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"MANAGING MASSACHUSETTS CONSTRUCTION LITIGATION COSTS:

PART ONE - LEGAL RESEARCH"

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I. INTRODUCTION.

This begins a new series breaking down into their component parts the different elements of a litigation so that our readers will understand what they are and then look at some ideas as to how the costs associated with each part might be managed, if not reduced.

Part One of this series deals with legal research costs.

TV and movies notwithstanding, a lot of court cases begin and end in the library. For, it is in the library - even if, today, the 'library' is actually mostly accessible through a computer - that a great many cases are won or lost.

Much as your lawyer would only have the most general idea as to how to proceed with the work contained in your trade, a contractor is not going to understand the ins and outs of the legal profession. And, why should s/he? To get admitted to the Massachusetts bar, a lawyer, generally speaking, will have gone to college for at least seven years, at least three of which were spent studying the law. To the extent that some of this study was done on a part-time basis[2] or involved some form of a co-op program or required internship, a number of additional years can get added on to that study.

Contractors often think that their legal bills are too high for any number of reasons. One of those reasons is that contractors don't understand why they get charged so much for legal research. Isn't their lawyer supposed to *know* these things? Why does s/he have to look up so many subjects to obtain the law for any particular case? And, to get answers to certain legal questions, isn't there a book like an encyclopedia that contains them?

The purpose of this Squib is to explain to you what your lawyer knows. And, what your lawyer might *not* know. And, then, what are some strategies you can follow to help you pick a lawyer to handle your work who will charge you the least possible in terms of 'legal research'.

When you see an ad on the internet or on a billboard which says that the lawyer in question handles cases involving criminal law, divorce law, wills and estates, litigation, negligence (tort) law and one or more additional areas of the law, unless that person is an absolute sheer genius, what this really means is that person does not know very much about any of the individual subject matters mentioned. A sort of 'jack of all trades' but 'master of none'.

When all the marbles are at risk in a case, no one wants to have their 'jack' come up against the other guy's 'master'.

So, the first idea to think about in terms of minimizing legal research costs is to pick a lawyer who has a concentration of his/her practice in the subject matter you are most interested in.[3] After all, it stands to reason that a lawyer who works in the same field on a day in/day out basis will simply know *more* of the law applicable to your issue before you even speak to him/her. And, this individual will not have to look up the answers to legal questions which s/he already knows the answers to.

As this article will explain, a lawyer cannot turn to some kind of encyclopedia and look up answers to the legal aspects of your problem. (To buy three different sets of encyclopedias described later in this Squib with specific pricing, would require most people to have to refinance their homes!) It would be nice if this were the case. And, in fact, there are various legal authorities that are in the nature of encyclopedias. But, as a practical matter, this is seldom sufficient to understand the applicable law relating to any particular problem. And, that is because there are many different sources of law that have to be considered to obtain those answers. And, other than with some forms of collection matters, each individual construction dispute has its own specific facts, unique to that particular situation. The facts that are developed, along with determining what law will be applied to those facts, will determine how many different sources of law will be necessary to consult to obtain answers that are (hopefully) going to result with the ultimate conclusion of your matter in your favor.

II. THERE ARE NOT CLEAR ANSWERS TO EVERY LEGAL ISSUE THAT ARISES.

For a moment, forget everything you think that you have learned about legal issues from novels, TV programs and movies.

This is one way I can describe the law.

Imagine the kind of screening that makes up screen doors. There is a wire or nylon mesh component composed of horizontal wire/mesh and vertical wire/mesh. And, between and among this mesh are squares of open air.

But, further imagine that these squares of open air are ten to twenty times larger than what you are used to seeing in screen doors.

Now, the nylon or metal mesh screening material represents what the clearly known and accepted law is as to any legal question. That answer is black and white and is not subject to different interpretations.

The open areas represent questions or issues where there isn't any law or such law as there is is not at all settled.

So, we are trying to find applicable law to be applied to the important key, relevant facts as to the legal issue we are concerned with. But, the law that needs to gets applied to that set of facts is inconclusive or, simply, is not there. This is particularly so when dealing with an unusual factual situation.

So, for many particular legal problems, the underlying factual and contractual issues can be complex. A variety of contract provisions simply may not have been complied with. Notice for claims of differing site conditions and changed conditions may not have been given or were given late or given without the contractually-required back-up or the back-up one would expect to see with claims of this nature. The contractor may not have requested additional days for the performance of a significant change order. Changes, delays and differing site conditions may not have been adequately documented as they arose. This is particularly important where contemporaneous daily reports, such as they are, don't differentiate between what contract work was done on a given day and the work associated with a potential claim. Dispute resolution may have been imperfectly initiated or begun late. 'Partial lien waivers' that were executed turn out actually to be complete releases, which threaten the possibility of even having a viable claim.

Welcome to the uncertainties and complexities of legal research!

III. SOURCES OF THE LAW.

The 'law' is actually composed of two key component parts that are involved with the resolution of civil cases: procedure and substantive legal principles.

A. PROCEDURE.

Procedurally, there are the Massachusetts Rules of Civil Procedure, which largely follow the Federal Rules of Civil Procedure, and are quite extensive. The Massachusetts state superior court has an additional set of rules. There are different appellate rules applicable to state district court appeals, appeals to the Appeals Court and appeals to the Supreme Judicial Court.

There are very detailed rules of conduct that govern lawyer and judicial behavior, including professionalism and ethics.

Now, even though federal courts are largely governed by extensive sets of rules, such as the Federal Rules of Civil Procedure, such courts will also have what are known as 'local rules'. These would apply, for example, to actions in the United States District Court and to actions before the bankruptcy court.

Substantively, there are a number of different sources of law.

B. STATUTES, ACTS AND ORDINANCES.

In terms of statutes - laws passed by a legislature - Massachusetts has various 'General Laws'. These laws are enacted by and modified by different individual laws passed annually by the Massachusetts Legislature - which, ironically, is more accurately referred to as the 'General Court' - which are generally referred to as 'Acts'. In 2018, according to a Massachusetts

Legislature website, the Legislature passed four hundred and fifty Acts that were signed by the Governor into law.

However, not all Acts that are passed become part of the General Laws. That is because many Acts are not of general application. For example, Chapter 1 of the Acts of 2019, as approved by the Governor, is entitled: "AN ACT ESTABLISHING A SICK LEAVE BANK FOR JOY COCHRAN, AN EMPLOYEE OF THE DEPARTMENT OF CHILDREN AND FAMILIES." Now, this Act is very important to Joy Cochran but is of no importance to anyone else. It is part of 'the law' but it is not part of Massachusetts' basic statutory law, otherwise known as the Massachusetts General Laws (or, MGL).

There are local ordinances in a municipality that address and control various local issues.

For some disputes, the law of more than one state might apply. The procedural law to be applied might be the rules/law in the state where the case is pending. But, the *substantive* law to be applied might be the law of a different state from the state that supplies the *procedural* law. When there are differences in the substantive law between two states, this is referred to as a 'Conflict of Laws' as to which there are some rules that may or may not determine what law shall be applied. Different states have different laws comprising the issue of 'Conflict of Laws'. Sometimes, there are different answers as to how to resolve 'Conflict of Laws' questions.

There are some legal issues that may involve both state *and* federal law. For some subjects, federal law might 'pre-empt' (control) state law. But, for other subjects, the federal law does not pre-empt the state law at all with the federal court basically applying state substantive law. While using federal civil procedure and local rules. (If you are not thoroughly confused at this point, don't worry. We are *still* working at it!)

For construction law, there are a variety of statutes that might be applicable. These would include MGL C. 149, s. 44A-H for the construction of public buildings. These also might include MGL C. 30, s. 39M, which governs the construction of public works. Some aspects of these laws apply to both the construction of public buildings and the construction of public works. Other aspects don't. The ability to file a demand for direct payment would be one example of that: applicable to state building projects but not to public works projects.

Much as the Massachusetts General Laws provides the generally applicable state statutory law, the United States Code Annotated (USCA) provides applicable federal statutory law. The USCA is so extensive as to make the MGL almost look like a short story.

C. REGULATIONS.

Massachusetts has both 'published' and 'unpublished' regulations. The most well known set of 'published' regulations is the Code of Mass Regulations (CMR). They are quite extensive. But, some state agencies have their own regulations, which have not been incorporated into the CMR. That's not to say that they consider such unpublished regulations as being any less important to their issues as those regulations contained within the CMR.

Then, there are federal regulations. There are a variety of sets of them. For example, there are the Federal Acquisition Regulations (the 'FAR'). And, there is also the Code of Federal Regulations (CFR), which is extensive enough to completely fill a *very* large bookcase**.**

D. CASE DECISIONS (OPINIONS ISSUED BY JUDGES AND OTHERS).

There is a fairly elaborate system organizing the different elements of decisional law.

Westlaw, the premier legal research system in the United States, has organized American case law (decisions) into more than 400 main topics, which contain within them more than 100,000 individual sub-topics, each of which has its own 'key number'. The idea is that when one has the correct 'key number' for a certain legal principle, one can then look throughout the United States to find all decisions on that point of law nationwide. It's not a bad system but finding the correct key number can sometimes involve quite a search. Aspects of certain legal principles might have more than one key number applicable to them. And, the key numbers do not appear at all in the 'official' Massachusetts Reports. They would only appear in West publications, which, in many states, means that there are two different, separate sets of case decisions.

(1) Some decisions are 'mandatory' authority while other decisions are 'persuasive ' authority.

Generally speaking, 'mandatory authority' are decisions by certain courts that other courts *must* follow. So, a Massachusetts superior court would have to apply clear law from both the Massachusetts Supreme Judicial Court (SJC) and the Massachusetts Appeals Court on any particular subject.

But, other case decisions are only 'persuasive authority', meaning that another court *might* or *could* apply that particular law to a particular issue but is not required to do so. This would include, for example, court decisions from other states.

(2) Within the Massachusetts decisions, there are decisions by a variety of courts.

There are probate court decisions. There are land court decisions. There are small claims decisions. There are district court decisions. There are superior court decisions. There are decisions by the appellate division of the state district court. There are decisions by the Massachusetts Appeals Court. There are decisions by the Massachusetts Supreme Judicial Court.

And, there are both "published" decisions and "unpublished" decisions. Even though the "unpublished" decisions are actual written decisions of the Appeals Court, until recently, they could not be cited as legal authority for the particular issues involved with any particular decision. Now, under limited circumstances, because of a recent court decision and a rule change, they can be cited as legal authority. But, no such decisions issued before February 26, 2008 may be cited as authority.

(3) Federal court decisions

There are decisions issued by various Federal District Courts. Under certain circumstances, in essence, the federal court is acting as almost a Massachusetts court, deciding Massachusetts legal issues applying substantive Massachusetts law. However, for some Federal District Court matters, federal law is applied. Decisions by these courts are appealed to various Courts of Appeal. From there, it's on to the United Supreme Court, assuming that Court decides it will hear that matter.

There are Bankruptcy Court decisions.

There are decisions by other Federal Courts, including the Court of Claims (a court in which one can sue the United States government and its agencies).

There are decisions issued by various federal agencies. As an example, such decisions can be by the Board of Contract Appeals applicable to each agency such as, for example, the Navy. There are decisions issued by the Veterans' Administration Board of Contract Appeals. There are decisions issued by the General Accounting Office's Board of Contract Appeals.

(4) In Massachusetts, there are decisions that are issued by a variety of state agencies.

Massachusetts has a procedure for administrative trials in front of state agencies, which have their own rules and are referred to as 'adjudicatory proceedings.' An 'adjudicatory proceeding' is roughly analogous to a trial in court, although it is somewhat simpler and a lot quicker.

Massachusetts also has proceedings for hearings that are *not* 'adjudicatory proceedings'. Bid protests are an example. While such hearings and decisions can be very important to bidders on public building projects and public works projects, such decisions are not something that a superior court has to follow. Court proceedings after the issuance of a bid protest decision are '*de novo*', meaning that the court is not at all bound by a decision of the Attorney General following a hearing on a bid protest.[4]

(4)(a) Bid Protests at the AG's Office.

Periodically, I get involved with various bid protests. And, one can look up bid protest decisions on an AG website and then read the actual decisions.

But the index organizing such legal research for these decisions borders on being primitive.

For one thing, only more recent cases can be researched through the Attorney General's website.[5]

And the indexing system, such as it is, can be very difficult to use.

As an example, there are frequently bid protests known as 'Paragraph E' protests, which reference a specific line in the form for a filed subbid, which is submitted with regard to eighteen

trades involved with a public building project. MGL C. 149, s. 44F requires all filed subbids for these specific eighteen trades to be for the entire work of that trade as set forth in the plans and specifications.

However, public owners will often allow for 'Paragraph E' subcontractors. As an example, it is not uncommon for plumbers to be allowed to have as a 'Paragraph E' subcontractor, an insulation subcontractor.

There are any number of potential 'Paragraph E' legal issues. I wouldn't be surprised if there are not at least a dozen such issues. But, here are four of them:

(1) What happens when a filed subbidder did not list a Paragraph E subcontractor on its bid form after having being instructed to do so.

(2) What happens when a filed subbidder lists a Paragraph E subcontractor where the bid documents did not give it the right to do so.

(3) Under what circumstances can a filed subbidder list itself as a Paragraph E subcontractor.

(4) What issues are involved in determining whether a company listed as a Paragraph E subcontractor is a *bona fide* (real, actual, legitimate) subcontractor in that subject area.

These are all actual separate and distinct legal issues. If the West system were employed with bid protest law - it isn't - we would have specifically assigned key numbers to each of the above topics.

However, when one goes to look at bid protest decisions, all of these issues, as well as additional Paragraph E issues, can only be found under the common search term of "Paragraph E". And, there are well over one hundred cases listed for 'Paragraph E'. Many of them/most of them may not apply to your specific Paragraph E issue. But, the wheat can only be separated from the chaff by your looking at as many of these decisions as you have the time and budget for. To read them all would take several days.

And, unlike the West system of key numbers, there is no actual resource to look at to tell you how many times a particular bid protest decision was cited as a legal authority in subsequent bid protest decisions.

And, while bid protest decisions may cite as authority various court cases, courts themselves don't generally cite bid protest decisions from the AG's Office as authority for their own cases.

Not sufficiently confused yet? We are *still* working at it!

E. LEGAL TREATISES (HORNBOOKS)[6].

These are essentially in the nature of textbooks. A well-regarded writer will write a detailed treatise on that individual's area of expertise. 'Corbin on Contracts' is such an example.

So, one might quote a treatise to emphasize the case law one is citing as authority or the book itself as the *only* authority, when there is no discernable case law.

F. MODEL LAWS.

What these are are proposals for a comprehensive system of law for any particular subject, which are then adopted by some states, usually with state variations. It's essentially what a group of scholars think the law *should* be or *might* be as to that subject matter but, in and of itself, it's not the law *anywhere.*

The Uniform Commercial Code is such a law. This has been incorporated into Massachusetts statutory law. Other examples include the Uniform Reciprocal Enforcement of Support Act (to get spouses to pay their alimony and child support.) And, an important (but extremely lengthy and technical) uniform law adopted by Massachusetts fairly recently is the Uniform Electronic Transactions Act. (Among other things, this law provides that a signature in an email is essentially the same as a person's signature on a piece of paper.)

G. OTHER POTENTIAL SOURCES OF LAW.

Such examples include law review articles discussing a certain subject. These can be very scholarly and are written by talented and very bright people. But, these people have not graduated from law school yet, which means that they have no practical experience. For that matter, they haven't completed their course of study yet.

Massachusetts Continuing Legal Education (MCLE) conducts seminars on a variety of different legal topics, issuing books, which are part of the seminars. There are a variety of other companies that put on seminars on different legal topics.

There is something called the Massachusetts Practice Series, which is a group of volumes about specific legal subjects. This is the closest one gets to an encyclopedia of just Massachusetts law. It's a very good starting point when one begins researching an issue of law that the researcher is not familiar with.

A variety of officials used to ask the Attorney General to issue opinions on various questions of law. There are a great many of these Opinions. Apparently, though, this does not seem to have been done in recent years.

And, of course, we *do* have some legal encyclopedias. An example is Corpus Juris Secundum (CJS), which, as described by Wikipedia, is an extensive discussion of United States law at both the federal and state levels.[7] According to Wikipedia, there are alphabetically arranged more than 430 topics, which then have sub-headings. And, also according to Wikipedia, as of 2010, CJS consisted of 164 bound volumes, 5 index volumes and 11 table of cases volumes.

As a point of information, a complete set of volumes for this title is being offered by Thomson Reuters on June 23, 2019 for $25,375.00. A set of a similar product, American

Jurisprudence 2d, is also offered by Thomson Reuters on June 23, 2019 for $23,260.00. These are the encyclopedias most lawyers use/used/cite, assuming they were going to use/used/cite an encyclopedia.

There is a very substantial system of legal articles contained within a series known as American Law Reports. There are a lot of different sets and versions. For example, there are American Law Reports, Federal, 3d, which is described as a "comprehensive analysis of issues of federal law," offered by Thomson Reuters on June 23, 2019, with a full set of the books being priced at $10,143.00. (Compared with the other two, a bargain!)

In case you were wondering, you now know why law is sometimes described as dealing with 'weighty matters'! More women graduate from law school today than men. But, it is true that for a very long time, women were discriminated against in terms of being hired. But, the reason for this had nothing to do with their sex. It had to do with the fact that an average strapping young lad could carry *more* of these books to court than an average woman could and it was beneath the dignity of a senior partner to carry *anything* to court!

Corpus Juris Secundum and American Jurisprudence 2d – the encyclopedias - are not authorities that are frequently cited as legal authority, as they are too general and, quite often, their statements of what the law is are based specifically upon legal decisions from other states, which are not primary, mandatory authority in Massachusetts.

And, we sometimes use dictionaries! These include legal dictionaries (e.g. Black's Law Dictionary) and regular dictionaries. Sometimes, the meaning of specific words is very important in analyzing a specific statute but there is no Massachusetts law defining what the word in question means. The appellate courts also use dictionaries.

IV. SUGGESTIONS ON HOW TO REDUCE LEGAL RESEARCH COSTS.

For all of our readers who are actually engaged in a trade or occupation . . . .

Did you learn everything you know about the trade or occupation today all at once or did your knowledge get acquired over a period of time? And, haven't you learned how to do that job better over time because you have had the benefit of experience?

And, whatever your job is within your present trade or occupation, are you *better* at it today than you were ten years ago? Twenty years ago? Thirty years ago?

It would be too much to expect any particular lawyer to know everything there is to know about even the subject matter of his/her concentration. There is simply too much existing material and new cases and other materials come out almost daily.[8]

And, quite often, there is absolutely no clear law as applicable to a particular factual situation. This causes us to look at some of the secondary sources listed above. And, to become creative! Having a vivid imagination is not a legal character defect. It's really required by the job for those who are going to excel.

A reader slogging through this Squib to this point now knows that a lawyer simply can not go to any one book or series of books to look up the law that is applicable to a legal question or issue. To do the job properly and effectively might require looking at *lots* of legal authorities, only some of which are listed above.

So, how can one keep this process as economical as possible while still having it be effective?

Some ideas . . . .

A. CONSIDER PICKING A LAWYER WHO ONLY PRACTICES IN THE AREA OF THE LAW YOU ARE INTERESTED IN.

This is why it is so important to pick a lawyer who works primarily in the subject area you are interested in because s/he will already have a legal background in that subject, meaning that what law has to be looked up should be *less*. Put another way, a well-experienced lawyer simply won't have to look up as much law as a less experienced attorney because s/he already knows a great deal of the applicable law. It's not any more complicated than that.

If the lawyers on the billboards say that they practice nine or ten areas of the law, this probably means that they don't know very much about any of them. That's not going to help any client of theirs win their case.

B. CONSIDER PICKING AN OLDER LAWYER.

Again, an older lawyer, presumably, will have more experience, both at practicing law and at performing legal research. And, with that experience usually comes knowledge. And, the more knowledge your lawyer has, the fewer the trips to the library (computer) to look things up.

Related to the issue of knowledge of the law, both procedurally and substantively, a more experienced lawyer is simply going to better know what works and what *doesn't* work in many situations. The plans and specifications for a job might tell you how the architect wants you to do your job. But, at least some of the time, doesn't the job get completed not because of the plans and specifications but in spite of the plans and specifications? The value of experience.

Many of you will remember the Eastern Terminal at Logan Airport. It was essentially made of concrete. (I don't know how true the following is but) I have been told that the general contractor didn't think enough rebar was included for the building by the design professionals. Someone told me that the general contractor *doubled* the amount of rebar. Again, the value of experience.

As with many (most?) jobs, what they teach you in law school in terms of practice and substance is a great deal different from how law is actually practiced. And, the only way one learns that is simply through experience. What arguments do judges tend to reject? What arguments do judges tend to accept? They don't teach these things in books.

For those who have been contractors for twenty or thirty years, ask yourselves this question: don't you estimate and manage jobs better than you did twenty or thirty years ago? Of course you do. And, it's the same with the law business.

C. BE SURE YOU KNOW WHO ACTUALLY IS GOING TO BE DOING THE WORK BEFORE GIVING A FIRM A CASE.

Some law firms will have very impressive partners who will discuss a matter with a new client. And, that partner is presumed to know a lot about that subject matter and, most likely, *does* know a lot about that subject matter.

But, particularly in larger firms, that work might actually be done by a one or two year associate, who really does not have a proficiency yet in much of anything. Such an individual is going to have to look up a *lot* more law than would the partner who so impressed you. And, you or someone like you will actually be paying for that individual's further education.

Apart from the increased cost of that additional legal research, how will anyone know whether s/he looked up the *right* law? One of the difficulties with inexperience with legal research is a tendency of going off on a tangent.

There seems to be a tendency, more so for Boston firms than for suburban firms, to have two or three attorneys working on a case.

Try to come to some understanding with the law firm as to how experienced the lawyer who will be working on your case is. And, will it be one lawyer? Or, more. And, if more, why?

D. ASK THE LAWYER AS EARLY IN THE PROCESS AS POSSIBLE WHAT S/HE THINKS YOUR CHANCES ARE IN THE LITIGATION.

The facts and the law are the facts and the law. Knowing as early on as possible what your realistic chances are for a good result can save you time and money.

An example. I recently had a relatively new contractor ask me to evaluate their company's chances on various claims for extras totaling 250k. Their contract was for less than one-half million dollars. After reviewing the matter for several hours, it was evident that this company: (a) had not met the notice requirements in their contract for claims; (b) were not able to actually indicate on which days they had extra hours that were part of the claim; (c) did not have sufficient records to differentiate on any particular day whether they were doing contract work or the extra work included in the claim, and; (d) simply lacked any real records to support these claims.

This is the result dictated by the law. And, dictated by experience.

I'm sure that this is not what they hoped to hear. But, it probably was better for them to hear that from me after only a rather modest investment than hear it from a judge after five years of expensive litigation.

E. CONSIDER SETTING SOME KIND OF BUDGET OR AT LEAST HAVE A PERIODIC REVIEW OF THE CHANCE OF SUCCESS OF YOUR CLAIM OR DEFENSE AND THE COSTS THAT ARE BEING INCURRED.

To some extent, budgets can often seem like four letter words to lawyers, particularly with regard to litigation. Clients really have to ask themselves what is more important. Are they primarily interested in winning their case (or getting a more favorable result)? Or, are they primarily interested in having the matter handled in the most economical way possible irrespective of whether or not this approach will produce something that will look like a win? A great deal of the time, one will not be able to get both.

At our firm, we, generally, can give reasonably accurate estimates for matters involving things such as the drafting and review of various contract documents. For some of these types of things, we are open to the idea of a flat fee. Even for some kinds of limited issues bid protests that will not require extensive legal research.

With litigation, however, it's very difficult to give realistic estimates of what any particular matter is going to cost from the beginning to the end.

This is for any number of reasons.

The lawyer will have to learn a great deal about the facts, the documents and the witnesses on both sides of the dispute, along with the applicable law, before s/he is going to have a pretty good idea as to how good (or bad) their client's position is. Clients want to win their cases. And, as we have seen, legal research can be a tortuous process. And it's very hard to give an accurate number for a *process* when it is an adversarial process. After all, one has no control over what the adversary will do. The other guy wants to win, also.

I have often used this analogy in trying to explain the adversary process. It's like having two surgeons involved with an appendectomy. One surgeon is trying to remove the appendix while, at the same time, the other surgeon is trying to put the appendix back. It's a very inefficient process. But, it is what it is.

It is difficult to accurately estimate how much time will be necessary to prepare the various legal memoranda for a complicated bid protest. Sometimes, one has to prepare just one brief. Other times, two. And, very occasionally, three. But going into a complicated bid protest, how many briefs that will have to actually be prepared is something that cannot be known.

As we discussed in our 'Paragraph E' example above, there is no easy process for researching the actual bid protest decisions because of how minimal the indexing is. To do a good job, the lawyer is probably going to have to read and review any number of bid protest decisions, many of which are not actually involved with your issue.

That wouldn't apply to *all* bid protest issues. So, if the issue is whether or not a bid can be accepted that was not signed, this is reasonably easy to research and answer. If the issue is whether or not a bidder provided bid security of five percent of the *potential* value of the bid (including alternates), again, this should not be too difficult to research.

Throughout the pendency of your matter, periodically ask your lawyer what s/he thinks about your chances of prevailing. In a litigation, only half of the people go away happy. 50% as a score in school would be a failing grade. No two judges are likely to evaluate a case in an identical fashion. And, most judges neither understand construction law nor like trying these cases. This situation gets even worse if there are public bid law issues.

It is in the nature of contractors and, sometimes of their attorneys, to primarily look at the factors that favor their position, giving less attention to those factors that could possibly croak them. I have found that in a trial, there aren't that many secrets. Pretty much, both sides – if they have done the proper preparation – will have a pretty good idea of the important facts. The Rules of Civil Procedure are designed to bring the parties to this level of understanding, the thinking being that if both sides understand the same facts, settlements are more likely.

One reason why a lot of cases tend to settle on the courthouse steps on the day of trial is that everyone knows the days of false bravado are over. Cases look easier to win when you are sitting in your own conference room and there is no one there to challenge or rebut your contentions. Not so on the day of trial! And, everyone knows that.

But, rather than wait for five years of expensive litigation to play itself out, try to create as many moments of sober evaluation of your position as early in the process and as often in the process as is possible.

Good knowledge of the law added to sufficient experience added to proper preparation in addition to a sober and realistic attitude can help contractors (and their lawyers) in evaluating what cases are a better investment for them to participate in and what cases should be launched, if possible. Too much litigation can kill most companies. It can be a very expensive process if one goes all the way through a complete trial. And, there can be no guarantees from anyone as to how any particular case is going to be resolved.

V. CONCLUSION.

There are five main points we have tried to get across with this Squib.

First, legal research is a necessary and important element in determining the strengths and weaknesses of claims and defenses that are made and will be made in litigation.

Secondly, there are so many different sources of the law, with more literally being added every day, it is impossible for one person to know every single aspect of the law applicable to a given subject matter.

Thirdly, people get better and more efficient in doing legal research the more that they do it. This can both improve the quality of the legal research being performed and should assist in reducing the amount of time associated with legal research, which should save money.

Fourthly, it is important to deal only with those lawyers who specialize in the area of the law you are involved with.

Lastly, it seems a reasonable conclusion that using more experienced lawyers might reduce the amount of time necessary for the performance of legal research, as experienced lawyers already know some of the law that a less experienced lawyer would have to look up.

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practicing law and for assisting those working in the construction industry and those interacting with the construction industry to be more successful.)

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[1] A s*quib* is defined as 'a short humorous or satiric writing or speech'. Wiktionary defines *squib* as "a short article, often published in journals, that introduces empirical data problematic to linguistic theory or discusses an overlooked theoretical problem. In contrast to a typical linguistic article, a squib need not answer the questions that it poses."

[2] The son of a single parent school teacher, I went through college under a co-op plan that takes five years to get through. Then, I went to law school at night for four years. At times, it was a question in my own mind as to which would come first. A law degree. Or, social security.

[3]Massachusetts does not recognize specialists as to most legal areas of practice. The most that legal authorities allow is for one to say s/he 'concentrates his/her practice' in a subject matter. There are some recognized specialties. Patent law would be one, although this law applies almost exclusively to federal law/issues. The law of the sea - admiralty law - would be another recognized specialty. These are not subjects having much, if any, application to construction issues.

[4]One can file a legal case in court if not satisfied with the result of a bid protest decision through the Attorney General's Office after a decision is issued. However, the Attorney General's Office will not hear bid protests if one first proceeds with court and is not satisfied with the decision that is handed down. So, depending on which legal action or bid protest is filed first, there may be only one bite of the apple. Done a different way, two bites of the apple.

[5]Many of us who participate in a lot of bid protests have boxes and boxes of earlier decisions, which are not readily available elsewhere. And, we have as to these earlier decisions various indices, referencing the various points of law discussed in these earlier decisions. Every now and again, one of these earlier decisions is instrumental in determining the outcome of a bid protest. Those of us who have these earlier decisions, indexed through earlier indices, have an advantage over those who may not even know these decisions exist and who do not have access to them.

[6]How did 'hornbooks' get that name? Wikipedia tells us (although here somewhat compressed) that "a hornbook is a book that serves as a primer for study, which term originated in England as long ago as 1450 or, possibly, earlier. The term has been applied to a few different study materials in different fields." Such materials were, "covered with a transparent sheet of horn (or mica)."

[7]I seem to recall pictures of Corpus Juris Secundum as a backdrop for the credits following episodes of Perry Mason on TV. If the number of people who became lawyers because of this show could be quantified, it probably would be an enormous number. What is ironic about this is that Perry Mason had almost nothing to do with the real practice of law today. Probably, the same was true with regard to the practice of law in the 1950's.

[8] According to a Massachusetts Legislative website, as of June 20, 2019, the Legislature has passed so far this year twenty-two Acts that have been signed by the Governor. The fifth such Act is seventeen pages long. According to that same website, last year the Legislature passed four hundred and fifty bills that were signed by the Governor.