

# Top Construction



# Introductions

**Terry Fielden**, LEED AP BD+C, Speaker

- *Director of K-12 Education, International Contractors, Inc.*

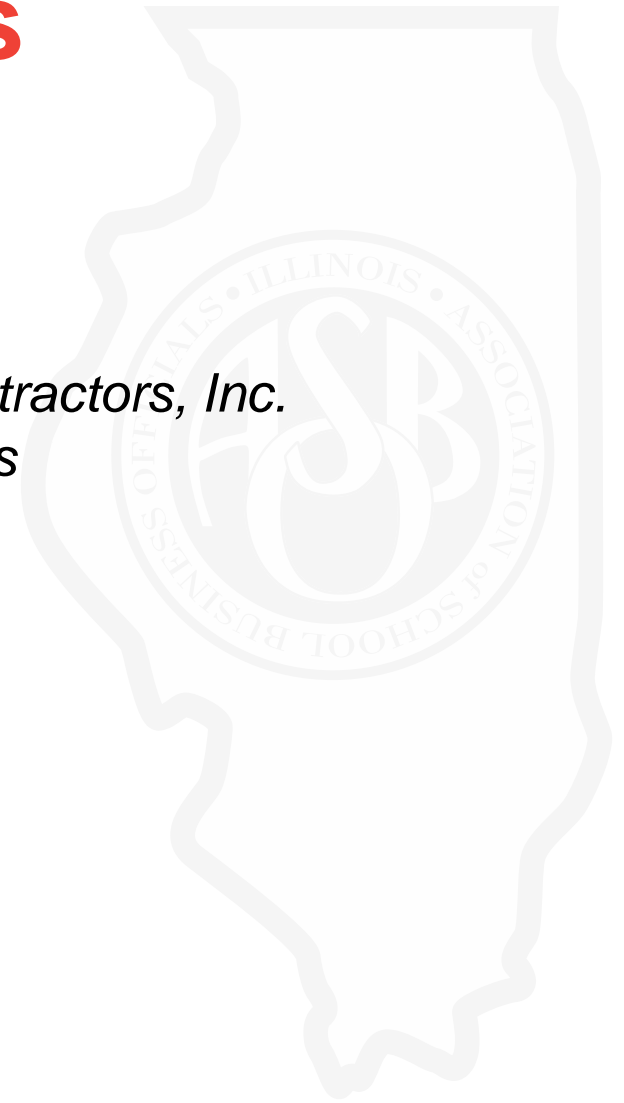
*Retired Board Member Naperville 203, 12 years*

**Kenneth Florey**, Speaker

- *Attorney, Robbins Schwartz*

**Carrie Matlock**, Speaker

- *President, DLA Architects, LTD*



# Opportunity to shine



# Opportunity to Cast Shade

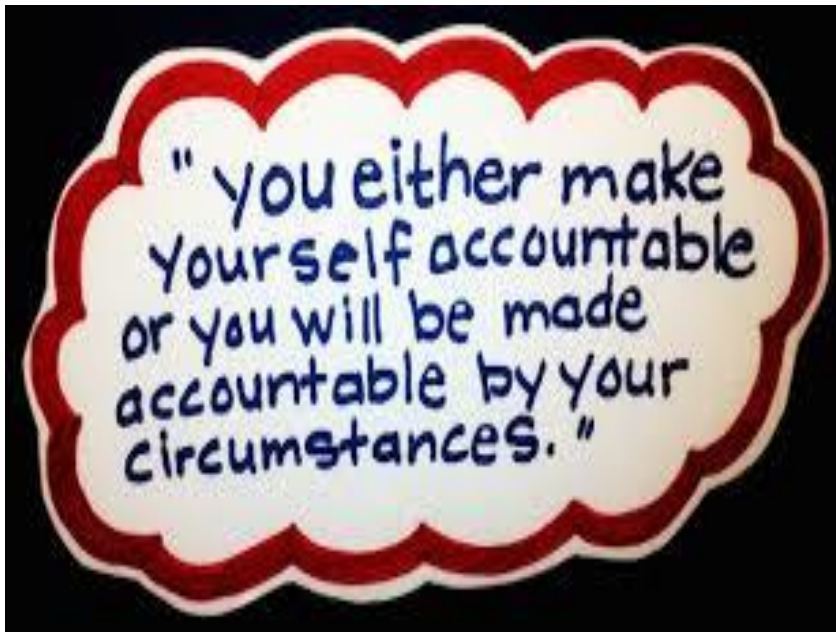




**School Construction = frustrating**

# Identify Common Problems

## Solutions

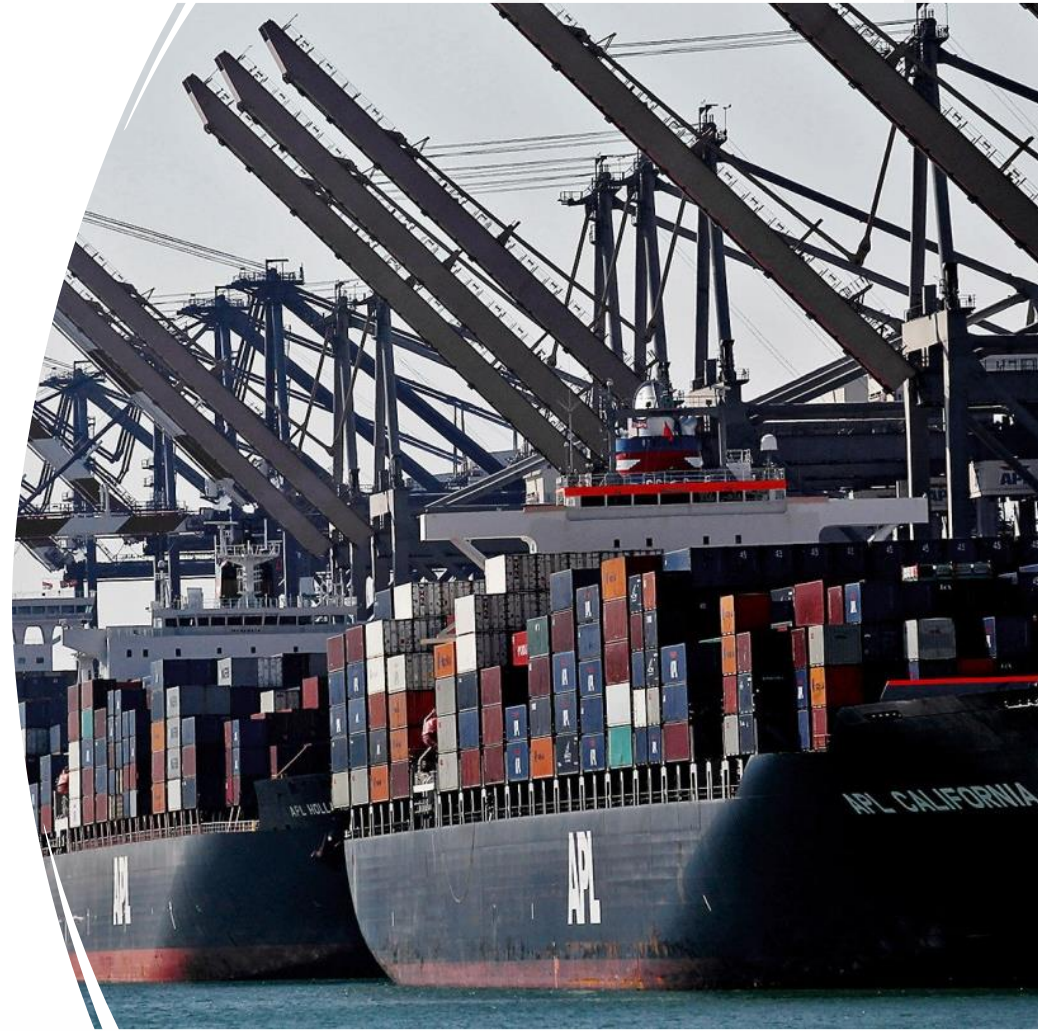


**Explaining to the Board**

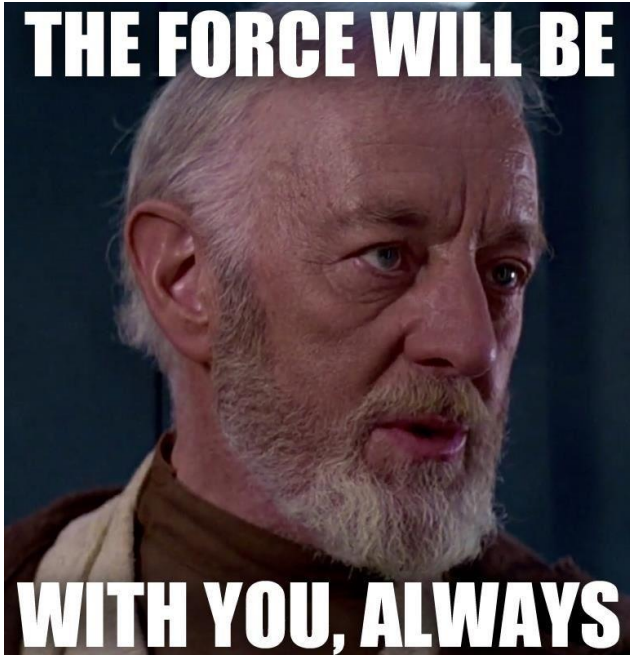
**Holding consultants responsible**

# COVID 19 Force Majeure

Is this a real thing?



# The “Force Majeure” is with you



## Will I encounter?

Star Wars  
Reference by  
contractor???

Unicorn contract  
term made up by  
lawyers?

Get out your  
checkbook.

Risks???!??!

Should you  
pay???



# COVID 19 Force Majeure

**Very real and costly for the near-term market**



**Write a check and  
open the school**

**You should carefully consider  
paying**

# COVID 19 Force Majeure

## “Force Majeure” My Attorney will write the magic

### LEGAL TERMS



Understand the notice timeframe



Demand back-up



Actively follow shop drawing approvals



Demand proof of material ordering



Demand proof of manufacturer delays



Situations are not “precedent setters”



Risks???!!!

# “Force Majeure” Paying the Bill

Pay when material  
is verified  
“available”



Pay when school  
will not open  
otherwise

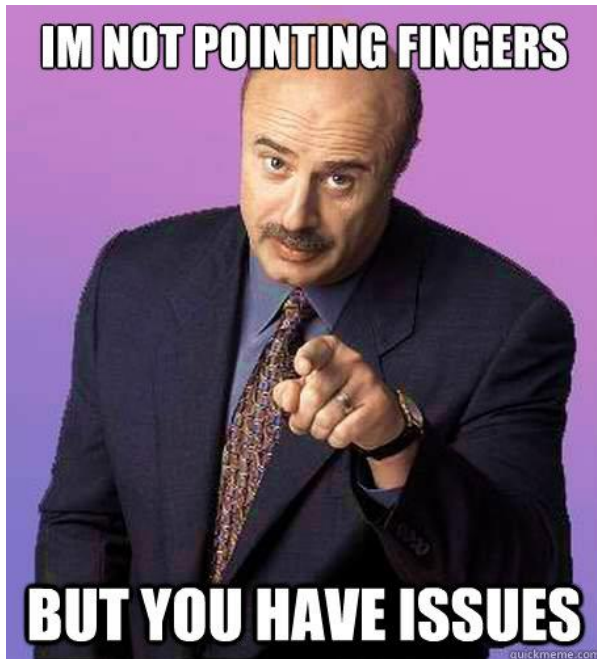
Pay each issue  
on presented  
merit

Alert the Board

# Architect “Design Errors”

**Rare and very infrequent**

Not missing information or elements



**Must always be addressed and paid by the District**

**Points of negotiation**

# Architect “Omissions”

*NOT “free scope” to the District*

OOPS a  
Daisy

Necessary for the project

Points of negotiation

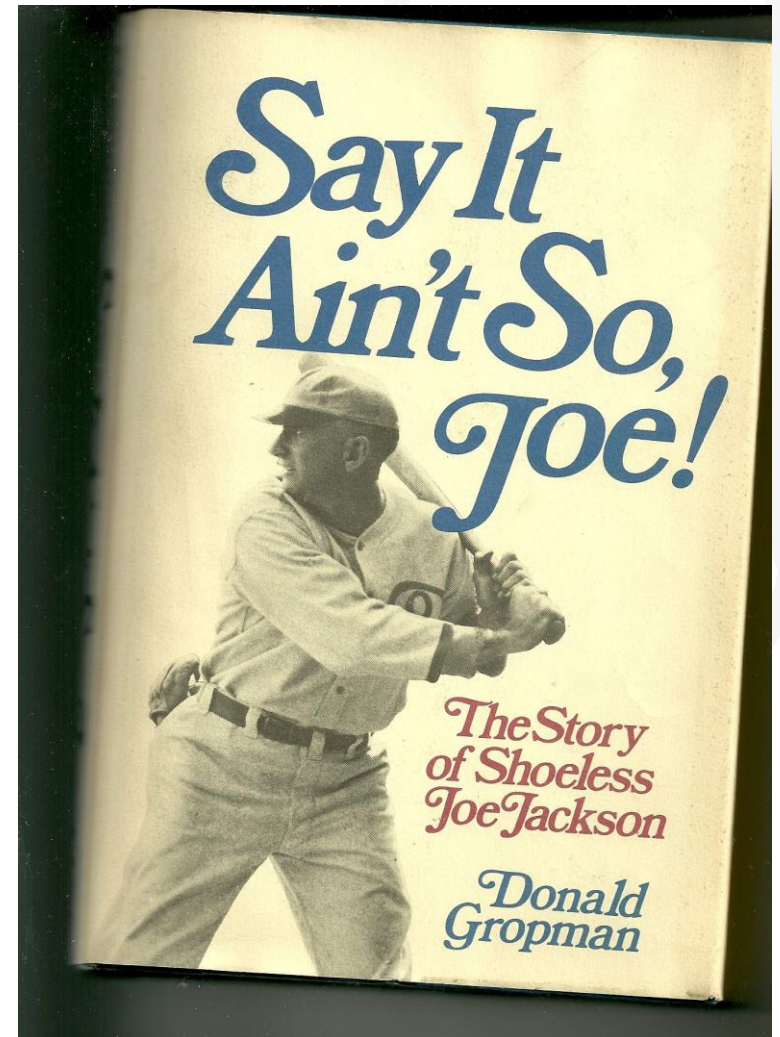
# Time Extensions and Delays

Unforeseen  
conditions

Submittal review  
delays

Changes in scope

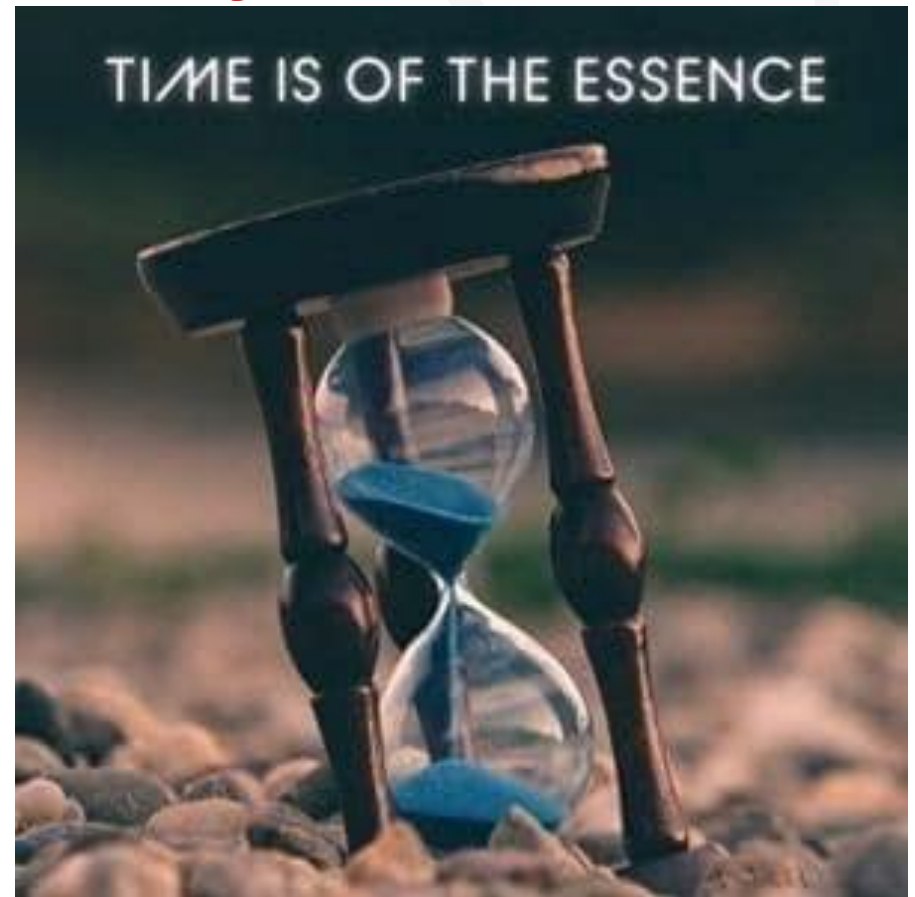
Weather impacts



# Time Extensions and Delays

Contractor  
notification

**Put the right contract  
terms in place  
Actively engage the  
contractor**



# mechanical system is not done

**Consider a commissioning agent**

**No “Test and Balance”  
– warranty does not start**

**Two-year warranty**





# Warranty Parameters

**Maintenance Obligations**

**Training First Time/Refresher?**

**When do I call?**



# Warranty Management

You must manage the warranty

Decide how much training you want/need

Track the issues in a log

Inspection at completion

I try not to  
**laugh**  
at my own jokes  
but we  
all know  
i'm hilarious

Riddlester.co

# Punch List or Death Wish

Who develops?

Why doesn't it get done?

Can I complete the list myself???

Can I get some cash back?



**Put the right contract terms in place**

# Manage Retention



10% retention

Hold until Final Completion;

No interest

Incorporate into all Subcontracts.

# Final Payment

**Final waivers in hand**

**Surety agrees to final  
pay**

**Punch-list Complete**

**Systems Certified**

**not  
until**

# Final Payment

Architect/CM to Approve

Walk the job one last time  
with consultants

Reduce retention in steps



# Financial Disputes



Liens

Contractor Claims-Demand for more money

When do I withhold payment?

Consultant Interface: Architect/CM

# “Construction Clean”

**What does that mean?**



**Do I let the trades use my toilets?**

**Decide who will clean**

**Set a date in the contract when  
you will clean**



# Close-Out Documents



**Record Drawings/As-Builts**

**Operation and Maintenance Manuals**

**Manufacturers' Warranties**

**Contractor's assignment of warranties**

# Close-Out Documents

## When should the Owner receive them?

Substantial Completion

Final Completion



# Construction Project Litigation

**Lien Claims**

**Delay Claims**

**Extra Claims**



# Construction Project Litigation

## Construction Defects



VectorStock®

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## Time to File the Lawsuit – Statute of Limitations

# Litigation



It's OK to get help

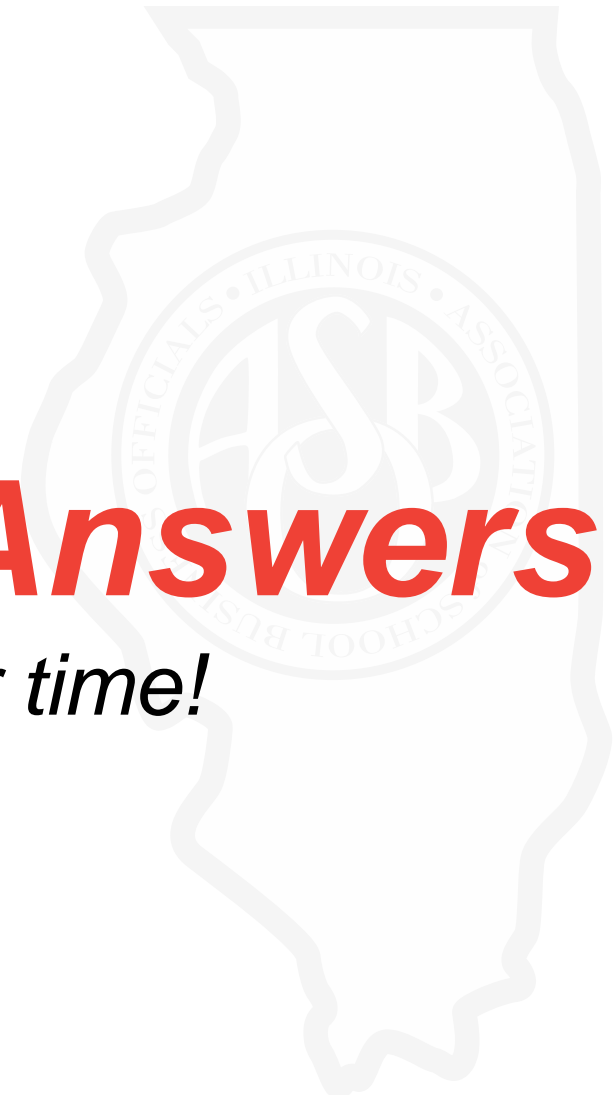
Mediation and  
Arbitration

Hiring Outside Experts  
CM? Architect?



# *Questions and Answers*

*We thank you for your time!*



# Presenters:

## MODERATOR INFO:

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