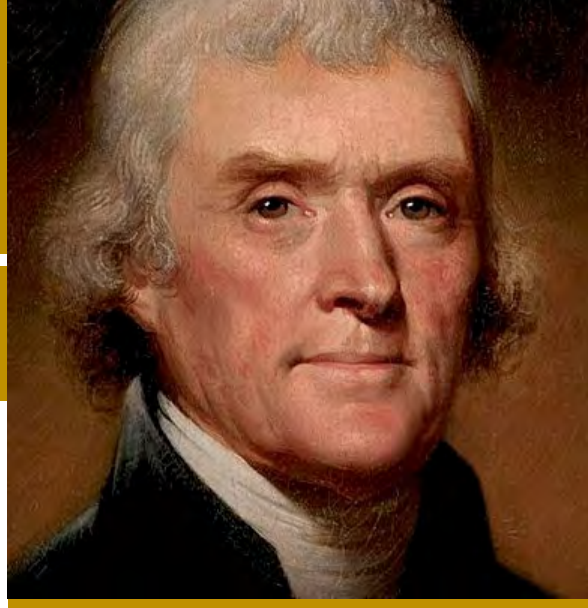
Monticello

THE QUARTERLY JOURNAL OF THE JEFFERSON SOCIETY, INC.

A Non-Profit Organization for Architect-Lawyers

Issue No. 28

Spring Issue - July 2019



PRESIDENT'S MESSAGE:

By Donna M. Hunt, AIA, Esq.
Ironshore Specialty Casualty

I am honored to serve as the seventh President of The Jefferson Society! (Lucky Number Seven). Before I continue, I would like to thank Suzanne Harness for her Leadership as the sixth President and her continued dedication to The Jefferson Society. Suzanne led the charge to implement changes to the bylaws with board members Chuck Heuer and Jeffrey Hamlett, and to implement website and technology improvements being spearheaded by Alex Van Gaalen. Both of these initiatives are invaluable in helping The Jefferson Society grow. Great gratitude is also due to Mark Ryan who organized the annual dinner held at The Mob Museum in Las Vegas and, as always, to Joyce Raspa in helping Mark in making the evening a great success. Please mark your calendar for the next annual meeting tentatively scheduled for May 14, 2020.

I had been thinking about what my first president's message would be and I knew it had to be about furthering the Society's vision and purpose to provide a resource to the architectural community. But before I started writing, I first wanted to review the messages of the previous Presidents and I found that Craig Williams, the second President of the Society in 2013, hit the nail on the head in his first President's Message, when he very eloquently stated:

"As I give thought to the future as a newly elected president, the first thing that comes to mind is that The Society is ready to start making a contribution to our professions of architecture and law. We are not a club, we are an organization with a purpose. This begs the question, what is that purpose? Generally, the Society was created to organize and use the dual professional specialties of the members to educate, and be a resource for, architects and attorneys as to legal issues arising from the practice of architecture, to promote activities and learning programs that support that purpose, to support with intellectual capital other organizations, schools, universities, and similar organizations who have interest, and provide a resource for architects in order to assist them in their professional and business development. In the future, the Society may conduct or participate in educational programs and seminars, interface with organizations such as the American Bar Association, The American Institute of Architects, The American Council of Engineering Companies, The Associated General Contractors of America, the Construction Users Roundtable, the Design Build Institute of America, and other organizations with interest in the design and construction industry."

(cont'd on p. 2)

Know of Another Architect-Lawyer Who Has Not Yet Joined The Jefferson Society, Inc.?

Send his or her name to TJS President Donna M. Hunt, AIA, Esq. at: donna.hunt@ironshore.com and we will reach out to them. Candidates must have dual degrees in architecture and law.

Inside This Issue:

Check us out on Facebook and LinkedIn

(President's Message
Cont'd from page 1)

Now is the time. As you will see in the meeting minutes, the Board has discussed and approved seeking provider status from the AIA. TJS would develop programs, submit for continuing education credit, and then distribute slides to members for scheduled local programs across the country in the name of The Jefferson Society. This approach will allow us to reach more people and expand geographically the education component of our Mission statement. I encourage each member to consider dedicating 10 hours of your time this year reaching out to a local organization to provide an educational program.

While there will be more to say as the year progresses, I want to part with saying that I am honored to be working with the Executive Board and Board of Directors and look forward to serving The Jefferson Society as its seventh president. Thank you! Donna.

2020 SUPREME COURT REMINDER

The next U.S. Supreme Court Admission for TJS Members is set for Nov. 16, 2020. If you are interested, please contact Jessyca Henderson (jessycahenderson@aia.org) or Jessica Hardy (jhardy@macdonalddevin.com).

Our Mission

The Jefferson Society, Inc. is a non-profit corporation, founded on July 4, 2012 for the advancement of its members' mutual interests in Architecture and Law. The Society intends to accomplish these purposes by enhancing collegiality among its members and by facilitating dialogue between architects and lawyers.

Charlottesville City Council Votes to End Thomas Jefferson's Birthday as A Paid Holiday

Charlottesville, Va. (July 1, 2019). It seems that the controversy over Thomas Jefferson continues to cause ripples across the political landscape, even in his hometown. While it is hard to think of Charlottesville, Virginia, without thinking of its most famous resident, the city council voted this month to remove Thomas Jefferson's birthday from the list of paid employee holidays. On Monday, July 1, 2019, the Charlottesville City Council voted to four-to-one to remove Thomas Jefferson's birthday, April 13, as a paid holiday. To replace it, "Freedom and Liberation Day" has been declared a holiday on March 3, which commemorates the day in 1865 when Union General Philip Sheridan's troops rolled through town and found a population that was majority African American — and although emancipation for most of them probably did not occur on that day, it was the opening salvo for the freedom of a lot of Charlottesville slaves.

Removing celebrating Jefferson was opposed by only a single "no" vote. Adding Freedom and Liberation Day was a separate vote and passed unanimously. Charlottesville is the location of Jefferson's birth, his death, and it is the place he called home when he wasn't serving in Washington, D.C. as the third president of the United States. He founded University of Virginia here, and his home, Monticello, sits on a little mountain on the outskirts of town, drawing almost half a million visitors annually. However, while Mr. Jefferson is a Founding Father of our Nation, he was also a slaveholder and this has caused many to question his legacy – even in his hometown! On July 1, 2019, just three days before Independence Day – and the anniversary of Jefferson's death (yes, he died on July 4th) the Charlottesville City Council voted to drop Jefferson's birthday as a paid holiday.

MINUTES OF THE ANNUAL MEETING

The Seventh Annual Meeting of the Members of The Jefferson Society, Inc., a Virginia non-profit corporation (the "Society"), was held at the National Museum of Organized Crime and Law Enforcement, Las Vegas, Nevada, beginning at 6:00 p.m. on June 5, 2019. In attendance were Members: Michael Bell, Matthew Boomhower, Suzanne Harness, Donna Hunt, Chuck Heuer, Jacqueline Pons-Bunney, Bill Quatman, Joyce Raspa,

Mark Ryan, Alex Van Gaalen, Josh Flowers, Craig Williams, Timothy Twomey, Matthew Boomhower, Laura Jo Lieffers, Mehrdad Farivar, Jeffrey Hamlett, Donald Z. Gray, Scott Vaughn, Jon Masini and Joelle Jefcoat. Mr. Flowers served as secretary of the meeting.

President Suzanne Harness opened the meeting, determined that a quorum was present, and called the meeting to order as the annual meeting of the Members.

MEMBER RECOGNITION AND APPRECIATION:

President Harness thanked Mr. Ryan for planning and executing the meeting. She recognized Ms. Raspa for her service as Secretary. She recognized and thanked two members whose term of service on the Board of Directors concluded at this meeting: Rebecca McWilliams and Chuck Heuer.

PRIOR MINUTES:

The minutes of the Sixth Annual Meeting, as printed in the Society's newsletter in July 2018, were duly approved by motion.

TREASURER'S REPORT:

President Harness reported on the finances of the Society on behalf of Treasurer Rodriguez who was unable to attend the meeting. As of the date of the meeting, the Society recorded a total of 110 members in good standing, with 90 members fully paid and 16 members showing outstanding dues amounts. Of the 16 members not paid, 4 have not paid dues since 2017. Treasurer Rodriguez is following up with all unpaid members. President Harness reported a balance in the account of the Society in the amount of $18,076.13 with no outstanding bills to be paid.

REVISION TO BYLAWS:

President Harness provided an overview of the proposed revisions to the Bylaws, which were provided to members in red-lined copy on April 18, 2019. The revisions were duly approved by motion of Mr. Ryan and seconded by Mr. Boomhower.

PRESIDENT'S REPORT:

President Harness reported the following activities:

AIA Convention Education Program. Mr. Heuer submitted a half-day program "Legal Best Practices for Architects" that the AIA accepted for presentation. Mr. Heuer, Ms. Hunt, Mr. Williams, and President Harness prepared slides for the program that the AIA also approved; however, the AIA canceled the program because it did not gain the minimum attendance by May 8. The reason for low registration is attributed to the AIA's not designating the program for Health Safety and Welfare (HSW) credit. The work was not wasted, because TJS will repurpose it for other programs.

The Society as an AIA Continuing Education Provider. The Board has discussed and approves seeking provider status from the AIA. As a provider, the Society would develop programs, submit and receive HSW credit for them, and distribute slides for member use across the country at local programs. This approach will allow the Society to reach more people and expand geographically the education component of the Mission statement.

Annual Meeting Budget. This year 22 members and 9 guests paid $95 per person to attend the annual dinner. In prior years the Society received a $2,500 sponsorship for the Annual Meeting, but this year our sponsor notified us that it would not continue the sponsorship. A few members tried to obtain sponsors without success. Without a sponsor we will run a deficit of about $70 per person. The Society can afford to subsidize the annual dinner through its Treasury, but to avoid doing so every year it will need to cultivate relationships with potential sponsors in the year ahead.

Website and Other Technology Improvements. President Harness introduced Mr. Van Gaalen, who volunteered at last year's annual meeting to lead technology and communication upgrades for the Society. He reported that he is now coordinating with Kenton Quatman, the Society's current webmaster, to populate a New Square Space web site, scheduled to be completed by mid-summer. It will allow e-commerce for dues and other payments for an annual cost of $216, plus tax and 3% transaction fees. The current web site will remain fully operational until the new one is fully populated, tested, and ready for release. The web site, as discussed at prior meetings, will be open to all. The members attending expressed gratitude to Kenton Quatman for his past assistance over many years, and agreed to send him a gift. Mr. Van Galen has volunteered to be our new webmaster and assist us with other new technology.

Mr. Van Galen also reported that for secure record storage, such as for minutes, Treasurer's reports, membership applications, etc., the Society will use a separate password protected G Suite account, at an annual cost of $360. The Society will also have an email address, @thejeffersonsociety.org, at

$50 per address, for use by the officers and webmaster for Society business, such as treasurer@thejeffersonsociety.org. With a designated email address, officers will not have to use their personal or business accounts for Society business and can extend its brand through a consistent email signature block.

The Society will use a free Mail Chimp account for a member list-serve. The list serve will be available to members for knowledge seeking and sharing, and for a job board. The list serve will further the Society's goal as a forum for the exchange of information and networking among its members.

Next SCOTUS Admission. In November 2019 the Society will start sending out emails for members to get their documents together for the third Supreme Court admission, on Nov. 16, 2020. Jessyca Henderson and Jessica Hardy are leading the effort this time around. Two prior admissions were in December 2015 and November 2017.

Revitalized Membership Committee. The Membership Committee is newly defined in the Bylaws to focus on developing new members. Bill Quatman has already volunteered to serve and Craig Williams, Jeffrey Hamlett and Donna Hunt volunteered to assist him. The committee will focus on member recruiting, through LinkedIn searches and other methods they determine.

Member Survey. Inspired by a suggestion from former President Mehrdad Farivar, the Society conducted a survey of the members. Donna Hunt and Jeffrey Hamlett prepared the initial questions, which were then formatted for Survey Monkey. President Harness and Secretary Raspa, helped to finalize the questions and beta test the questionnaire. The survey was conducted online March 27 through April 10 with 61 responses. President Harness presented a report of the survey responses, illustrated with charts and graphs, which will be published in the July issue of *Monticello*. Among other things, the responses show that most of the Society's members are attorneys in private practice, are satisfied with membership in the Society, and support holding an annual meeting in Charlottesville, VA. Members also indicated interest in presenting local and regional education programs.

ELECTION OF OFFICERS AND DIRECTORS:

President Harness then announced the election of Officers and Directors as the next item of business. She asked Ms. Hunt to present the recommendations of the Nominating Committee. Ms. Hunt then provided the report of the Nominating Committee as follows:

For the Position of a three-year Director the nominees were: Michael Bell, FAIA, Esq., and Laura Jo Lieffers, Esq. For the position of Treasurer-Elect, the committee nominated Jeffrey Hamlett, AIA, Esq. For the position of Secretary, the committee nominated Josh Flowers, FAIA, Esq. President Harness called for any further nominations and there were none. Therefore, she declared the nominations closed and called for a voice vote. Mr Bell, Ms. Lieffers, Mr. Hamlett and Mr. Flowers were unanimously elected.

NEW BUSINESS:

Following election of officers and directors, Ms. Harness turned the floor over to the new President, Donna M. Hunt, AIA, Esq. President Hunt. thanked Ms. Harness for her service to the Society and expressed her enthusiasm about leading the Society in the year ahead.

Next Meeting. To coincide with the AIA Conference on Architecture, the next Annual Meeting will he held on Wednesday, May 13, 2020 in Los Angeles at a place yet to be determined.

There being no further business, on motion by Mr. Hamlett seconded by Mr. Twomey, the meeting was adjourned at 9:20 p.m.

Respectfully submitted, Josh Flowers, Secretary

OREGON. VENUE-SELECTION CLAUSE INVALID BECAUSE NO FEDERAL COURTHOUSE EXISTED IN THE COUNTY!

A city in Oregon sued its engineering firm in state court, alleging breach of contract. The firm removed the case to federal court based on diversity of citizenship but the U.S. District Court for the District of Oregon granted the city's motion to remand the case back to state court. The engineering firm then appealed. The novel issue on appeal was the wording of the contract's venue-selection clause that provided: *"Venue for litigation shall be in Linn County, Oregon."* The problem is that Linn County lies within the federal court's Eugene Division, but there is no federal courthouse located in Linn County, as the federal courthouse is located in Eugene, which is in Lane County. The 9th Circuit held that permitting the engineering firm to remove the case to federal court would violate the plain terms of the parties' agreement. As a result, the only way to effectuate the clause was to limit venue for litigation to the state court in Linn County regardless of diversity of citizenship. The district court's order was affirmed. *City of Albany v. CH2M Hill, Inc.,* 2019 WL 2285346 (9th Cir.).

The 7th Annual Meeting of The Jefferson Society was held in the Oscar B. Goodman Room of The Mob Museum in downtown Las Vegas. Some of the attendees included: (below left) Past-president Craig Williams and his wife Barbara (both from Dallas); and (below right) Mehrdad Farivar (Los Angeles), Don Barry (Ann Arbor), and Don Gray (Boise). There are more photos on pages 6 to 8.

Also attending the 7th Annual Meeting in Las Vegas were: (above left) Immediate Past-President Suzanne Harness and her husband Ray Kogan (also an architect) (from Arlington, Va.); (above right) Tim Twomey (Baltimore) and Jeffrey Hamlett (Mukileto, WA); (below left) Laura Jo Lieffers and her husband Scott (of St. Petersburg, FL); and (below right) our new webmaster Alexander van Gaalen (Pasadena) sharing a laugh with Donna Hunt's husband, Dick Perez (aka "the Rock") (Boston).

More pics from the 7th Annual Meeting in Las Vegas: (above left) Past-President Bill Quatman (Kansas City, MO) with Matthew Boomhower (San Diego); (above right) Bill (again) taking a "selfie" with Joelle Jefcoat (Charlotte); (below left) Joshua Flowers and his wife Kate (both of Memphis); and (below right) meeting planner and host Mark Ryan and his wife Shelli (Henderson, NV).

(Above) Jon Masini (Chicago) with new President Donna Hunt (Boston) at the Annual Meeting. (Below) Scott Vaughn (Cambridge, MA) with his father, Otis Vaughn. Not pictured, but attending, were: Chuck Heuer (Cambridge, MA) and Jacqueline Pons-Bunney (Laguna Hills, CA).

NEW YORK. ARCHITECT AND ENGINEERS NOT LIABLE FOR DAMAGE TO ADJACENT BUILDING CAUSED BY EXCAVATION WORK.

Owners of a residential property located in Brooklyn filed suit against their neighbor, its contractor, architect geotechnical engineer and structural engineer due to alleged damage caused by construction and excavation operations taking place on the neighbor's property. The plaintiffs claimed that the defendants violated provisions of the Administrative Code of the City of New York and the New York City Building Code requiring those who conduct excavation activities on their property to preserve and protect adjoining properties from damage. The defendants asserted cross claims against each other for indemnification and/or contribution. The plaintiffs moved for summary judgment on the issue of liability alone against the construction and excavation companies, in part, upon an affirmation of a professional engineer and his unsworn reports. The architectural and engineering firms separately cross-moved for summary judgment dismissing the complaint and all cross claims asserted against them. The trial court granted the plaintiffs' motion for summary judgment on the issue of liability against the construction and excavation companies, and granted the separate cross motions for summary judgment dismissing the complaint and all cross-claims insofar as asserted against the architectural and engineering firms. Those rulings were appealed to the Supreme Court, Appellate Division, which held that: 1) the construction and excavation companies were liable for damages on adjacent property; 2) the architecture and engineering firms were not liable to either adjacent property owners or other construction and excavation companies; and, 3) the motions for summary judgment by the property owner and engineering and architectural firms were not premature.

Getting into the granular details, the New York City Building Code imposes strict or absolute liability upon a "person who causes an excavation to be made." The plaintiffs made a prima facie case that the contractor and excavator caused soil or foundation work to be made, pursuant to a license granted under the city building code, and that the work proximately caused damage to their building. That evidence included, among other things, a notarized affirmation from a professional engineer whose investigation found that the excavation on the adjacent property had caused damage to the plaintiffs' building. The court ruled that the alleged poor preexisting condition of the plaintiffs' building did not factor

into a proximate cause analysis under the city's building code, but merely raised an issue of fact as to damages (not liability). The appellate court also found that the architecture and engineering firms established (prima facie) that they were not a "person who caused" soil or foundation work to be made, and otherwise owed no duty to the other defendants or to the plaintiffs. Further, the design firms established that they did not exercise actual supervision or control over the damage-producing work. The plaintiffs failed to rebut those facts. To avoid summary judgment, the plaintiffs argued that discovery was not yet complete, but the court rejected that, saying: "The mere hope or speculation that evidence sufficient to defeat a motion for summary judgment may be uncovered during the discovery process is an insufficient basis for denying the motion." As a result, the trial court's rulings were affirmed. See, *Reiss v. Professional Grade Construction Group*, 2019 WL 2112413 (N.Y.A.D. 2 Dept.).

MASSACHUSETTS. DESIGN-BUILD CONTRACTOR IS NOT AN INTENDED THIRD-PARTY BENEFICIARY OF A/E FIRM'S CONTRACT FOR PRELIMINARY BRIDGING DOCUMENTS.

CDM International ("CDM") is a Massachusetts corporation operating out of Boston. In 2008, CDM entered into a master contract with USAID to serve as the architect and engineering firm ("A/E")for United States Agency for International Development ("USAID") projects world-wide. In Nov. 2009, Tropical Storm Ida hit El Salvador, causing flooding, landslides, and the destruction of homes, roads, bridges, schools, health clinics, and other infrastructure. USAID provided $ 25 million in funding to rebuild damaged infrastructure. In late 2011, CDM entered into a Task Order with USAID which specified its duties as the A/E for these reconstruction projects. It required CDM to conduct studies and assessments of each project site and create preliminary designs and technical specifications (what we would call "bridging documents") at least 30% complete for each facility. The CDM Task Order also required CDM to participate in the procurement process for design-build contractors, who would use the preliminary bridging documents to create final designs and then actually reconstruct the facilities. Finally, CDM had to supervise the work of the design-build contractors. Between 2011 and 2014, CDM made numerous statements in public documents that it was completing the preliminary designs of at least 30% of the final designs to assist the design-build contractors in making bids.

In late 2013 and early 2014, USAID issued RFPs from design-build contractors for eight schools and one health clinic. In the RFP documents, USAID explained that the final designs had to be based on CDM preliminary bridging designs. A large local contractor in El Salvador ("ARCO") bid these projects. In submitting its bids, ARCO relied on the CDM preliminary designs and on representations by both USAID and CDM that the designs constituted at least 30% percent of the final designs for each project. USAID accepted ARCO's bids, and USAID and ARCO entered into contracts in late 2014 for the projects. The design-build contracts included CDM's preliminary designs and repeated the promise that they constituted at least 30% of the final designs.

After starting work on the projects, ARCO realized that CDM's preliminary designs contained numerous defects and constituted substantially less than 30% of the final designs. For example, the designs for the schools allegedly failed to follow building-code requirements and did not account for soil-condition and subsurface issues. The designs for the health clinic allegedly failed to address flooding requirements, lacked a plan for bio-infectious waste disposal, and did not identify that the annex to the clinic was structurally unsound. Because of these errors, ARCO claimed that it spent significant time and resources redrawing the designs; obtaining new permits; conducting additional excavation, soil compaction, and hydrogeological studies; and demolishing more structures than planned. ARCO also alleged that CDM and USAID interfered with its work in other ways, including delays in responding to concerns about the preliminary designs, and failing to approve technical documents in a timely manner and maintain a proper document control system. ARCO also claimed that CDM used outdated technical specifications, utilized its supervisory role to prevent ARCO from executing its final designs, and caused numerous other delays. ARCO also alleged that CDM and USAID conspired to hide the problems with the preliminary designs and shifted blame to ARCO. Because of these delays, USAID withheld progress payments to ARCO and assessed liquidated damages. ARCO claimed that CDM and USAID wrongfully avoided paying for its work by determining that it had not substantially completed the projects. ARCO claimed it was owed almost $ 9 million for its work, including delays.

In late 2018, ARCO sued CDM in federal court in Massachusetts, invoking diversity jurisdiction. The suit asserted seven causes of action: breach of contract, tortious inference with contractual relations, intentional misrepresentation, negligent misrepresentation, civil conspiracy (concerted action), civil conspiracy (coercion), and unjust enrichment. In its breach of contract claim, ARCO alleged that it was an intended beneficiary of the CDM Task Order with USAID and suffered damages due to CDM's deficient preliminary designs. CDM promptly moved to dismiss the breach of contract claim for failure to state a claim. The district court granted CDM's motion on the grounds that under Massachusetts law, ARCO was not an intended beneficiary to CDM's task order with USAID.

The court explained that Massachusetts courts have adopted the Restatement (Second) of Contracts approach for determining whether a third party may recover on a contract. Under this approach, not all third parties who derive a benefit from a contract can sue to enforce that contract. Instead, Massachusetts courts distinguish between "intended" and "incidental" beneficiaries. A third party qualifies as an intended beneficiary only if "the language and circumstances of the contract" show that the parties to the contract "clearly and definitely" intended the beneficiary to benefit from the promised performance. Further, only an intended beneficiary can sue to enforce a contract. As applied here, the language of the CDM Task Order did not indicate that USAID and CDM "intended to benefit the design-build contractor for the school and clinic projects." The express purpose of the CDM Task Order was for CDM to "provide professional architecture and engineering (A/E) services for the technical tasks associated with USAID's Tropical Storm Ida Reconstruction Project." ***The court said that, "Nothing in this language suggests that the parties intended any benefit to ARCO."*** While acknowledging that ARCO incidentally benefited from the studies and preliminary bridging designs, there was no indication that USAID and CDM entered into this agreement with that benefit in mind. The lack of intent to benefit ARCO was found to be even clearer in light of CDM's supervisory role over the design-build contractor, as USAID entered into the CDM Task Order at least in part to oversee the contractor's performance.

The court held that: "While the CDM Task Order contemplates that CDM International will work with the design-build contractor, it includes no provision indicating that the parties intended to impose liability on CDM International to ARCO for shoddy preliminary designs and delays." As a result, CDM's motion to dismiss the breach of contract claim of the complaint was granted. Of course, this did not dispose of the other six counts in the lawsuit. *Arco Ingenieros, S.A. de C.V. v. CDM International Inc.*, 368 F.Supp.3d 256 (D. Mass. 2019).

People On The Move.

Laura Jo Lieffers has changed law firms and is now with Carlton Fields, P.A., in Tampa. Her new contact info is:

Laura Jo Lieffers, Esq.
Carlton Fields, P.A.
4221 W. Boy Scout Blvd., Ste. 1000
Tampa, Florida 33607-5780
LLieffers@carltonfields.com

Alex van Gaalen has also changed jobs. His new contact info is:

Alex van Gaalen, AIA, Esq.
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Have you changed firms or moved? Email TJS Secretary Josh Flowers at: jflowers@hbginc.com

RHODE ISLAND. ENGINEER NOT LIABLE TO CONTRACTOR WHOSE BID WAS REJECTED ON ENGINEER'S RECOMMENDATION.

A sewer authority hired an engineering firm ("Pare") for services relating to a sewer expansion project, including preparation of a Request for Proposals ("RFP") from bidders. Five contractors submitted bids, including Rocchio. Rocchio was the low bidder at $2,318,285, which was approximately $147,000 less than the next-lowest bidder, DiGregorio. Pare prepared a memo which noted that Rocchio failed to include certain required EPA forms in its bid, recommending disqualification of Rocchio. At the next board meeting, the authority's executive director recommended rejection of Rocchio's bid and award to DiGregorio instead, based on Pare's memo. The board unanimously approved the motion to award the contract to DiGregorio. The low bidder, Rocchio, filed suit against the engineering firm, Pare, alleging interference with prospective contractual relations, negligence, and breach of contractual obligations due to Rocchio as a third-

party beneficiary of the contract between the authority and Pare. Pare moved for summary judgment on all counts, arguing that it did not act in a way as to intentionally interfere with Rocchio's prospective contractual relations, pointing out that it had no interest whatsoever in which company was ultimately awarded the bid; and, further, that the economic loss doctrine barred Rocchio's claim. Pare also argued that Rocchio was an "incidental beneficiary" of Pare's contract with the authority, not an "intended beneficiary," and, as such, was not entitled to bring a claim for breach of contract against Pare. The trial court granted the motion and the Rhode Island Supreme Court affirmed on all counts finding that: 1) the engineering firm did not owe a duty to Rocchio as a third-party who could foreseeably be injured or suffer economic loss caused by the firm's negligent performance of contractual duty owed to sewer authority; 2) Rocchio, as a bidder, was not an intended beneficiary of the contract between engineering firm and sewer authority; and, 3) the engineering firm did not intentionally interfere with the bidder's prospective contractual relations with the sewer authority. The Court explained that Rocchio was one of five bidders that responded to the RFP and, "In situations involving public requests for bids, it may be impossible to determine how many and which general contractors will submit bids for the project * * * Here, a determination that Pare owed a duty to Rocchio … would effectively be a determination that all engineers contracted by project owners owe a duty to all general contractors that could possibly submit a bid on any given request for proposal. We believe that would be an absurd result." As to the claim of intentional interference with contractual relations, there was no evidence of Pare's intent to harm Rocchio, and Rocchio did not submit any evidence that Pare was not acting in good faith. The Court stated that since there was no contract between Rocchio and either Pare or the district the economic loss doctrine alone did not apply to preclude Rocchio's negligence claim. However, that claim was barred for lack of a legal duty owed. *John Rocchio Corp. v. Pare Engineering Corp.*, 201 A.3d 316 (R.I. 2019).

The 7th Annual Meeting of The Jefferson Society was held in the Oscar B. Goodman Room of The Mob Museum in Las Vegas.

OHIO. SUIT AGAINST CONTRACTOR, SURETY AND ARCHITECT BARRED BY 10-YEAR STATUTE OF REPOSE.

A school district board hired an architectural firm to design a new high school and, later, hired a general contractor to build the school. The contractor provided a performance bond from its surety. The school board claimed that all construction and design of the project was required to conform to the standards set forth in the Ohio School Design Manual ("OSDM") published by the Ohio Facilities Construction Commission, which requires that "school building structures and exterior enclosures shall be designed and constructed of materials which will perform satisfactorily for 40 years with only minor maintenance and repairs, and for 100 years before major repairs or replacement of primary structural or exterior enclosure elements is required." The board claimed that issues such as condensation, moisture intrusion, heat loss, excess humidity, premature deterioration, in areas of the roof and building envelope of the project arose from deficiencies with the design, construction, installation, and materials of the roof and building envelope, and that the school district would require major repairs, including removal and replacement of the existing roof. As a result, the school board sued its general contractor, the contractor's surety, and the architectural firm, alleging breach of contract and other claims based on the construction of a school that failed to conform to the standards set forth in the OSDM. The defendants all moved to dismiss the lawsuit on the basis of the Ohio 10-year statute of repose for actions for damages based on defective and unsafe condition of improvement to real property, R.C. 2305.131(A)(1). The trial court found the project in this case was completed no later than 2005, but the suit was filed in January of 2018, more than ten years later. The trial court further found the statute of repose allows bringing an action against those involved in the construction industry to be extended by two years should issues be discovered within the last two years of the statutory period, but noted the complaint in this case did not allege a date of discovery. The trial court ruled that even if the two-year extension applied, the school board's claims expired in 2017 under the statute of repose. As a result, the trial court granted the defendants' motion to dismiss for failure to state a claim and the school district appealed.

The Court of Appeals examined the 10-year statute, agreeing with the trial court that the lawsuit was filed more than 10 years after substantial completion of the project, thus barring the suit. However, the school board argued that the statute only applied to tort actions, not claims for breach of contract – which are governed by a 15-year statute of limitations. However, the appellate court rejected that interpretation, finding that the statute barred all claims, not only tort claims. As to the two-year extension in the statute of repose for defects discovered in the last two years of the 10-year period, the Court held that the extension would not help the plaintiff here since the suit would be time-barred even if two more years were added, among other grounds.

The school district then argued that the contractor was liable under its express warranty in its construction contract, and that the ODSM creates a forty (40) year warranty that had not yet expired. Rejecting these arguments, the Court of Appeals found that the school board did not allege specifically breach of warranty claims in its lawsuit against the contractor or its surety. Further, the Court ruled that "a surety's liability is dependent upon, and can be no greater than, that of the principal." Therefore, the surety could assert the same defenses as its principal and, thus, whatever "amounts to a good defense to the original liability of the principal, is a good defense for the sureties when sued upon the collateral undertaking." The trial court's ruling was affirmed without any extensive discussion of the architect's liability. *See, Board of Education of Tuslaw Local School District v. CT Taylor Company, Inc.,* 2019 WL 2004316 (Ohio App. 5 Dist.).

OKLAHOMA. ARCHITECT BOUND BY FORUM-SELECTION CLAUSE IN HIS EMPLOYMENT AGREEMENT . . . TO LITIGATE IN QATAR!

The plaintiff in this case was an architect employed by his firm for work in Doha, Qatar. He claimed that he resigned when the firm removed him from the project for which he was hired. He sued his firm in federal court in Oklahoma, alleging that the firm breached his employment contract by failing to support his efforts to lead and direct the project and by failing to provide the necessary support personnel for the project. He further alleged that the firm made fraudulent misrepresentations to him regarding the staff he would have available to him in Qatar, who were required for successful project completion. The plaintiff also sought relief on the tort theory of tortious interference with business relation-

ships and prospective economic advantage premised on his decision to terminate his prior employment to accept the position in Qatar. The architectural firm filed a motion to dismiss under the doctrine of *forum non conveniens,* claiming that the lawsuit should have properly been filed in Qatar, not in Oklahoma. The firm argued that the Employment Agreement contained a forum selection clause, Clause 24, indicating that Qatar is the only appropriate place for legal action related to this contract.

The Oklahoma federal district court first considered the validity of the forum selection clause, noting that: "If the clause controls and points to a state or foreign forum, then the court may apply the doctrine of *forum non conveniens.*" The Employment Agreement clearly stated that "[t]his Agreement shall be governed by the exclusive jurisdiction of the local judicial systems and laws of the Country." The plaintiff argued that this provision was ambiguous as to where claims must be pursued and, further, that the language of the clause does not mandate Qatar as the appropriate venue for his action. The district court rejected the argument that the contract was ambiguous, noting that Appendix A defined "Country" as Qatar, and that was the location of plaintiff's employment. It was apparent to the court that the agreement contemplated that Qatar was the reference point of the entire contract stating: "Nothing in the Employment Agreement, which Plaintiff executed in Qatar for work to be performed in Qatar gives any indication that Clause 24 would apply to any other country." The court added that Clause 16, which addresses termination, has a reference in both the contract and Appendix to Qatari labor law.

The court noted that under Qatari civil code, where the wording of a contract is clear, it should not be deviated from in construing the parties' intent. The court found that the Employment Agreement was clear and its provisions there are no references to countries other than Qatar.

The employer also submitted an affidavit of its in-house legal counsel who was stationed in the UAE, who claimed that he had knowledge of the Qatari legal system, and that under Qatari law, all employment disputes must be presented to the Qatari Ministry of Labor. The plaintiff did not present the affidavit of any contrary expert on Qatari law, but cited to various provisions of the Qatari labor law. He offered no evidence about his expectations at the time he executed the agreement, nor did he argue that he was unaware of the contractual provision. Rather, he argued that the firm was headquartered in New Jersey (which did not explain the Oklahoma venue). The court found that the language of Clause 24, and the use of the term "exclusive jurisdiction" supported the firm's theory that the Qatari judicial forum is mandatory. The court also found that the scope of the forum-selection clause was broad enough to encompass tort claims, as well as contract claims. The plaintiff did not contend that Clause 24 was the product of fraud, coercion, or overreaching.

The plaintiff next argued that he would suffer an undue burden and his remedies would be foreclosed because he would have to hire counsel in Qatar and that, even if his physical presence is not required, he would have to contend with a major time difference between Oklahoma and Qatar. However, he cited no legal authority finding that a time difference or the need to hire counsel in a different location presents inconvenience sufficient to invalidate a forum selection clause. In sum, the district court ruled that, "Qatar has a stronger interest than Oklahoma in having this dispute resolved in Qatar, the country having an interest in the treatment of its expatriate work force and in enforcement of its laws. Finally, Qatari justice officials are better prepared to address Qatari law." The court added that the official version of the country's laws are in Arabic, and the translations available directly from the Qatari government lag behind with regard to amendments, therefore an Oklahoma federal court would be "left assessing Qatari law with no meaningful guidance as to how to interpret and apply the same." As a result, the court concluded that the balance of public interest factors weighed in favor of enforcing the forum-selection clause and dismissing this action. *Keenan v. Berger*, 2019 WL 1590589 (W.D. Okla. 2019).

As of July 1, 2019, The Jefferson Society has 110 Members in good standing.

Please welcome our newest member:

Robert ("Bob") J. Rayes, AIA, Esq.
Principal & Chief Information Officer
Corgan
401 North Houston Street
Dallas, TX 75202

Current and former members of The Jefferson Society posed for a photo at the Victor O. Schinnerer Annual Meeting of Invited Attorneys in Denver on May 23, 2019. (From left) Yvonne Castillo, David Garst, Bill Quatman, Hollye Fisk, Jon Masini and Frank Musica.

CONGRATULATIONS TO OUR NEW OFFICERS AND DIRECTORS!

At the Annual Meeting in Las Vegas on June 5, 2019, the following members were elected to the position of Director: **Michael J. Bell, FAIA, Esq.** and **Laura Jo Lieffers, Assoc. AIA, Esq.** In addition, the following were elected as Officers: Secretary: **Joshua Flowers, FAIA, Esq.;** Treasurer-Elect: **Jeffrey M. Hamlett, AIA, Esq.** Congratulations to each of you!

BYLAW CHANGES ADOPTED

At the Annual Meeting in Las Vegas on June 5, 2019, the membership voted to approve the following changes to our Bylaws: 1) Elimination of the dual licensure requirement for the Director position would open the slate up to more members; 2) Timing of the required annual Board Meeting (immediately after the Annual Meeting); 3) Election of Officers by the Board following the Annual Meeting; 4) Elimination of the $2-bill Initial Dues Requirement; 5) Creation of a new membership category for Honorary Members; 6) Art IX, Sec. 1, Committees; 7) Art VII, Sec 1, Officers and, 8) allowing Associate Members to serve as Officers and Directors. The newly revised Bylaws will be posted to the Society's website.

WHAT TO DO WITH THOSE $2 BILLS?

At the Annual Meeting, there was some discussion about what the Society should do with all of the two-dollar bills used to pay initiation dues. The bills are unique with Mr. Jefferson's image on the front and Monticello on the reverse side, but never have caught on in U.S. circulation. Some are collection items, worth more than their face value. If you have a suggestion, please send it to TJS President Donna M. Hunt via email at this address: Donna.Hunt@ironshore.com

MEMBER PROFILE:
BRUCE EHRLICH, AIA, Esq.

Ehrlich Group Law Office
Los Angeles, CA

Bruce Ehrlich, with his wife, Teresa Burke, and their daughter Katie Ehrlich, at her graduation from Washington Univ.

Bruce Ehrlich says that his eyes were opened to a career in architecture after watching his parents build a new home when his family moved to Wisconsin during his junior year in high school. "I had assumed I was going to go to college to be an engineer, but when I discovered the concept of architecture, which seemed as if it could combine my bent towards the scientific and engineering world with my interest in the arts, my path forward became clear."

At the time he graduated from high school there were no architecture schools in the state of Wisconsin, so going "out of state" to study architecture was a given. Wisconsin had a program to pay the difference between Wisconsin in-state tuition and out-of-state tuition at a state college anywhere else in the U.S. "I fairly quickly limited my choices to schools that were west of the Mississippi, following Horace Greeley's advice to 'Go West Young Man,' I suppose." Bruce eventually enrolled in the architecture program at The University of Arizona. His first job out of architectural school was with a fast-growing, mid-size firm in Denver. "As the firm was quickly expanding, there was a group of us that started at about the same time who were pretty much thrown into the deep end of the pool," Bruce recalled. "It was a circumstance where you were almost immediately placed in the role of a project architect, whether you were experienced or not. Nerve-racking at times, but a great learning experience!"

After practicing architecture for a number of years, Bruce became disillusioned with the seemingly regular "Boom or Bust cycles" in the economy which impacted the profession. During one of the downturns, he closed his office in Denver and moved to California, determined to step up to the client level, eventually finding a position with a real estate development company. "I soon came to realize that real estate development was dependent on securing the land-use approvals and entitlements that would actually allow for development," he said. In development, Bruce found that he enjoyed the creative and strategic approach it took to successfully secure land-use entitlements, but that his architectural background, while helpful, did not give him a complete command of the legal framework that controlled land use. He knew he would benefit from a legal education, so Bruce enrolled at Loyola Law School in Los Angeles.

After he graduated from law school, Bruce worked for a company which developed and operated large truck stop/travel plazas throughout the U.S. That job involved extensive travel. "Every project presented a different legal and political framework for securing the necessary development, and land-use approvals," he said. "I became a real road warrior. It was grueling, and certainly disabused me of any notion that work travel was some-how glamorous." After about a year in that role, Bruce worked in the land-use departments of several law firms, including Paul Hastings, before starting his own practice. Today, about 75% of Bruce's practice involves real estate development, representing both real estate developers and companies that are not in the real estate business, but who own real estate and must secure land-use approvals in order to operate. The other 25% of his practice is dedicated to preparing architectural, construction, and construction related consultant agreements for both real estate development clients as well as various design professionals he represents. "The best part of my job is the fact that every assign-

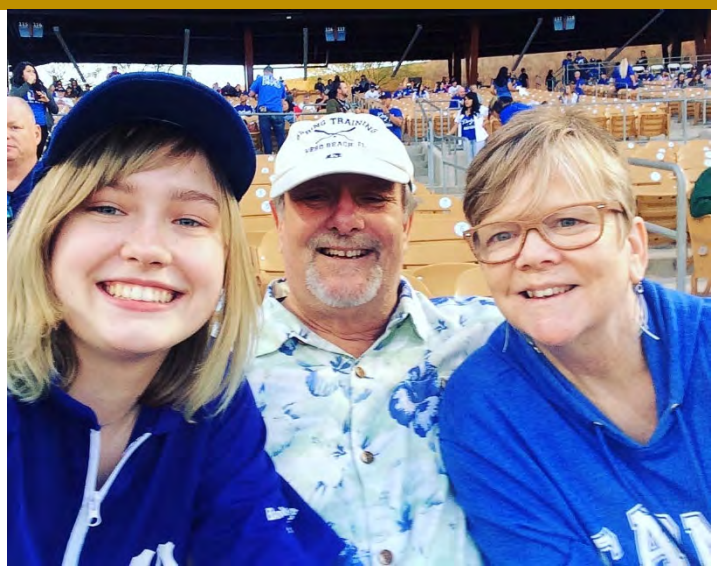
ment that walks through the door is different and presents a unique set of challenges," Bruce said. "Interesting work is a must, and I find the fields of land-use and real estate development law consistently present those challenging opportunities," he added.

Bruce lives in Glendale, California, a medium size city in the LA metro area. His wife, Teresa Burke, helps with business development for his law firm. Although Teresa started out as a journalist, she began doing business development for his former architectural firm in Denver, and she very successfully continued in that field for a number of Los Angeles firms after the couple returned to California. They have one daughter, Katie, who graduated as a Communication Design major from the Sam Fox School of Design and Visual Arts at Washington Univ. in St. Louis in 2018. Katie now lives in New York City and works for a graphic design firm in the Flat Iron District.

When not practicing law, Bruce has a passion for photography and is an automotive enthusiast. "If you need to find me, come to the Monterey Peninsula in August for the annual Car Week and Pebble Beach Concours d'Elegance. It's a tradition with me." Bruce and Teresa enjoy travelling, and the entire family loves the Los Angeles Dodgers (see photo to the right). Bruce is also the treasurer of the Los Angeles Headquarters Association and serves on the Governmental Relations Committee.

He admires Lou Kahn's design of the Salk Institute in La Jolla, California. "Lou Kahn was a huge influence when I was in architectural school. He was at the height of his powers at that time, and I found the bold geometric nature of his work compelling." Bruce likes the detailing of Kahn's work, which he calls "simple, beautiful, and elegant." "I particularly like the interface between the wooden window elements of the building, and the massive poured in place concrete walls. Over the years I have visited several Kahn buildings besides the Salk Institute, and have always been moved by their demonstration of what architecture can achieve." Bruce is also a fan of Charles Moore and the sense of whimsy that was inherent in his work. "I also very much like the work of Mario Botta, and the work that Frank Gehry is doing is compelling."

What would he tell a young architect thinking about law school? "I would suggest spending a few years working in what we always referred to as the 'real world.' The law can be an exciting, and yes, creative profession (depending, of course, on the area of practice I suppose), but I think the most insightful practitioners, who are bringing the most valuable advice and assistance to their clients, are those who understand the interplay between the abstract philosophy of the law, and the concrete nature of its application to their client's 'real world' issues. I was lucky enough to have been doing similar work to my law practice, both in the architectural and real estate development worlds, long before I became an attorney. I have found, and continue to find, that this earlier experience has been absolutely invaluable in understanding the often-complicated nature of my client's issues, goals, and objectives. That experience has only enhanced my ability to provide my clients with the advice and the strategic approaches that will allow for the successful achievement of those goals, and objectives."



(Above) Katie, Bruce and Teresa enjoying a Dodgers Spring Training game in Arizona; (below) Bruce and Katie enjoying his two passions – cars and photography!

MEMBER PROFILE: LAURA JO LIEFFERS

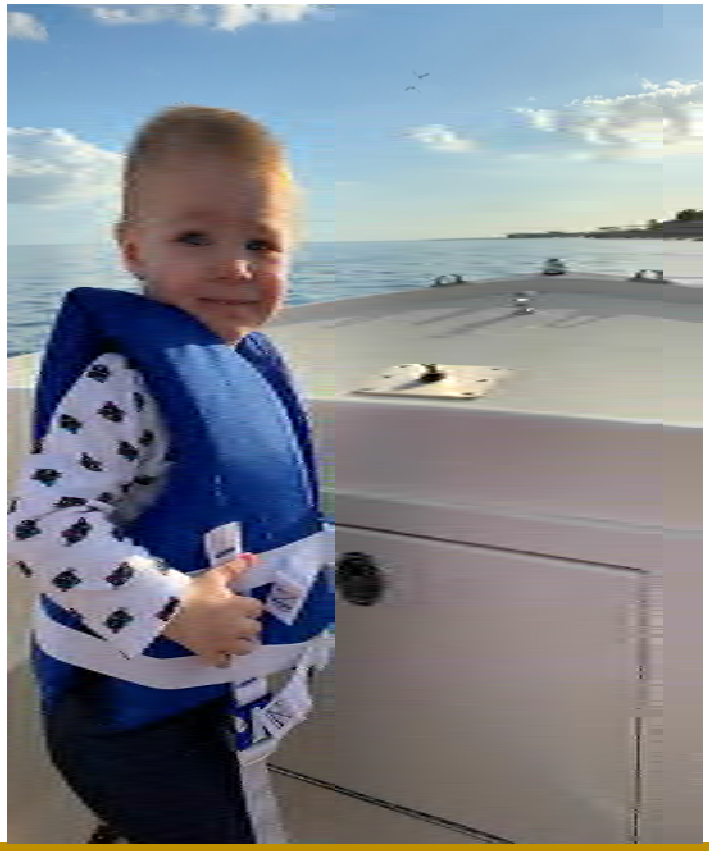
Carlton Fields, P.A.
Tampa, FL

TJS Member Laura Jo Lieffers became intrigued about combining the two studies of law and architecture after a construction lawyer came into her Professional Practice class during her last year of architecture school. That lecture changed her life. "By the end of his lecture, I knew that while I loved to design, protecting architects is what I wanted to do. He showed us an AIA contract and I realized that there was much more to the practical business of architecture that my classmates and I had yet to learn. He also described how protecting yourself from liability as a professional was just as important as providing innovative design work, which truly resonated with me. That night I registered for the LSAT!"

Although she grew up in Ohio, Laura Jo obtained her Bachelor of Architecture at Roger Williams University in Bristol, Rhode Island. "As a longtime fastpitch softball pitcher, I searched for a school where I could major in architecture and play softball. I found that at many of the larger schools, athletics and architecture usually did not mix, and students could not do both. Roger Williams was a perfect fit with a professional architecture program and Division III athletics - not to mention a campus beautifully situated on Mount Hope Bay!" She studied also abroad in Florence, Italy during her time at Roger Williams, and she keeps returning to Italy whenever possible.

After that life-changing lecture during her last year, Laura Jo knew she wanted to go to law school, but was excited for a job in the design world as well, so she moved to St. Petersburg, Florida and took a job with a small architecture firm designing tenant fit-outs, mainly restaurants. Due to a series of fortuitous events (and just after receiving her acceptance letter to Stetson Univ. College of Law in nearby Gulfport, Fla.), she met Mark Williams, an architect and owner of Williams Building Diagnostics Inc. He just happened to be looking for a designer with an interest in the law of all things! By the time Laura Jo started law school at Stetson, she had been hired to help the Williams firm, which performed remedial design and served as construction defect litigation expert witnesses. "It was such a great combination of design and the law, further solidifying my interest in combining the two studies," Laura Jo told us.

(Above) "Beach Bums" Laura Jo, Scott and Lucy Mae at Redington Beach, Fla.; (Below) daughter Lucy Mae out on Tampa Bay



The location and the part-time program drew her to Stetson's College of Law, where she was able to work full time at the Williams firm, while taking advantage of Stetson's part-time program in the evenings. After graduation from law school, Laura Jo started practicing construction defect litigation at Banker Lopez Gassler P.A., a midsize law firm in St. Pete, where she represented owners, design professionals, and contractors throughout Florida.

Today, Laura Jo practices construction law at Carlton Fields, P.A., in Tampa, a firm with offices throughout the U.S., although her work remains focused in Florida, currently in the area of construction defect litigation. Laura Jo loves the people she works with, "both my colleagues at the office and the clients we serve. It is a privilege to work with and represent hardworking, interesting, and knowledgeable people and companies. I also love that building design is a huge part of my life day in and day out."

She and her husband, Scott, have one daughter, Lucy Mae. "She is almost two years old and is as smart, sassy, and funny as they come," her mother said. "She will most definitely keep us on our toes for the foreseeable future." Outside of her career and family, Laura Jo loves to run. "I have run two marathons, the most recent last November in Florence, Italy. However, the half-marathon is my favorite distance. I love to travel, whether it is back home to Ohio, to the Northeast to visit friends, or across an ocean. My husband and I are also beach bums at heart." This Ohio native likes sunny Florida and her new hometown. "The Sunshine City! St. Pete is fantastic," she said. "It has grown tremendously over the last decade, but kept its relaxed atmosphere." Laura Jo is active in the local AIA Tampa Bay Chapter, especially the Women in Architecture Tampa Bay organization, and she often presents continuing education programs throughout Tampa Bay. She is a member of the ABA Forum on Construction Law and a past board member of the local chapter of the Florida Association for Women Lawyers. "I enjoy being involved in these organizations because it is inspiring to find kindred spirits in the law, like those who also have passion for design and construction or other working mothers."

What a view! Laura Jo and Scott on vacation in Glacier National Park.

2019 JEFFERSON SOCIETY MEMBERSHIP SURVEY RESULTS

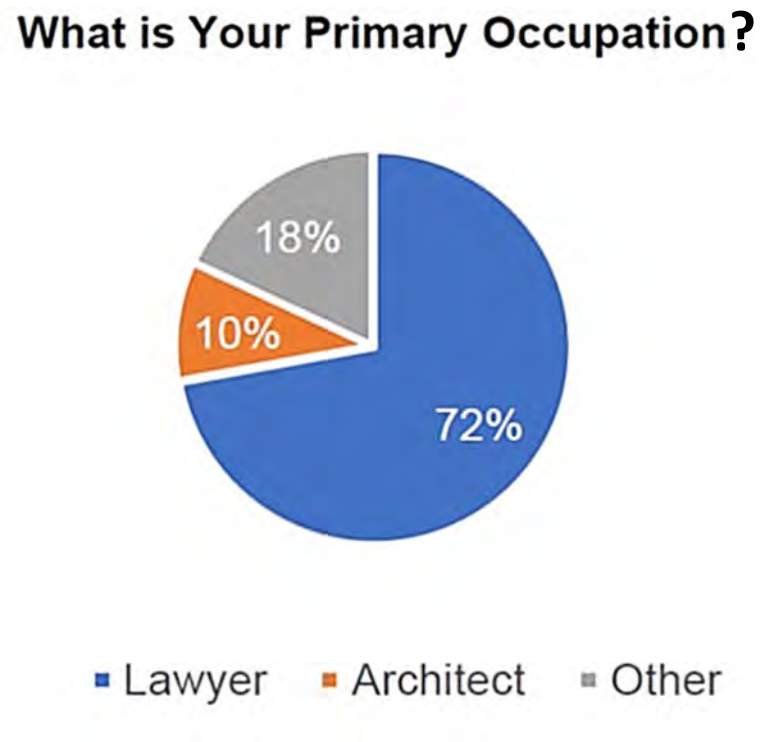
The Jefferson Society polled its members to see what they do for a living, why they joined, what they want out of their membership, etc. Sixty-one of our 110 members responded and the results are published below.

QUESTION 1. What is your primary occupation? Of the 61 members answering, 44 (72%) are practicing law; 11 (18%) are engaged in alternative occupations; and just 6 (10%) responded as practicing architecture. As to more details about their occupations, members identified as: real estate development, insurance, government, retired, part-time teacher, mediator, arbitrator, general counsel, owner representative, in-house for non-profit association, risk management, staff attorney at an industry association, director of operations, contract drafting and negotiation, construction law, procurement law, litigation, architect-engineer law, land use and zoning law, insurance bad faith, employment law/management side, personal injury, licensing law, intellectual property law, full service architectural firm, residential architecture, higher education and sports design, construction management, among others.

QUESTION 2. For what reason(s) did you join The Jefferson Society? Of the 61 members answering, they gave multiple reasons (not limited to a single response). The far majority (92%) said they joined because it is "a national organization of architect/attorneys." Coming in second was 77% who said they joined as "a source for sharing knowledge." Third at 72%) was to "increase my network of similarly educated professionals." Slightly less than half (43%) said they joined as "a way to give back to the architectural/legal communities." Only about a third (34%) admitted that they joined so they could "add the membership to my resume." Some of the comments we received were: "It's kind of a rare distinction and a cool thing to be able to point to." Another said, "A few of us thought we are a unique collection of lawyers who are also architects, and we should collect ourselves into a group who can collaborate and improve the lot of architects who must deal with lawyers." One said, "I admire Thomas Jefferson."

QUESTION 3. Are you satisfied with the value of being a member? 87% of the 61 members who responded said "Yes." Some of the feedback from those not satisfied were: "No clear mission statement; too few opportunities to interact with fellow members." A similar comment was: "I'd like to see more opportunities to get to know each other, as opposed to only leaning on each other with technical/professional questions." Similar was this comment: "I would like more in person social and professional networking events, even if they focus on those members in my geographical area." One member (practicing architecture) said, "it would be helpful to do more for those few of us who remained in our architectural practice." Another took the contrary position, saying, "I think the group is too architect-focused. Annual meeting is always at AIA Convention. Why not also do the ABA Construction Forum?" Two replied that they cannot attend the Annual Meeting (for various reasons), so the newsletter is the only tangible connection to the Society, one adding, "But I love the newsletter." A candid comment was: "I'm not sure what the value really is, other than a nice group of folks with whom I can go to a meeting." Lastly, one member said, "I have not taken advantage of writing or speaking opportunities." Our Board of Directors will study these responses and attempt to address the more common concerns voiced in the survey.

QUESTION 4. Asked members to **"Identify other organizations you belong to that provide programming and benefits of interest to architect/attorneys."** Coming out on top, to no surprise, were the AIA and ABA, which tied at 22 each (out of 61 responses), with a variety of other organizations mentioned, such as NCARB, AGC, ULI, DBIA, AAA and DRBF.



QUESTION 5. Have you ever been to an Annual Meeting? Twenty-five (41%) said "Yes" while 36 of the 61 members answering (59%) said "No." The obvious follow-up question was next.

QUESTION 6. If you haven't been to an Annual Meeting, why not? The survey allowed for multiple responses. The top reason given by those not attending was "I do not attend the AIA Convention" (64%). Next was "I have been too busy to attend" (33%). Only ten members felt the "Cost to attend the Annual Meeting is too high" (22%). There was a host of alternative reasons, each of which was unique to the responder, ranging from health reasons to schedule conflicts to simply not active in the profession at this time. The Board wanted to know if members would attend an Annual Meeting if it was not tied to an AIA Convention. That led to the next question.

QUESTION 7. Would you attend an Annual Meeting held in Charlottesville, VA (Thomas Jefferson's hometown)? This was a popular alternative, with 46 of 61 (75%) saying "Yes," with only one-fourth of the responders saying "No." If not that city, then where? And when?

QUESTION 8. If you would prefer another timing and location for the Annual Meeting, please suggest. There was a wide variety of responses, with no clear consensus reached.

QUESTION 9. Would you be interested in doing any of the following on behalf of The Jefferson Society? As with several other questions, responders were able to select more than one answer. The top vote-getter at 74% was "Participating as a presenter at a **local seminar** on aspects of design and construction law." Two-thirds of the responders said, "Participating as a presenter at a **national seminar** on aspects of design and construction law." Tied for third place, with 53% each, were: "Hosting a roundtable in your office, or with your local AIA or other interest groups, regarding aspects of design and construction law" and "Organizing or attending regional or local meetings of The Jefferson Society." Last place (at 45%) was "Taking a tour nationally or internationally with a group of Jefferson Society members." A few years ago, TJS sponsored a group trip to Cuba, but only two members signed up, so the trip was cancelled. Perhaps a domestic or less exotic venue would appeal to the membership.

QUESTION 10. Please suggest other types of activities for The Jefferson Society. This question generated a variety of ideas, mostly centered on providing seminars and on public advocacy. Some of the suggestions were:

- Become an AIA CEU provider authorized to award HSW and "green credits.
- Continuing education opportunities.
- Advocate for Architects.
- Advocate for the importance of architects and lawyers in all aspects of planning, design and construction.
- Meet at the AIA National Headquarters.
- Day trip (drive, dine and return).
- Remote access to programs.
- Smaller regional gatherings.
- Volunteering to rebuild in the community of some of our members as part of a disaster recovery effort.
- Share "architectural advancements" with lawyers.
- Have meetings tied to other conventions (not just AIA).
- Testify before Congress on legislation that impacts the design profession.
- Prepare and file Amicus Briefs on key cases involving design professionals.

The next question sought levels of interest in serving the Society (And, yes, we will be following up with all of you!)

QUESTION 11. Would you be interested in any of the following? From first choice to last, the answers were:

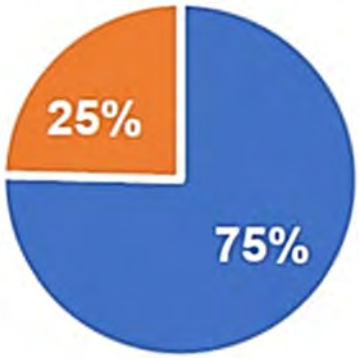
80% - Serving on the Board of Directors
56% - Serving as an Officer
52% - Helping to plan the Annual Meeting
32% - Helping to write and/or edit Monticello (quarterly)

Some responders said they were "over-extended" or "leading other endeavors" at present, but would like to get more involved in the future.

QUESTION 12. The Final Question simply asked for "Other Comments or Suggestions." Here are a few of the responses:

- "TJS should make itself known to the schools of architecture and offer the opportunity for students to meet TJS members and get to know about alternative careers for architects."
- "We need sponsors."
- "The newsletter might be a good way to share more information about our members, the work we each do, our contributions to the two professions and how our unique background of both professions have helped us do that work."
- "Submit a session to the AIA convention or maybe college forums about what it's like to be architects and attorneys."
- "We have a unique opportunity to not only recruit but also encourage young students to pursue unique degree combinations to bring unique skills sets to different professions."
- "Having more local networking events."
- "Accept either PayPal or a direct bank transfer method such as Zelle, for the payment of dues."
- "TJS is now at the point of making a difference with the AIA and ABA, and should communicate ideas to both as to how that can be done."
- "I am interested in helping to organize professional development opportunities that enhance communications skills - for example, a negotiation skills workshop, or a training to become a Dispute Board (or FIDIC DA/AB) panel member."

Thank you to all members who responded. This is great feedback and will help steer the future of this unique organization.



Would You Attend an Annual Meeting if Held in Charlottesville?

▪ Yes ▪ No

- "TJS is now at the point of making a difference with the AIA and ABA, and should communicate ideas to both as to how that can be done."
- "I am interested in helping to organize professional development opportunities that enhance communications skills - for example, a negotiation skills workshop, or a training to become a Dispute Board (or FIDIC DA/AB) panel member."

Thank you to all members who responded. This is great feedback and will help steer the future of this unique organization.

AIA PROMOTING SCHOOL SAFETY THROUGH DESIGN

(Editor's Note: As a follow up to the April issue's discussion of Prevention Through Design ("PtD"), we wanted to update our members on another similar movement afoot. This press release was issued by the AIA last year, and reprinted here in full).

WASHINGTON. Aug. 13, 2018. The American Institute of Architects (AIA) and its members are launching a variety of initiatives to help address violence in schools through design.

"Architects have a role to play in addressing school violence," said 2018 AIA President Carl Elefante, FAIA. "For two decades, architects have worked with school communities racked by tragedy to develop better strategies in school design. While public discourse on access to firearms and mental health services remains deadlocked, the power of design can improve school safety now. AIA is committed to working with stakeholders and officials to make schools safer while building the positive, nurturing, learning environments we all want for our children."

In a statement issued today, *"Where We Stand: School Design & Student Safety,"* the AIA outlines its commitment for improving school design policies. Specifically, AIA is launching a bipartisan effort on Capitol Hill to help state and local school officials better access information and funding to design safe and secure schools. To that end, AIA will focus on two main goals.

1. Making architectural and design services for schools an allowable use of funds within existing federal funding and grants; and

2. Establishing a federal clearinghouse of resources on school design best practices for school officials, architects and other design professionals to keep them informed.

In addition, AIA member architects are taking part in advising

state officials across the country on school design. On Aug. 7, [2018] architect Stuart Coppedge, FAIA, Principal of RTA Architects, presented to the U.S. Department of Education's Federal Commission on School Safety during its listening session in Cheyenne, Wyoming. Coppedge provided the Commission with insights into the collaborative design and community evaluation processes architects employ to create great educational environments with enhanced safety.

On Aug. 1, [2018] the Institute participated in a two-day Department of Homeland Security 2018 National School Security Roundtable. During the meeting, two leading members of the AIA Committee on Architecture for Education (CAE), Karina Ruiz, AIA, Principal of BRIC Architecture Inc. and Brian Minnich, AIA, of GWWO Architects explained how schools can be designed with open and positive learning environments while also enhancing safety and security. Recommendations from participants in the roundtable — including members of the academic community, law enforcement, fire and emergency medical services and other experts — could be included in future updates to federal design guidelines for schools.

In May, [2018] the AIA announced the appointment of architect and former AIA President Jeff Potter, FAIA, to Texas Governor Greg Abbott's roundtable, which is intended to identify enhanced safety and security strategies for the state's schools and communities. Additionally, AIA components in Arizona, Connecticut, Florida, Pennsylvania, Virginia and other states have been advising their governors and elected officials on the issue.

On Oct. 19, [2018] the Institute's CAE is holding a national multidisciplinary symposium: *"The Design of Safe, Secure & Welcoming Learning Environments,"* at the AIA national headquarters in Washington. The symposium will bring together a wide variety of perspectives from stakeholders that include law enforcement, educators, mental health advocates, and security consultants, as well as architects and other design professionals. Together, they will share in a dialogue about the development of safe, secure and welcoming schools, which may inform the resources included in a federal clearinghouse.

Visit the AIA's website for more information on school design. https://www.aia.org/pages/206356-where-we-stand-school-design-and-student-sa?editing=true

VIRGINIA: LEGISLATURE PASSES NEW LAW REQUIRING ARCHITECT OR ENGINEER TO CERTIFY THAT SCHOOL PLANS HAVE BEEN REVIEWED FOR CRIME PREVENTION THROUGH DESIGN

On Feb. 15, 2019 the Virginia state legislature passed H.B. 1738, a first-in-the-nation to adopt a law requiring school plans to be reviewed by someone trained in Crime Prevention Through Design (or CPTD). The bill passed unanimously in the Senate 40-0 and in the House 97-0 and was signed into law by Gov. Ralph Northam on March 5th. The bill emerged from recommendations made by the House Select Committee on School Safety after last year's Parkland, Florida shootings at Marjory Stoneman Douglas High School that left 17 people dead.

As originally introduced, the bill required that: "No public school building or addition or alteration thereto, for either permanent or temporary use, shall be advertised for bid, contracted for, erected, or otherwise acquired until the plans and specifications therefor have been approved in writing by the division superintendent and are accompanied by **a statement by an architect or professional engineer who is trained and experienced in crime prevention through environmental design** and licensed by the Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects that such plans and specifications are, in his professional opinion and belief, in compliance with the regulations of the Board of Education and the Uniform Statewide Building Code."

As amended and passed, the law still requires that the plans for school buildings "are accompanied by a statement by an architect or professional engineer licensed" in Virginia that the plans are code-compliant, but does not require that design professional to have been trained and experienced in crime prevention through environmental design. Instead, the design professional must certify that the plans **"have been reviewed by an individual or entity with professional expertise in building security and crime prevention through building design."** This implies that such review may be by an outside consultant, retained by the school district or by the architect/engineer of record.

The new law, Section 22.1-140 of the Code of Virginia, took effect on July 1, 2019. For the full text of the new law, click below: https://lis.virginia.gov/cgi-bin/legp604.exe?191+sum+HB1738

RENOVATION OF JEFFERSON'S ROTUNDA WINS 2019 AIA AWARD

The 2019 AIA Awards for Architecture included a 200-year old building familiar to most Jefferson Society members. The Institute gave an award to the "Restoration of the Rotunda at the University of Virginia," a project by John G. Waite Associates, Architects, PLLC for the University of Virginia in Charlottesville. The article in AIA's on-line magazine said, "This restoration of the symbolic center of the University of Virginia — widely considered Thomas Jefferson's single most important architectural achievement—relies on the highest level of historic preservation and building conservation care. Envisioned by Jefferson as a temple for learning, but largely relegated to administrative and ceremonial use, the Rotunda is once again a focus of university life.

The team began the project, commissioned to celebrate the Rotunda's 200th anniversary, with a thorough historic structure report and measured drawings in order to study and understand the original design and the changes made over time. The structure was severely compromised in a catastrophic 1895 fire that left only its brick walls standing. Later, Stanford White attempted to replicate Jefferson's design and intent but significantly altered the interior volumes. A poorly funded and researched renovation in the 1970s further compromised it.

The project tapped into some of the most advanced conservation measures available. A leaking roof was replaced with a copper one while specialist contractors cleaned, stabilized, and repointed the brick walls. The building's exterior metal moldings, dating from the 1890s, were restored, and the deteriorated replacement column capitals on the north and south porticos were replaced with Carrara marble capitals that accurately replicate Jefferson's originals. Inside, the architects restored Jefferson's volumes, finishes, and architectural details on all three floors. In the dome room, acoustic plaster replaced the perforated aluminum ceiling while cast plaster column capitals from the 1970s were replaced by ones of carved wood, again echoing Jefferson's original intent. The project's least noticed but perhaps most important element is the construction of a new mechanical, service, and storage space contained in a vault that was excavated beneath the east courtyard. During the renovation, a chemical hearth dating to the 19th century was unearthed on the ground floor, the only trace of the original chemistry facility. Freed from its tomb, it is now the star of an exhibition that celebrates Jefferson's Academical Village."

Another image of the restoration of Thomas Jefferson's spectacular Rotunda at the Univ. of Virginia in Charlottesville, VA by the firm of John G. Waite Associates, Architects, PLLC.

TEXAS: ARCHITECT COULD SUE THE INDIVIDUAL PARTNERS OF A JOINT VENTURE FOR FEES OWED

An architectural firm entered into a contract with a joint venture to provide architectural services for a new hotel project. The firm invoiced for $186,784 but was only paid $44,000. The firm sent a demand letter for the balance, filed a mechanic's lien, and then sued the three JV partners individually for judicial foreclosure on the lien, as well as for breach of contract and unjust enrichment. The defendant joint venture partners filed a motion to dismiss claiming the firm cannot state a claim for foreclosure of a Texas mechanic's lien because the joint venture was actually a limited liability company ("LLC") and there were no facts pled to pierce the corporate veil implicating liability as to its members; and there were no facts alleged sufficient to state a breach of contract claim because the alleged contract was with the JV, not the partners. Last, the defendants argued that there were insufficient facts for a claim for *quantum meruit* because the complaint made no allegation because the complaint failed to allege that any alleged services were valuable to the partners.

As to the LLC argument, the plaintiff noted that the LLC was not formed until five months after the contract at issue was executed, and that the LLC was now non-existent. Therefore, the firm claimed that the JV was actually a partnership and that the partners were unjustly enriched due to the services provided. The federal district court held that at the motion to dismiss stage, a judge assumes that all the allegations in the complaint are true (even if doubtful in fact). Therefore, even if a defendant was a member of an LLC, that fact is immaterial at the pleading stage because as an alleged partner to a contract, under Texas law a partner in a general partnership is personally liable for partnership debts jointly and severally with all other partners. As a result, the court found that it was a waste of "the parties and the Court's resources" to attempt to engage in fact finding at a motion to dismiss stage. The motion to dismiss was denied. *Tyson and Billy Architects, PC v. Kingdom Perspectives G.P., Ltd.,* 2019 WL 2127343 (E.D. Tex., 2019).

CONNECTICUT: NON-ARCHITECT COULD TESTIFY FOR PLAINTIFF ON THE STANDARD OF CARE IN A PROFESSIONAL MALPRACTICE CASE

A hotel guest suffered injury after he walked into a glass wall located separating the lobby hallway from a restaurant in a hotel. He sued the contractor and the architect, alleging that individuals employed by these defendants designed and/or were responsible for erecting a glass wall and/or partition which was defective in a number of ways. The suit alleged that both defendants violated the building code by failing to provide a continuous and unobstructed way of egress; allowed a glass wall and/or partition to be erected and/or installed in the hotel which they knew or should have known to be dangerous; failed to put decals, stickers, or other warning signs on the glass wall and/or partition; failed to warn patrons of the dangerous glass wall and/or partition; failed to inspect the area where the plaintiff was injured to notify him of the dangerous condition; failed to remove the glass wall and/or partition although the defendants knew or in the exercise of reasonable care should have known that the area was dangerous and hazardous; failed to place cones, barricades, signs, or other such devices in the area to warn of the presence of the glass wall and/or partition; and failed to take reasonable precautions to ensure there were no hazards such as the unmarked glass wall and/or partition. The defendants denied negligence and raised special defenses, including comparative negligence of the plaintiff. Both defendants filed motions for summary judgment. While noting that: "Issues of negligence are ordinarily not susceptible of summary adjudication but should be resolved by trial in the ordinary manner," the court proceeded to consider the motions any way.

The contractor claimed its only duty was to comply with the plans and specifications required by the contract. The contractor provided an affidavit of its project manager that it had, in fact, complied with the plans and specs for the glass wall. However, the court found that the issue was not solely about the design of the glass wall and/or partition, or even the installation. A question of fact remained whether the defendant, as the general contractor, was negligent in its "construction management" of the project in allowing the glass wall and/or partition to be erected and installed. The contractor's motion for summary judgment was, therefore, denied. Turning to the architect's motion, the court noted that the plaintiff's claim sounded in professional negligence which requires expert testimony as to the applicable standard of care and causation. The architect argued that it was entitled to summary judgment because the plaintiff's expert was not a licensed architect and, therefore, he was not qualified to testify as to the standard of care applicable to architects. While acknowledging that Connecticut courts have recognized that expert testimony is required to determine the duty of architects in cases involving claims of professional negligence, the federal trial court held that an expert witness does not have to be a licensed architect in order to provide the standard of care applicable to architects if the expert witness is otherwise qualified based on reason of training and experience and/or licensure. Therefore, the plaintiff had established a question of fact as to the negligence of the architects, and accordingly the motion for summary judgment was denied. *Falzarano v. C.E. Floyd Company, Inc.,* 2019 WL 1938067 (Conn. Super. 2019).

NEW YORK: TWO COMPETING EXPERT AFFIDAVITS PRECLUDED SUMMARY JUDGMENT ON AN ARCHITECT'S CLAIM FOR CONTRIBUTION AND INDEMNITY AGAINST A ROOFING SUBCONTRACTOR

An employee of Cornell University was shoveling snow when he was allegedly hit by ice and/or snow falling from the roof of Mews Hall on the university campus in Ithaca. He filed suit for personal injury against the building's architect, alleging professional malpractice. The architect, in turn, filed a third-party complaint against the roofing subcontractor for contribution and common-law indemnification. The trial court granted summary judgment for the subcontractor on the third-party complaint and the architect appealed. The Supreme Court, Appellate Division, held that under New York law, "a builder or contractor is justified in relying upon the plans and specifications which he or she has contracted to follow unless they are so apparently defective that an ordinary builder of ordinary prudence would be put upon notice that the work was dangerous and likely to cause injury." The roofing subcontractor showed evidence that, during the project submittal phase, it had added snow guards along the eave of the building and a corresponding change order was added to its subcontract. The architect's specifications, however, called for the model number 10 snow guard, but the roofer advis-

ed that the model number 10 could not be fastened to a metal roof and recommended the model number 30 snow guard instead. The subcontractor's president attested that the change was approved and that the model number 30 was installed, as confirmed by supporting documentation in the record. The roofer's expert witness, a licensed architect, explained that the roof design did not include the placement of snow guards on the roof dormers or the dormer valleys. The subcontractor also showed evidence that the project was completed, full payment was received from the general contractor, and no complaints were made as to the installation of the snow guards. The roofer's expert also stated that his inspection of the roof above where plaintiff was injured confirmed that there were no defects and that "the roof and snow guard system were properly built and installed" in accord with defendant's plans and specifications. By this showing, the court found that the roofer met its prima facie burden for summary judgment dismissing the third-party complaint.

In response, however, the architect offered an expert opinion from a different architect who took no issue with the use of the model number 30 snow guard, but maintained that the roofer failed to properly construct the roof as required by defendant's design plans and specifications. In particular, the expert claimed that the roofer had only installed 67% of the snow guards specified by the architect. Given this competing expert opinion, the court found that a question of fact had been raised and the trial court erred in granting the roofer's motion for summary judgment. *Cusson v Hillier Group,* 2019 WL 1940358 (N.Y.A.D. 3 Dept.).

LOUISIANA. DEFAULT JUDGMENT AGAINST ARCHITECT'S INSURER REVERSED BECAUSE PLAINTIFFS FAILED TO INTRODUCE THE ACTUAL POLICY IN COURT.

A husband and wife sued their architect for failing to produce appropriate architectural plans that they contend they paid for. They also sued Ohio Security Insurance Company ("OSIC"), which allegedly issued a commercial general liability ("CGL") policy to the architect, and RLI Insurance Company, which allegedly issued a professional liability ("PL") policy to the architect and his firm. OSIC did not file a responsive pleading and the plaintiffs obtained a preliminary default judgment against OSIC, which was confirmed. The insurer appealed, claiming that the trial court erred in confirming the default judgment because the plaintiffs did not establish their prima facie case with respect to insurance coverage because they did not submit the actual CGL policy into evidence at the confirmation hearing. Under Louisiana's civil code, a preliminary default must be confirmed by proof of the demand that is sufficient to establish a prima facie case and that is admitted on the record prior to the entry of a final default judgment. The Louisiana Supreme Court and lower courts have held that the failure to offer the operative insurance policy into evidence prevents a plaintiff from establishing a prima facie case of coverage and precludes entry of a default judgment against an insurer. The trial court record contained only a single certificate of insurance, not the actual policy. Accordingly, the Court of Appeals reversed the trial court's confirmation of default against OSIC and vacated the judgment, with costs assessed to the plaintiffs. *East v. Capdevielle*, 2019 WL 1614612 (La. App. 3 Cir.).

July 4 Trivia! Did You Know That . . .

- John Hancock was the only member of the Continental Congress who actually signed the Declaration of Independence on July 4, 1776. All the others signed at later dates!
- The average age of the Signers of the Declaration of Independence was 45. The youngest was age 27 and the oldest (Benjamin Franklin) was 70. Thomas Jefferson was age 33.
- Seven signers of the Declaration of Independence were graduates of Harvard University.
- Only two signers of the Declaration of Independence later served as U.S. President: John Adams and, our favorite, Thomas Jefferson.
- Presidents John Adams, Thomas Jefferson and James Monroe all died on the Fourth of July (Adams and Jefferson died on the exact same day, within hours of each other in 1826).
- Every 4th of July, at 2 p.m. EST, the Liberty Bell in Philadelphia is tapped (not actually rung) thirteen times by children who are descendants of Declaration signers in honor of the original thirteen colonies.

MEMBER PROFILE: WENDY R. BENNETT

Milber Makris Plousadis & Seiden, LLP
Berwyn, PA

Most appropriate for a member of "The Jefferson Society," member Wendy R. Bennett got her Bachelors of Science in Architecture from the Univ. of Virginia in Charlottesville. "I attended UVA because I was taken so taken with the school, the culture, the architecture of grounds itself including the Rotunda and the Lawn. I was coming from the Philadelphia region and it was important enough to my father that I stay on the east coast that he bribed me to pass over Cal Poly by offering me a new car. Of course, it was a 1991 Chevy Cavalier!" (The Cavailer is the official mascot of UVA). After getting her bachelors degree, Wendy completed a two-year Masters in Architecture program at the Univ. of Pennsylvania (aka Penn – the one in Philadelphia, not the football school in State College.) While there, she also worked part time for an architecture firm, then named Kise Franks and Straw (now Kise Straw Kolodner), which became her first full time professional job upon graduation. There, she worked on a handful of what she called "really fun, local institutional projects," including the renovation of the long-abandoned Ridgeway Library on South Broad Street into Philadelphia's Creative and Performing Arts School. (Interesting side note – while she had the Ridgeway Library open and was surveying it for renovation, it was also used as one of the very-abandoned-looking filming locations in *Twelve Monkeys*.) Beyond a few more prominent institutional projects, she mostly worked on low-income and mixed-income housing developments that were garnering a lot of CDBG grants at the time (mid 1990s). "That is how I met my future colleagues at the Philadelphia Redevelopment Authority, where I started work about 2 years later after they convinced me to leave firm life behind for a life in the public sector."

Wendy and Maisie figure skating in Rockefeller Center, New York City

Why law school? Wendy says, initially, it was her desire to create a larger voice and more opportunities for herself to promote the role of architecture and urban design within the various city projects she interacted with. "And, to be honest, the Thomas Jefferson tie-in humored me as well in light of my years spent at UVA," she said. "But, it was not until later in my adulthood that I decided to go back to school to obtain my JD. At the time, I had been working for the Redevelopment Authority of the City of Philadelphia," Wendy said, "initially as an architect and construction project manager in the Design and Construction Department and, later, in a more city planner type role in their Urban Renewal Department. One of the great things about public city work is that if you have any ambition whatsoever and you volunteer for things – tasks, projects, committees, etc. – you generally get to do them. So, I found myself on a handful of design review committees where it was pretty common that nearly everyone else in the room (typically coming from other City agencies, City departments, community development groups, non-profit agencies, etc.) was a lawyer." Wendy observed that the lawyers liked to talk - a lot! And the few design professionals in the room were commonly talked over. "So, I decided that if I couldn't beat 'em, I'd join 'em," she told us.

Wendy looked at several law schools, including UVA, but ultimately decided to keep working and go to school at night. So, she chose Temple University, where she completed a 4-year evening program. "Temple had an amazingly supportive adult evening program and the school's motto at the time was 'Real

(Above) Wendy and Maisie at Love Park in Philadelphia; (Below) Wendy and Maisie, ready for Hamilton on Broadway in NYC.

World, Real Law.' That really resonated with me as I had already had the benefit of establishing a name for myself and garnering real life work experience and understood the value that a hands-on, practical, education afforded a student like myself."

While in law school, Wendy gave birth to her daughter, Maisie, which necessitated that she take a bit longer to complete her law degree and, therefore, walk away from her job with the Philadelphia Redevelopment Authority and her work in the public realm. During her fourth year, and largely because of her background and rapport with a variety of Philadelphia contractors and subcontractors with whom she had worked, Wendy was offered an associate position with a local construction litigation boutique firm where she represented owners, contractors, subcontractors and the like – doing both plaintiff and defense side work. She then worked for an even smaller boutique law firm which predominantly handed homeowner claims against residential developers in the mid-Atlantic region. Recently, Wendy joined the law firm of Milber Makris Plousadis & Seiden, LLP in their small Berwyn, Pennsylvania office, working under Rich Davies, Hon. AIA, defending design professionals. "I like the cohesiveness of the team here," she said, "and I really appreciate the opportunity to work with architects and engineers as my primary clients. I obviously have a great affinity for design professionals and an in-depth understanding of the types of claims they face and how to best handle and defend those claims. I believe I speak their language because I was a practicing architect in several arenas for the better part of a decade."

Wendy is a single mom of "a wonderful 12-year old daughter," Maisie. Right now, Maisie has no plans to follow in either of her mother's footsteps – she wants to be a veterinarian or a surgeon. Wendy calls Philadelphia home, although she recently moved just outside of the city to Bala Cynwyd, Pa. "I try to channel most of my free time into planning trips and local outings with my daughter and just exposing her to as many different experiences as possible – whether it a jaunt to the shore or a local state park, soaking in the various cultural and natural offerings while visiting family in North Carolina or exploring all the faux architecture of Disney World."

Wendy is very into physical fitness, and can often be found swimming in a pool or at the seashore, adding, "And I participate, and sometimes compete, in pole fitness." (Yes, that means *pole dancing*!) She also enjoys amateur-level competitive trap shooting. Her advice for an architect thinking about law school? "Make sure you understand why you are doing it. If you are just going to law school because you think it will be more lucrative – don't do it. Talk to some lawyers who are practicing the type of law you want to practice so that you understand the culture of what you will be getting in to."

NEW YORK. ARCHITECT WITH ORAL CONTRACT MIGHT BE LIABLE FOR TEAR DOWN OF BUILDINGS THAT DID NOT COMPLY WITH LOCAL CODES.

A property owner hired an architect under an oral agreement to perform professional architectural services for renovations of certain properties. The owner claimed that the architect failed to properly design and administer the projects, resulting in the city issuing stop work orders and ultimately requiring the owner to tear down construction on the projects. The property owner sued the architect for professional malpractice, breach of contract, negligence, and negligent misrepresentation, seeking the cost of undoing his construction, and also related costs, including legal fees it paid to its counsel. The architect filed a motion for summary judgment that there was no enforceable contract which required him to advise the plaintiff about, and providing drawings in conformity with, all relevant laws, codes, and regulations, including zoning laws, so that the property owner could obtain valid building permits from the city and complete construction on the projects.

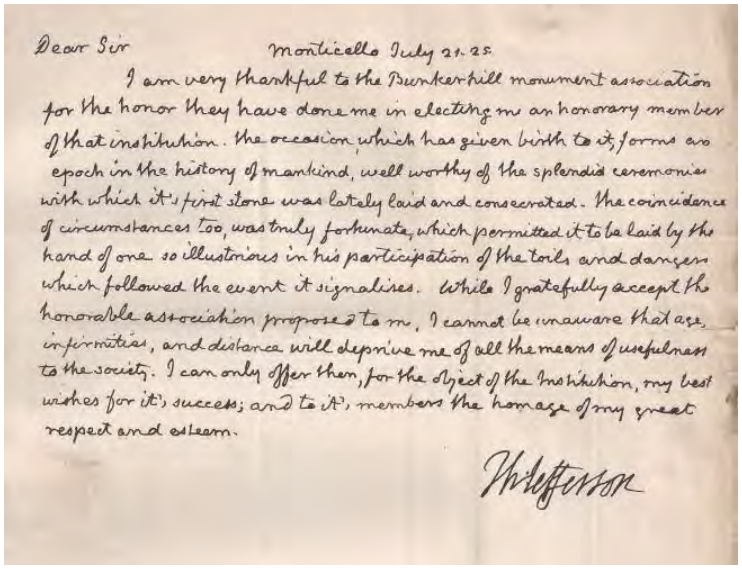
To begin, the trial court said that for parties to form a binding contract, "there must be a meeting of the minds, such that there is a manifestation of mutual assent sufficiently definite to assure that the parties are truly in agreement with respect to all material terms. In determining whether the parties intended to enter a contract, and the nature of the contract's material terms, we look to the objective manifestations of the intent of the parties as gathered by their expressed words and deeds." Viewing the facts in the light most favorable to the plaintiff, the court held, "it is clear the parties did not achieve a 'meeting of the minds' regarding any contractual obligation for Defendant to bear the responsibility of determining the need for variances for the projects at issue. Without a written contract to examine for what the parties agreed to when Plaintiff retained Defend-ant as the architect to design the projects, the Court must look to the 'objective manifestations of the intent of the parties as gathered by their expressed words and deeds.' " The plaintiff's course of conduct during the relevant period supported the conclusion that, as a matter of law, the scope of the parties' binding contract did not require the architect to investigate the need for or applying for variances or building permits for the projects, or, "stated another way, Defendant guaranteeing his plans would comply with the building codes as ultimately interpreted by the City and the Supreme Court." The plaintiff admitted that he did not expressly tell the architect that he would be responsible for obtaining a building permit for either property; that he did not know whether or not it was the defend-ant's responsibility to submit the building permit applications for the projects; and, that he indicated it was his responsibility to apply for building permit applications. The owner had even retained an attorney to prepare a site plan review application for one of the properties and that lawyer testified that he would have examined the need for any variance for the project at the time of the application; and that if the subject property required a variance, he would have applied for one.

Based on this evidence, the court concluded that, "At every step of the process, Plaintiff assumed the mantle, or relied on [his attorney], to research the need for a variance or building permit and actually apply for building permits. The parties' words and deeds cannot, as a matter of law, support the conclusion that Plaintiff and Defendant had a 'meeting of the minds' that Defendant would be responsible for any needed variances or a guarantor there would be no such need." As a result, the trial court granted summary judgment in favor of the architect on the breach of contract claim alone.

As to the claim for professional negligence (or malpractice), the court held that such a claim "requires proof that there was a departure from the accepted standards of practice and that the departure was a proximate cause of the injury." It was incumbent upon the plaintiff to present expert testimony to support allegations of malpractice, except where the alleged act of malpractice falls within the competence of a lay jury to evaluate. The undisputed facts showed that the city historically interpreted its zoning code to not require variances for projects like the ones at issue in this case but that "historic inter-pretation went into flux as these projects developed." The city issued building permits for both projects then issued stop work orders for the projects, leading to plaintiff's appeal, which the zoning board of appeals denied. The plaintiff's own expert witness did not state whether the professional standard of care required an architect in the defendant's position to certify that his drawings confirmed with applicable codes as written or applicable codes "as interpreted by the local authorities." The court found that it was not a question that falls within the competence of a lay factfinder to evaluate, or for the court to ultimately decide on a summary judgment motion. As a result,

the court ruled that while the architect-defendant met his initial burden for summary judgment on the professional malpractice claim, when granting all reasonable inferences in plaintiff's favor, the plaintiff had submitted sufficient proof to establish the existence of material fact issues that required the denial of summary judgment. However, the court found that plaintiff's negligence and negligent misrepresentation claims relied on the same set of facts as the contract and professional malpractice claims and were, therefore, dismissed as duplicative. The case proceeded ahead only on the claim of professional malpractice. *See, Cortland Apts., LLC v Simbari Design Architecture, PLLC*, 2019 WL 1272834 (Sup. Ct.).

Newly Discovered Jefferson Letter Describes the Revolutionary War's impact on the "History of Mankind"



Dear Sir Monticello July 21. 25.

I am very thankful to the Bunker-hill monument association for the honor they have done me in electing me an honorary member of that institution. the occasion which has given birth to it, forms an epoch in the history of mankind, well worthy of the splendid ceremonies with which it's first stone was lately laid and consecrated. the coincidence of circumstances too, was truly fortunate, which permitted it to be laid by the hand of one so illustrious in his participation of the toils and dangers which followed the event it signalizes. While I gratefully accept the honorable association proposed to me, I cannot be unaware that age, infirmities, and distance will deprive me of all the means of usefulness to the society. I can only offer them, for the object of the institution, my best wishes for it's success; and to it's members the homage of my great respect and esteem.

Th: Jefferson

A letter written by Thomas Jefferson that had been lost to historians for over a century has recently surfaced. The letter, which was priced at $80,000 for sale by Ardmore, Pa.-based historical document dealer Raab Collection, was written in the final year of Jefferson's life (he died on July 4, 1826). It reveals his vision for how America would change human history. Jefferson wrote the letter at his Monticello home on July 21, 1825 to politician and orator Edward Everett. Mr. Jefferson highlighted the importance of the battle of Bunker Hill, which was fought on June 17, 1775, during the early stages of the Revolutionary War. "I am very thankful to the Bunker Hill monument association for the honor they have done me in electing me an honorary member of that institution. The occasion [the first great battle of the Revolution], which has given birth to it, forms an epoch in the history of mankind, well worthy of the splendid ceremonies with which its first stone was lately laid and consecrated," Jefferson wrote. "The coincidence of circumstances too was truly fortunate, which permitted it to be laid by the hand of one so illustrious [the Marquis de Lafayette] in his participation of the toils and dangers which followed the event it signalizes." More than 100 American troops were killed and 300 wounded in the battle, which ended in a British victory. However, over 1,000 British troops were either killed or wounded in the engagement. The high British casualty count proved the fighting abilities of American forces, which had been grossly underestimated by the British prior to the battle. The Marquis de Lafayette, a French aristocrat, was a celebrated commander of American forces during the Revolutionary War.

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