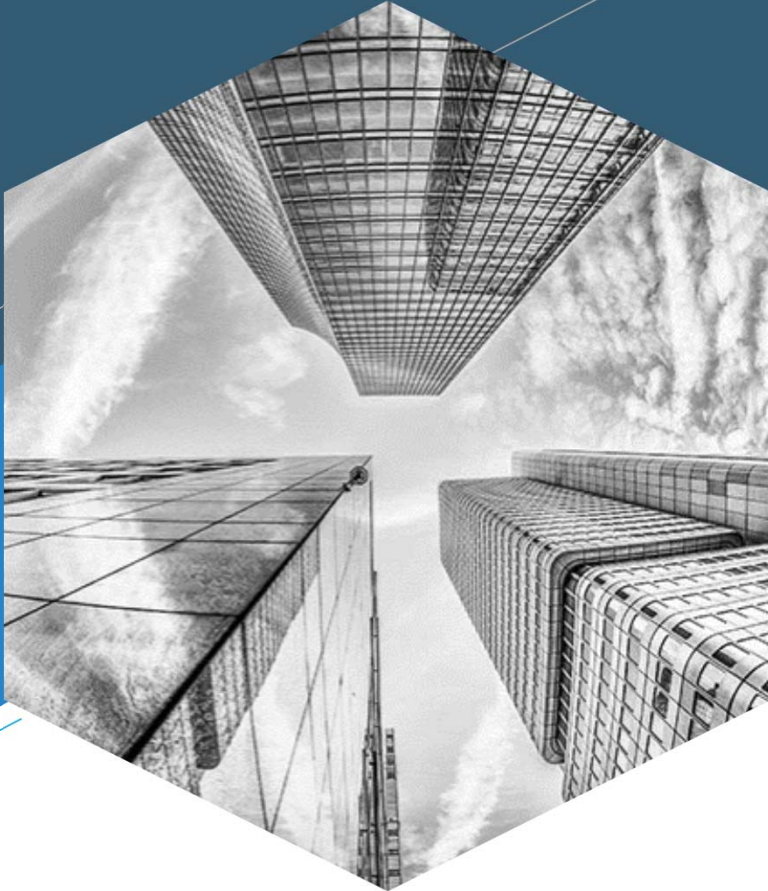
No waterproofing, anchors, dowels, models, or anything but stone is included.



CASE STUDIES:
***SAFETY &
SPOILIATION***

SAFETY & SPOILIATION



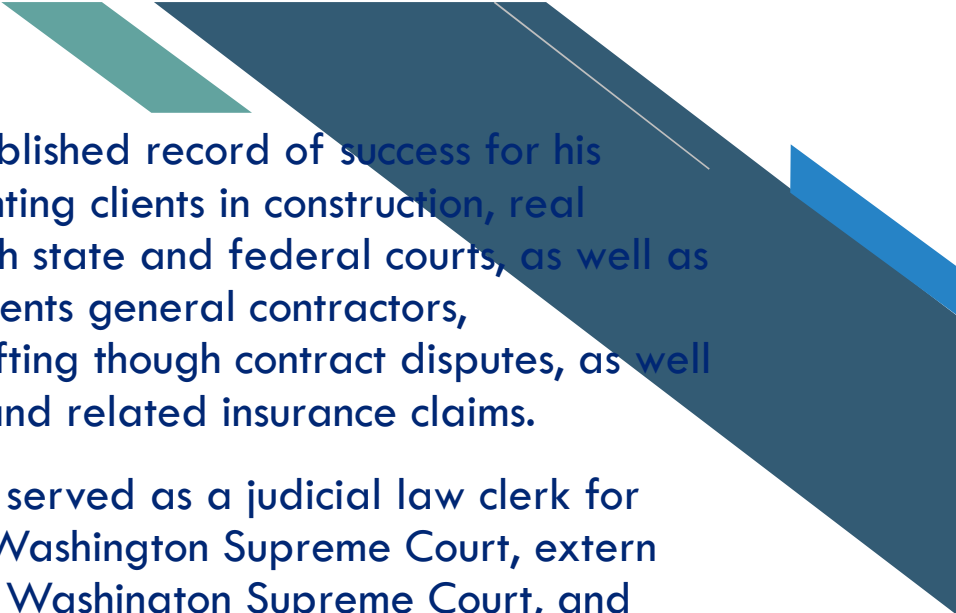


ETHICS: THE GOAL



THE GOAL

It is not reasonable to expect every employee or colleague to know what is the ethical and business-savvy choice in every situation. Instead, the goal is to be able to recognize a choice when it's presented and to take the moment to step back and consider what the long-term consequences might be, and then to ask your colleagues to confirm what the best course of action would be. If you still need help, find a trusted attorney and ask.



Joshua B. Lane is a skilled litigator with an established record of success for his clients. He concentrates his practice on representing clients in construction, real estate, and complex commercial disputes in both state and federal courts, as well as in private mediation and arbitration. He represents general contractors, subcontractors, and suppliers from contract drafting through contract disputes, as well as property owners with all manner of defect and related insurance claims.

Prior to joining Ahlers Cressman & Sleight, Josh served as a judicial law clerk for Associate Chief Justice Charles Johnson of the Washington Supreme Court, extern for Chief Justice Mary Fairhurst (retired) of the Washington Supreme Court, and intern for Judge Ronald B. Leighton of the USDC of the Western District of Washington. He was also honored to be a consultant for the Mars Exploration Rover Project at NASA's Jet Propulsion Laboratory. While in Law School, Josh earned several CALI Awards as top of his class, including for Professional Responsibility (Ethics).

Josh is admitted to practice in Alaska State, Washington State, and in the United States District Courts for the Western and Eastern Districts of Washington.