



Scotti Law Group

Construction Law: Concept through Completion ©

# Growing Pains - Risks Associated with a Growing Company®

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Goal of my  
presentation



Awareness of the Issues



Risk factors involved with a  
growing company



Role of Counsel in appreciating and  
managing these risks

# OVERVIEW

- A. A manufacturing company has grown from \$30M/year to \$60M and is on its way to be a \$100M/year company
- B. You are the company's outside/in-house Counsel
- C. What issues are created by this growth?
- D. What risk factors are associated with these Issues?
- E. What can you do to assist with and manage this growth?

Where is  
corporate  
growth  
reflected?

- Increased business
- Increased number of customers
- Expanded business footprint
- Expanded size and type of work
- Increased number of employees
- More and more complex contracts
- Additional layers of company management



Increased  
business  
creates a  
need for:



**MORE**

## Risk Factors related to an increased number of customers

- Managing competing and conflicting needs
- Expanding number of employees with responsibility for customer relations
- Need to develop a hierarchy of employees related to areas of work, customers and territories
- Branding and a consistent company message needed to overcome limitations of personal contact

# Risk Factors associated with expanded business footprint

- Doing business in multiple states
- Servicing distant customers and markets
- Counsel needs to become knowledgeable regarding local laws where the work is being performed or goods sold
- Contracts need to be adapted to the applicable state and local laws
- Client may need to obtain a license in these other states
- The type and amount of insurance coverage may be implicated
- Need to determine the applicable building code(s)

# Considerations in adapting existing contracts to other states

- What do local indemnity statutes provide for?
- What are the state's mechanics' lien laws?
- Is there a prompt pay act?
- What are the workers compensation insurance requirements?
- How to address sales and excise tax?
- How do the state's tort laws affect the type and amount of insurance coverage?
- Are there laws regarding the retainage that can be held?
- What building code applies?



## Considerations in working in other states



- Is a contractor's license required?
- Is medical or recreational marijuana legal?
- What building code applies to the work?
- Need to register with the secretary of state.
- What are the applicable taxes?

# The Company is attracting and performing more work



- The additional work may include larger, more complex/onerous contracts;

- Larger contracts may involve large clients with greater bargaining power;

- The contracts may be manuscripted or heavily edited form agreements that require an attorney to review; and

- Business decision as to what additional risk the Company is willing to accept.

# Larger Projects create additional risk

Larger Projects take longer to complete and may need:

- To create and follow a CPM schedule;
- To order long lead time items with supply chain risks;
- To tie up more company resources;
- Increased field and home office overhead;
- To manage cash flow - larger contract values paid over a longer period of time;
- To supplement the work force through subcontracts; and
- To run multiple crews requiring more supervisors.

# Types and Levels of Insurance Coverage are increased



As the volume and value of work increases, the company will need:

- More comprehensive insurance program;
- Formalized safety and training programs; and
- To carefully manage insurance costs.

# The Insurance Agent may be replaced with a Risk Manager



Expert advice regarding insurance types, coverages and managing costs is needed to help guide a company's expansion;

Need to evaluate how to use the size of deductibles to help control costs;

The use of a large self-insured retention may be considered; and

Companies also look at a captive insurance program where resources are pooled with similar companies to spread and share the risk.

# Growth may require changes in the corporate culture

- Doing business on a handshake is no longer feasible;
- The head of the company can no longer oversee each project;
- Client contact becomes more limited and more structured;
- Accounting functions become a separate department;
- Need for H.R. Dept. - hiring, healthcare, workers comp., discipline, and termination; and
- Standardized company contracts and forms needed to control risk.

# Growth may require changes in the corporate structure

- There may be a need to create separate companies to handle specific types of work, risks or assets.
- The attorney needs to structure the form and relationship of multiple entities.
- An example is to have a separate company own the real estate, equipment and/or machinery.
- A separate company or a holding company may be formed to help isolate parts of the business' assets and/or risks

# Conclusion

Legal counsel can help a company to grow to the next level. All of your skills, education and experience will be needed to properly serve the best interests of the client.



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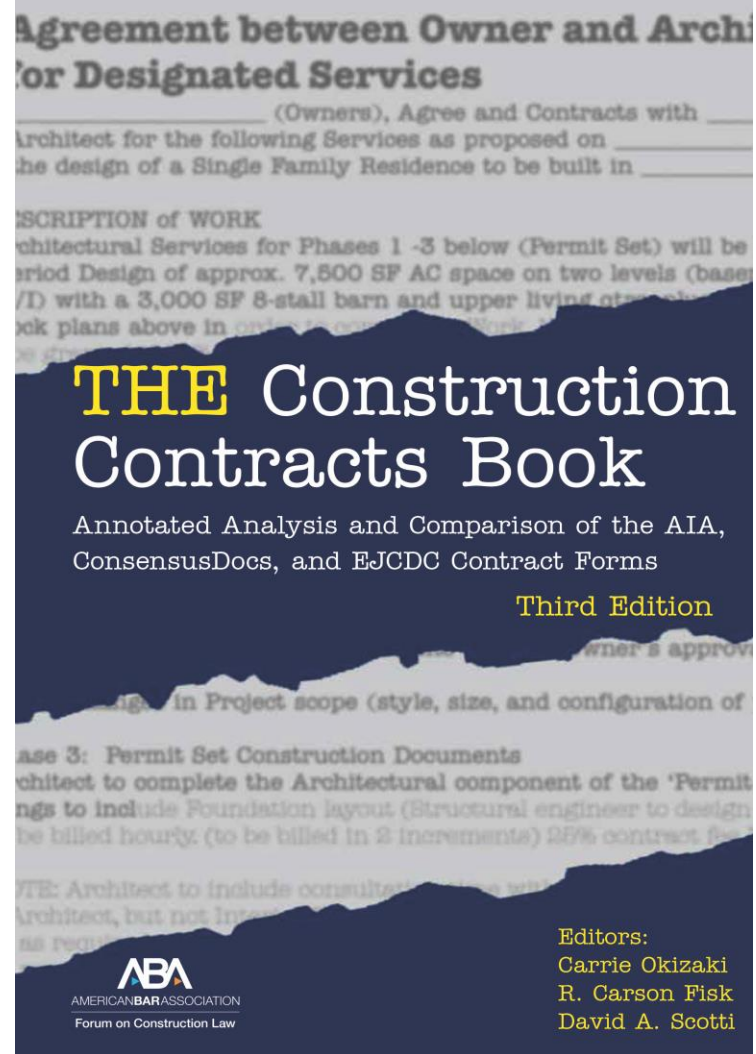
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