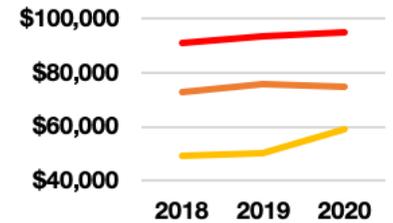


TRENDLINES

Planner salaries



Zweig Group's *2020 Salary Survey of Mountain & Pacific Engineering Firms*

provides yearly base salary trends for planning positions of all levels on the West Coast. Median base salaries for planners at the **entry level**, **project level**, and **project manager** were analyzed over a three-year stretch from 2018 to 2020. Entry level planners saw the biggest jump in base pay over that stretch while the other two levels experienced a steady rise.

Participate in a survey and save \$320 on any Zweig Group research publication. Visit bit.ly/TZLsp to learn more.

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Getting everyone fired up

“You would be surprised how quickly your employees get in the bandwagon when they can be part of the solution.”



Mark Zweig

Sometimes, in business, it’s necessary to get everyone fired up. The doldrums set in. People lose sight of their goals. Everyone just plods along and the results show it. Revenues plateau. Profits go down. People aren’t discontented, nor are they particularly enthusiastic about things.

If you are their leader, there’s only one person who is likely to be able to fix the problem. That’s you. Here are my thoughts:

- 1) **It starts with YOU.** If you aren’t fired up – if you don’t know in your soul that you can get the place reenergized – it won’t happen. For you to influence anyone else you have to be “living” as an example. You have to be confident and positive. And you have to be honest and sincere. It can’t be stressed enough.
- 2) **You have to lay out the problem for everyone.** Don’t minimize the importance of problem definition. I have seen many many people over the years attack what they thought was the problem when their diagnosis was completely wrong. Many times I have seen management define a problem with its symptoms versus getting to the root cause. A good example of an improperly defined problem could be “We aren’t profitable,” when in reality the real problem is more likely something such as “We have quality problems and have to do too much rework,” or “Our managers can’t manage projects because the information they get isn’t timely.”
- 3) **You need to get the input from all the people who best know what is going on.** The people who work there want to help. And usually they know a lot and are willing to share their ideas on how to fix things if you just ask them. The important thing is to fully listen to what they are telling you and not get defensive or they will clam up and you will cut yourself off from important information sources.
- 4) **Don’t waste your time developing and promoting catchy, cliché-ridden mission/vision/values statements.** Most people are burnt out on this nonsense. They make fun of these things behind management’s back if they are the least bit hokey or insincere. Don’t hurt your credibility by jumping on the “BS bandwagon.” And you know BS when you see it – just as your employees do.
- 5) **Measure and report the numbers on everything that’s important.** Do it frequently and quickly. You have to get your gauges on the machine operational. It’s crucial because you will need to not only share this information on a widespread basis but also interpret it for everyone **AND** use it to fine tune your action program. People respond to numbers when you track and distribute them.
- 6) **Explain how achieving certain goals will benefit everyone.** This means you have to be specific about substantive raises/ bonuses/training/promotion opportunities/tools, etc.) that will be forthcoming. The carrot is more important than the stick.

See MARK ZWEIG, page 2

ON THE MOVE

WALTER P MOORE ANNOUNCES AUSTIN LEADERSHIP TRANSITION International engineering firm **Walter P Moore** announced that Brian Caudle, P.E., managing director of the firm's Austin office, stepped down. Adam Johnson, P.E., S.E., LEED AP has assumed the managing directorship and office leadership with Caudle's ongoing support.

Caudle, a 30-year veteran of Walter P Moore who has led the Austin office since shortly after its inception in 2001, is stepping down to focus more on managing projects and mentoring staff. Through steady leadership and with a positive and energetic spirit, Caudle has led the office and built it into an outstanding success.

After 18 years of leadership, recognizing the strong pipeline of talent in the office, Caudle expressed a desire to give to someone else the opportunity to lead, allowing him to focus on his areas of highest passion – project management and mentoring others. Over the last few years, he has worked hard to position the Austin office and its upcoming leadership to take the reins and continue with the same success.

Dilip Choudhuri, Walter P Moore president and CEO, said, "Brian has anchored the leadership of the Austin office since its beginning in 2001 and grown our presence in Austin over the years. We thank him for his years of leadership as managing director and wish him the very best for his future role within our firm."

Johnson, principal, a structural engineer at Walter P Moore since 2004, has been promoted to managing director of the Structures Group in the firm's Austin office.

Johnson will be taking over leadership of the

Austin office while working closely with Caudle and Austin's Operations Manager Brent Wenger, P.E. Additionally, Johnson will have the support of Structures Group Design Director Viral Patel, P.E., S.E., who is located in Austin, and Dennis Wittry, P.E., S.E., Regional Director for Central Texas.

Johnson has led Walter P Moore's efforts on a variety of important projects in Austin such as The Oracle Waterfront Campus, Austin Planning and Development Center, Employee Retirement System of Texas Office Building, and Arena Tower. Outside of Austin, Johnson led the firm's efforts on the United Airlines Consolidated Flight Training Center Renovation in Denver, Colorado, The Quarry Run Regional Operations Center in San Antonio, and several towers in Panama City, Panama.

"Adam's collaborative leadership style will continue the success that we have had in Austin into the foreseeable future. He is well-liked and trusted by our most important clients and we wish him a lot of success as the new Managing Director of the Structures Group, Austin," remarked Choudhuri.

Walter P Moore is an international company of engineers, innovators, and creative people who solve some of the world's most complex structural and infrastructure challenges. Providing structural, diagnostics, civil, traffic, parking, transportation, enclosure, technology consulting, and construction engineering services, they design solutions that are cost- and resource-efficient, forward-thinking, and help support and shape communities worldwide.

MARK ZWEIG, from page 1

- 7) **Focus on results.** Focus on things that produce immediate results so people get the idea there is more within their control than they may have thought initially. You need quick results.
- 8) **Make heroes out of your highest performers.** Promote those who are showing new energy and getting results to the rest of the team. Share their accomplishments with everyone. Look for and promote even the smallest victories. You are working to create positive energy.
- 9) **Clear out the negative influencers.** One bad apple can spoil the whole bunch. There is a lot of research on this topic. You know who these negative, can't-do skeptics are – the ones holding the "meeting after the meeting." They have to go. You will be glad when you get the courage to do it.
- 10) **Be positive!** Explain how what you are doing **WILL** work. If it doesn't work out, pull the plug and try something else. Be confident it will work until proven otherwise.
- 11) **Refine and repeat, daily.** Just like your shampoo bottle says "rinse and repeat," do the same thing with your organization. But change that "rinse" to refine. Refine your plan and your data and your decision-making.

These 11 steps are guaranteed to produce results. Use them! You would be surprised how quickly your employees get in the bandwagon when they can be part of the solution. You have to be honest with everyone and not hold back. ➤

MARK ZWEIG is Zweig Group's chairman and founder. Contact him at mzweig@zweiggroup.com.



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Low-hanging fruit

Cross-marketing is the low-hanging fruit of business development. But will it work for your firm?



**Berry
Still**

Cross-marketing can be an important and highly useful tool in your arsenal. It can be mutually beneficial to you and your clients, saving you both time and money. However, it's not an effective strategy for every company or situation. How can you know if cross-marketing will be beneficial for your firm? And if so, how can you implement it?

Before we get into the mechanics of cross-marketing, we need to first assess if your company is well positioned to cross-market. For this purpose, diversity and culture are going to be key. If you have no diversity in services, clients, or geography, you have nothing to cross-market – and nobody to cross-market to.

Likewise, if your firm lacks a “one-company” culture, staff will be reluctant to spend their time and effort cross-marketing because they will not see how it benefits them. To get people excited about cross-marketing, they need to have the mindset that strengthening one facet of a company strengthens the company as a whole. A company that operates in silos, where every market essentially exists in its own little world, cannot accomplish this.

So, to assess whether your company is positioned to cross-market, ask yourself a couple basic questions:

- Do you have a diversity of service lines, clients (private/public), or geography?
- Does your firm promote a “one-company” philosophy and culture in which all employees can see how they would benefit from cross-marketing?

If your answer is no to either of these questions, your cross-marketing efforts will most likely be unsuccessful.

After you've evaluated your company and determined you're well positioned to successfully cross-market, what's next? You have two options:

See BERRY STILL, page 4



ON THE MOVE

WARE MALCOMB ANNOUNCES EXECUTIVE LEADERSHIP TRANSITIONS

Ware Malcomb, an award-winning international design firm, announced Lawrence Armstrong, who has served as CEO for 28 years, has elected to transition into the new role of chairman of Ware Malcomb. Kenneth Wink, a 25-year veteran of Ware Malcomb has been promoted to CEO, and Jay Todisco, who has been with the firm for 21 years, will assume the role of president. Ware Malcomb also announced the promotion of Matt Brady to executive vice president, and Tobin Sloane to EVP/CFO.

"It has been the honor of a lifetime to have the opportunity to lead this incredible firm and its team of talented professionals for the past 28 years," said Armstrong. "Together, we have grown Ware Malcomb from our foundation as a strong regional operation to a leading international design firm with a future that has never been brighter. As I hand over responsibility for day-to-day operations to the capable hands of our new leadership team, including CEO Ken Wink and President Jay Todisco, I look forward to continuing to serve the firm in my new role as chairman. Together with the additional contributions of seasoned executive team members Matt Brady and Tobin Sloane, I know Ware Malcomb is poised for continued growth and success in this new decade, and beyond."

"I want to thank Larry for his incredible leadership of Ware Malcomb spanning three decades," said Wink. "I share his excitement for the future of Ware Malcomb and am honored to take on the role of CEO to implement a strategic vision for the ongoing expansion of the scope and reach of our services, the professional development of our team members, and the success of our clients."

"I look forward to continuing to work closely with Larry, Ken, and the entire team to accelerate

Ware Malcomb's business development and growth in the years to come," said Todisco. "Ours is a firm committed to cultivating long-term relationships with our team members, partners and clients alike, all while creating industry-leading design that puts Ware Malcomb at the forefront of commercial real estate."

■ **Lawrence Armstrong.** Armstrong is transitioning from the role of CEO to chairman of Ware Malcomb. Under his leadership as CEO for the past 28 years, Ware Malcomb has grown to become a leading international design firm with 25 offices in four countries. Armstrong's strategic, visionary approach to the firm's management and growth, as well as his commitment to fiscal discipline, has laid a strong foundation for future success. In his new role as chairman, Armstrong will lead the board of directors for Ware Malcomb.

■ **Kenneth Wink.** Wink has been promoted to CEO. With Ware Malcomb for more than 25 years, Wink has consistently demonstrated excellence in every challenge and opportunity he has been given during his tenure with the firm. He has been instrumental in leading the growth of Ware Malcomb, including developing and overseeing operations companywide. He has also coached and mentored key leaders across the firm. As CEO, Wink will lead the overall company vision, growth and management of Ware Malcomb.

■ **Jay Todisco.** Todisco has been promoted to president. With the firm for more than 21 years, Todisco's leadership has significantly contributed to the firm's continued growth, and to the execution of numerous strategic and innovative initiatives companywide. As president, Todisco will oversee the overall growth and business development for Ware Malcomb, with a focus on exceptional client

service and relationship management. An accomplished architect, Todisco is also highly engaged with Ware Malcomb's Design Studio and oversees all aspects of design from the executive level.

■ **Matt Brady.** Brady has been promoted to executive vice president. With Ware Malcomb for more than 20 years, Brady has led the expansion of firm services into multiple new markets in the U.S., Panama, and Mexico. He has been directly responsible for the launch of the firm's San Diego, Phoenix, and Atlanta offices, while also taking on many corporate responsibilities and leading select companywide initiatives. As executive vice president, he will oversee many corporate, growth, and operations initiatives for the firm.

■ **Tobin Sloane.** Ware Malcomb's CFO has been promoted to the additional role of executive vice president. With Ware Malcomb for more than 15 years, Sloane's leadership has helped ensure the financial health of the firm while facilitating strong growth. He will continue to remain a critical member of the executive team, while leading the financial functions of the firm and directing the accounting, administration, contracts, legal, and human resources operations.

Established in 1972, Ware Malcomb is an international design firm providing planning, architecture, interior design, branding, civil engineering and building measurement services to commercial real estate and corporate clients. With office locations throughout the U.S., Canada, Mexico, and Panama, the firm specializes in the design of commercial office, corporate, industrial, science and technology, healthcare, retail, auto, public/educational facilities and renovation projects. Ware Malcomb is recognized as a Hot Firm and Best Firm To Work For by Zweig Group.

BERRY STILL, from page 3

- 1) Cross-market to existing clients.
- 2) Pursue new clients currently outside of your service line.

Option one, cross-marketing to existing clients, is generally the easiest way to go – the "low-hanging fruit" option, if you will. Marketing costs can be high, especially when attempting to break into new markets or gain new clients. By leveraging existing client relationships to embrace the diverse services that your company provides, you can avoid the high logistical costs of establishing your service line in a brand-new market.

How to get started:

- Focus your cross-marketing efforts on clients with multi-service contracts who you have a strong, trusting relationship with. Use this strong relationship to offer quality services that can be beneficial to your company and the client.

"By leveraging existing client relationships to embrace the diverse services that your company provides, you can avoid the high logistical costs of establishing your service line in a brand-new market."

- Remember your client value. Cross-marketing is mutually beneficial to both you and the client. You gain a client for an existing service line and the client gets the peace of mind that comes with dealing with one quality firm to complete their goals. A true win-win! ▀

BERRY STILL is a vice president and Southeastern Business Unit Leader for Transportation Design at Mead & Hunt. His experience spans more than 28 years in the transportation industry. He is knowledgeable in all facets of highway construction, from environmental to design to construction. Contact him at berry.still@meadhunt.com.



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APRIL

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Atlanta, Georgia

15-16 Elevating Doer-Sellers:
Intensive 2 Day Workshop
San Francisco, California

MAY

19 Project Management for AEC
Professionals
Tampa, Florida

27 Learn The Language of
Business: Financial
Management
Dallas, Texas

JUNE

11-12 The Principals Academy
Washington, D.C.

17-18 Leadership Skills for AEC
Professionals
Seattle, Washington

24 Elevate Your Recruiting &
Retention Strategy
Denver, Colorado

JULY

14 Learn The Language of
Business: Financial
Management
Chicago, Illinois

23-24 The Principals Academy
Portland, Oregon

AUGUST

5-6 Elevating Doer-Sellers:
Intensive 2 Day Workshop
Chicago, Illinois

12 Project Management for AEC
Professionals
Dallas, Texas

20 Elevate Your Recruiting &
Retention Strategy
Orlando, Florida

SEPTEMBER

30 ElevateHer Symposium
Denver, Colorado

30-2 Elevate AEC Conference
& Awards Gala
Denver, Colorado

OCTOBER

14 Project Management for AEC
Professionals
Minneapolis, Minnesota

22 Elevate Your Recruiting &
Retention Strategy
Los Angeles, California

NOVEMBER

5-6 The Principals Academy
Phoenix, Arizona

12-13 CEO Roundtable Retreat
Napa, California

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PROFILE



Change leader: Sirish Samba

CEO of Sambatek (Minneapolis, MN), a professional services firm with an authentic culture that promotes openness, transparency, and trust.

By LIISA ANDREASSEN
Correspondent

Staff describe him as “inspiring” and “relentlessly determined to achieve his dreams.” When asked about the challenges he’s overcome, Samba’s response is, “What challenges?” In 2009, he championed the efforts to restructure Sambatek and took responsibility as the firm’s primary owner. Since then, he’s led Sambatek into a phase of growth and energy.

“As an entrepreneurial engineering firm, we’re always looking to expand our services to new markets and to new locations – wherever our clients take us,” Samba says. “We’re always on the lookout for acquisition targets to diversify our market and geographic reach.”

A CONVERSATION WITH SIRISH SAMBA.

The Zweig Letter: How much time do you spend working “in the business” rather than “on the business?”

Sirish Samba: As a practicing civil engineer, I enjoy working with our clients on a day-to-day basis. I do, however, believe that working “on the business” is a

key contributor of business readiness in the long-term. Therefore, we are developing the discipline to master that style of *modus operandi*. We’ve separated the roles of CEO and COO. In my role as CEO, I want to spend more of my time working on the business while day-to-day operations and working in the business is taken up predominantly by our COO and our directors. The leadership team meets every quarter “off-site” to discuss topics pertaining to working on the business. I must say some of my best ideas working “on the business” come during my down time.

TZL: What role does your family play in your career? Are work and family separate, or is there overlap?

SS: With the connected nature of our business, I’m not sure I can say it is distinctly separate between family time and work time. I have two teenage daughters and a younger son. I sometimes talk about work deliberately during family time with the hope they too will openly talk more about their day at school. I believe it was Dicky Fox in the movie *Jerry McGuire* who said, “If this [heart]

is empty, this [head] doesn't matter." Having the support of your loved ones plays a very important role in one's career. Fortunately, my wife enjoys our time together at work events and [Zweig Group's conferences](#), especially if it's at a warmer location.

TZL: What, if anything, are you doing to protect your firm from a potential economic slowdown in the future?

SS: As the president of American Council of Engineering Companies/Minnesota, on behalf of all our member firms, we are closely monitoring the economic indicators through a series of surveys and communications with ACEC/National, Minnesota Chamber of Commerce, Minneapolis Federal Reserve, and others. We follow Zweig Group and other outlets to keep our eyes wide open for recession proof strategies. We work diligently for enhanced value proposition as a trusted advocate to our clients and those long-lasting client relations help us weather the storm during thick and thin. As an entrepreneurial engineering firm, we're always looking to expand our services to new markets and to new locations – wherever our clients take us. We're always on the lookout for acquisition targets to diversify our market and geographic reach.

TZL: Are you using the R&D tax credit? If so, how is it working for your firm? If not, why not?

SS: We have been using the R&D tax credit for several years now. Thanks to our innovation, we were fortunate to benefit from the tax credit and reinvest the proceeds into new R&D.

TZL: It is often said that people leave managers, not companies. What are you doing to ensure that your line leadership are great people managers?

SS: First and foremost, it's important to have an authentic culture that promotes openness, transparency, and trust. Second, identifying core values that help bring alignment with vision and your road map must be clearly defined and embraced by all. Once we have those building blocks in place, having the right people in the right seat to lead, mentor, and manage makes all the difference. Typically, professional services' managers are excellent at analytical problem solving and delivering great results, but do they have the emotional intelligence to patiently listen and empathize with their staff's spoken and unspoken aspirations? With the help of personality profile tests such

as Kolby and others, Sambatek provides opportunities to our managers and staff to obtain unique individualized professional training to top off their personality and help them transform from great managers to great leaders.

TZL: What novel approaches are you bringing to recruitment, and how are your brand and differentiators performing in the talent wars?

SS: With changing times, it's important to stay relevant and fresh with your brand. Brand isn't limited to logo. It's important to embrace the changing times and evolve your culture from conventional brick and mortar design to one that promotes flex hours, flex spacing, and remote access – giving our employees the greatest freedom to do great work in an enjoyable, fun environment. Why put a square peg in a round hole? We provide the freedom to our employees to pursue the area of their greatest interest. We're fortunate to have several services and markets, which allows our college graduates and interns to try different areas before picking the area of their greatest passion. This combination of freedom of choice and Sambatek's exceptional mentorship program motivates interns to choose Sambatek year after year. It allows us to then move the graduate engineers eventually to higher positions the company wants to fill. This strong foundation allows us to fare quite well in the talent war. September 12, 2019 marked my 25th year at Sambatek. Several of our employees are celebrating five, 10, 25, and even 40-year tenure at our firm. We have proven processes for recruiting and retaining talent.

TZL: Is change management a topic regularly addressed by the leadership at your firm? If so, elaborate.

SS: Whenever you see a successful business, someone once made a courageous decision. An organization must realize that its task is to lead change. If it doesn't, it will fail. Therefore, as Peter Drucker famously said on change management, "the best way to predict your future is to create it by being a change leader." What works well when you are a 50-person firm will not work when you're a firm of 100 unless you lead the change and adapt to new structure and processes, and surround yourself with people who embrace change as the norm. So, yes, at Sambatek change is not a watershed event that happens on a blue

See CHANGE LEADER, page 8



HEADQUARTERS: Minneapolis, MN

NUMBER OF EMPLOYEES: 105

YEAR FOUNDED: 1966

NUMBER OF OFFICE LOCATIONS: 3

SERVICES:

- Civil engineering
- Surveying
- Planning
- Environmental

MARKETS:

- Land development
- Renewable energy
- Transportation
- Municipal

MISSION: Collaborate, design, build, and succeed

PROUD OF: Sambatek is known for being creative, responsive, and always up for the challenge. Its multi-disciplinary approach means it can support projects of any size, from basic concepts through final construction.

IN THE COMMUNITY: Each year, the SPARK Committee, made up of company employees, asks team members to help identify which causes are near and dear to their hearts and do their best to support clients and communities through one of three ways: volunteering, monetary giving, or through educating young people about subjects such as engineering and renewable energy to help them plan their future.



Sambatek staff at the firm's Minnetonka, Minnesota office.

CHANGE LEADER, from page 7

moon day; it's something we incrementally bring about on a daily basis.

TZL: Ownership transition can be tricky, to say the least. What's the key to ensuring a smooth passing of the baton? What's the biggest pitfall to avoid?

SS: I gave a presentation at [Zweig Group's Hot Firm Conference](#) a while ago on how not to do an ownership transition. I believe it's a day one priority for all CEOs and firm leaders. Do not wait until the day of retirement or change event to start thinking about ownership transition. To build a firm that lasts, orderly, smooth transition and seamless operational continuity is a must. It's best accomplished if we can avoid surprises and be able to articulate all options and avenues in a transparent manner.

TZL: What unique or innovative pricing strategies have you developed, or are you developing, to combat the commoditization of engineering services?

SS: Quality-Based Selection is something we all should strive to get to with our clients. Unfortunately, we all find ourselves having to combat the commoditization of engineering services. As a firm, we try to avoid commoditization or a bidding situation by developing "clients for life" through client advocacy and value add that far exceeds design fee.

TZL: They say failure is a great teacher. What's the biggest lesson you've had to learn the hard way?

SS: When I was a young CEO and someone left the firm, I felt as if a part of my soul left me too. I later realized that you cannot please everyone. Growth and change are not for everyone. It's important that the company is clear about its core values, vision, and mission and then takes steps to surround itself with men and women who align with those principles.

TZL: Diversity and inclusion are lacking. What steps are you taking to address the issue?

SS: We have come a long way in this area. We live in a great country and Sambatek is a great firm where an immigrant graduate engineer with a thick mustache and a thicker accent can one day become the CEO of the firm, livening the lives of ALL our employees, clients, and communities we live in. It is that humble underpinning that allows me to create a fantastic runway for diversity and inclusion to flourish at our firm. Long-term success of any firm is highly dependent on embracing changing demographics and increased participation of women in STEM fields. I believe each and every one of us can make a difference instead of categorizing and relegating this issue to others. I volunteer at Risen Christ Catholic Missionary School in inner city Minneapolis to help mentor 8th grade students through high school and STEM classes. Be the change you want to see in the world. It doesn't have to be a pretty slogan on board room walls, but rather something we all can live by every day for the continued prosperity of our firms and our country.

TZL: A firm's longevity is valuable. What are you doing to encourage your staff to stick around?

SS: In this competitive marketplace, excellent compensation and benefits programs are now table stakes. When clients and employees have so many choices, why stick around your firm? What are your three unique attributes? What is your value proposition? What is your purpose, mission, vision, target, and roadmap? What processes/procedures are helping you get there? What are your hurdles? Each firm must ask itself these questions. When I became the CEO 10 years ago, we adopted an Entrepreneurial Operating System or Traction Model to get to the core of those questions. It helped us identify our core values and to create a culture of trust, mutual respect, common goals, and shared ideals for a great future together. ▀



Certification agreements

Careful review of certifications with your legal counsel and insurance advisor will enable you to better address the needs of your clients and lenders.



**Rob
Hughes**

Although design professionals often are asked or required by clients to issue certifications, many simply sign certification agreements without reviewing them carefully. Unfortunately, this may leave them with large uninsured liability exposures.

The most widely used certifications applicable to design professionals include: lender certifications, which “certify” a project can be built within the budget or construction loan amount; certification for contractor payments, which require careful review, but generally don’t pose significant risks for design professionals when they include appropriate caveats; and certificate of Substantial Completion, which may pose significant risks for design professionals, who in effect are certifying a project was constructed and completed according to their plans and specifications.

A number of insurance companies and professional associations currently offer risk management guidelines for design professionals concerning certification. Victor O. Schinnerer, managing general agent for CNA and a leading underwriter of professional liability insurance for AEC firms, provides a list of questions for design firms to consider.

One of the key issues for AEC firms when a lender requires certification is whether the language in the agreement – or simply the provision of the certification – establishes a claim of detrimental reliance by a third party. For example, consider the following language from a standard certification form required by a lending institution:

“... Engineer is executing this Consent, Agreement and Certificate to induce Lender to advance funds under the Loan Agreement; and Engineer understands that Lender would not do so but for Engineer’s execution and delivery for this Consent, Agreement and Certificate.”

This should be a red flag; the legal concepts of “inducement” and “detrimental reliance” give the lender cause (where it otherwise didn’t exist) to sue the design professional. This implied

See ROB HUGHES, page 10



ROB HUGHES, from page 9

responsibility also falls outside the design professional’s “standard of care” and could result in an uninsured claim.

Meanwhile, language from two other sample certification agreements points out other potential issues for AEC firms.

EXAMPLE 1: ENGINEER’S AGREEMENT. While not all stipulations in a certification increase a design professional’s potential liability, some may have financial or other consequences. Consider the following paragraph:

Use of Plans. Engineer agrees that BANK and its agents shall have the right to possess and use all the Plans and Specifications, the Ideas, designs and concepts contained therein, and all modifications thereof, in connection with the completion of the Project, without payment of any additional fees or charges for such use.

Note the underlined text. Ideally, a design firm would maintain control of its work product or at least be indemnified for any subsequent re-use or misuse.

EXAMPLE 2: ASSIGNMENT OF ENGINEERING CONTRACT. Another type of certification agreement calls for the design professional to assign the engineering contract to the lending institution. These agreements may contain problematic language or express warranties or guarantees that can result in significant and uninsured liabilities for design firms. Consider the following paragraph from a sample agreement:

Whereas, this Agreement is given by the Engineer to (BANK) in connection with (BANK’s) disbursement of acquisition, development and/or construction loan funds (the “Loan”) for improvements to _____ (the “Borrower”), and it is intended that BANK shall rely upon the contents and accuracy of this Agreement in going forward with such financing

Here, the underlined wording appears to make granting the loan contingent upon the engineer’s certification, which goes beyond the design firm’s responsibility under the “standard of care.” Thus, design firms should seek to strike that text.

“Professional liability insurance generally covers design professionals for issues arising from their negligence, but does not cover contractual breaches that go beyond the negligence standard or arise from other issues.”

A subsequent paragraph from the same sample agreement reads:

Now, therefore for value received, the receipt of which is hereby acknowledged, and in order to induce BANK to make the Loan to Borrower, the Engineer hereby confirms and agrees as follows...

Again, the underlined wording should be deleted.

The same sample agreement also has other problematic wording:

Engineer acknowledges that BANK may be disbursing construction advances from the Loan proceeds to Borrower and/or third parties in reliance on inspections or certifications to be made or supplied by the Engineer to Borrower and/or BANK in connection with construction of the Improvements and, that BANK shall be entitled to rely upon and receive the benefits of the Contract, inspections and certifications as if BANK were a party thereto or was listed as an addressee thereon.

The first section of the underlined text expands the design professional’s potential liability and the second section (“... that BANK shall be entitled ...”) gives rights to the lender that may not have existed in the original contract.

“Make sure relevant parties understand the liability issues associated with any problematic language in the certification and explain that the design firm is likely to lack any insurance protection for related claims. This may enable you to negotiate the insertion of appropriate caveats into the certification.”

Professional liability insurance generally covers design professionals for issues arising from their negligence, but does not cover contractual breaches that go beyond the negligence standard or arise from other issues. Clients and lenders may not know that the warranties, guarantees, and other contractual commitments they request in a certification aren’t covered by the design professional’s professional liability insurance.

Make sure relevant parties understand the liability issues associated with any problematic language in the certification and explain that the design firm is likely to lack any insurance protection for related claims. This may enable you to negotiate the insertion of appropriate caveats into the certification – such as “to the best of the engineer’s/architect’s knowledge ...” – that may help preserve your coverage.

Some AEC insurers suggest defining the term “certify” at the bottom of the certification form and provide sample wording. In addition, consider including contractual language used in the most recent AIA and EJCDC documents. This language defines more clearly the intent of certifications and provides important protections.

By carefully reviewing any certification with your legal counsel and insurance advisor, negotiating the removal of inappropriate clauses and insertion of caveats to minimize potential liability, design firms will be in a better position to address the needs of their clients and lending institutions financing the projects. ▀

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Understanding ESOPs (part 5)

ESOPs are becoming an increasingly common tool for succession planning among AEC firms.



**Pat
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Undergoing an ownership or management transition is no easy task. It is important to understand one's goals and objectives prior to selecting a path to succession. An employee stock ownership plan is one of only a handful of succession alternatives. This article serves as the final part of our [Understanding ESOPs series](#).

Utilizing an ESOP as a part of the succession plan is a common tool in the AEC space, as it aligns well with the culture and objectives of many well performing companies in this space. Because it is not uncommon for AEC firms to have broad-based ownership within the management team, the employee ownership mindset is already embedded into this sector. Given that a 100 percent ESOP company (S corporation) is exempt from federal and most state income taxes, utilizing an ESOP allows the company to spread the economic benefits of ownership to the employee base in a tax efficient manner. If the ESOP transaction is structured for a C corporation, the selling shareholder(s) may have the ability to defer capital gains tax, significantly enhancing the after-tax cash proceeds from the stock sale.

“When comparing an ESOP to other transition alternatives, an ESOP remains as one of the most flexible business transition alternatives.”

Additionally, the benefit of participating in an ESOP could be used as a significant employee recruitment and retention tool. It can also help in the “she has ownership and I have no ownership” issue that exists in many AEC companies. If not addressed, this can become a significant distraction to those with no ownership. Finally, an ESOP transaction does not require a financial contribution from the employees, thus eliminating

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ON THE MOVE

DYER BROWN UNVEILS RESTRUCTURING AND NEW LEADERSHIP TRACK, NAMING KEY PROMOTIONS AND NEW ASSOCIATES Approaching its 50th year in practice, the national architecture and interior design firm **Dyer Brown** has announced a major expansion of its leadership ranks and employee ownership in the firm.

A new career track has debuted to include associate and principal levels, and the firm named its first four associates, a senior associate, two associate principals, and new director of design as part of the announcement.

Reflecting a trend among industry-leading service companies around the world, Dyer Brown's new title track and firm structure are formulated to recognize and foster professional qualities of leadership, including "commitment to the best interest of the firm as a whole; engagement of clients and teams with integrity; and maintaining transparent, respectful communication with a willingness to continually improve," says the firm.

"As we further build and expand the future of Dyer Brown, we also actively seek to foster and encourage emerging leaders and owners who will take the firm forward to the next fifty years," says Brent Zeigler, AIA, IIDA, president of Dyer Brown. "This new structure enhances our ability to reward and recognize our top designers and collaborators."

As it rolls out the new opportunity of its Associate titles, Dyer Brown has named its first four:

- Kelly Conover, the firm's marketing manager
- Maggie Mitchell, IIDA, LEED GA, senior interior designer and leader of Dyer Brown's Atlanta office

■ Charisse Marchesi Smith, senior project manager and studio coordinator for Corporate Services

■ Lisa Hylton Lamothe, senior project manager and studio coordinator for the firm's Workplace, Retail + Hospitality studio

All four were elevated to associate in December, says Zeigler.

In a related move, Dyer Brown will advance Heather Stanley, NCIDQ, to senior associate in charge of the asset design and support practice. Strengthening the ranks of this acclaimed group previously known as Building Services elevates the innovative service offering for asset managers, landlords, brokers, and property owner-managers.

Dyer Brown also announced the appointment of two associate principals:

- Ashley Dunn, AIA, who also serves as Director of Workplace
- Sara Ross, LEED AP, director of Corporate Services

In addition, the award-winning design firm has made a new director-level appointment, elevating senior architect and designer Karen Bala, AIA to be Dyer Brown's new Director of Design. Bala's advancement to this position reflects her increasingly high profile in the design community and her leadership on award-winning buildings, spaces and products. Bala's move into the role also frees the president Zeigler – formerly director of design – to devote more time to Dyer Brown's strategic planning and business operations.

"These key promotions and Dyer Brown's new title track represent our full commitment

to the evolution of our team and the future of the firm as a whole," says Rachel Woodhouse, NCIDQ, LEED AP, Dyer Brown's principal and director of operations. "The leadership track now includes the levels of associate, senior associate, associate principal, and principal, with corresponding increases in responsibility and visibility."

At the associate level and above, according to Dyer Brown, their leadership ranks are characterized by collaborating in the best interest of the whole firm, staying actively engaged in studio leadership, and seeking to develop junior staff. The firm's leaders also take on responsibilities related to financial management of their studios as they work closely with studio leaders, directors and principals to execute new strategy. Outside the firm, the associates and principals can be seen engaging widely with professional organizations and the real estate and client communities.

Dyer Brown's latest announcement signals the firm's continued robust growth and expansion in both project types and scales, as well as a clear intention to continue its tradition of growing and developing leaders from within its ranks. The move also speaks to Dyer Brown's impressive staying power and growth in new national markets, including higher education and hospitality, which demand the vision and experience of individual market leaders.

Dyer Brown is a Boston-based architectural firm specializing in building vibrant, refreshing environments for retail and professional spaces alike.

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the economic challenge that faces many key employees who might otherwise buy into an ownership position.

There has been significant ownership transition activity in recent years, with an increase in firms transitioning to ESOP ownership. This has been driven by a number of factors including: continued business transition from an aging baby boomer population; strong economic conditions; robust valuations/multiples; and strong capital markets which are creating liquidity in the market. Even given the common viewpoint that a recession is likely within the next two years, ownership transition is expected to continue at a higher than normal pace. When comparing an ESOP to other transition alternatives, an ESOP remains as one of the most flexible business transition alternatives.

As in any significant business transition event, it is important to plan accordingly. This includes making sure your books and records, management team, and professionals are ready for this undertaking (especially as it relates to ESOPs). If you would like to gain a better

"Utilizing an ESOP as a part of the succession plan is a common tool in the AEC space, as it aligns well with the culture and objectives of many well performing companies in this space."

understanding of ESOPs, or are interested in discussing the next steps as it relates to implementing an ESOP in your company, please connect with [Pat Stoltz](#) or [Jim Swabowski](#). ➤

Wintrust Financial Corporation is a \$34 billion financial services company headquartered in the Chicago area. With our national niche lending groups, including Wintrust ESOP Finance and Wintrust Construction, Engineering & Architecture, our experts have the knowledge and expertise to provide a business owner in the AEC space with a relationship-focused partner and key trusted advisor. PAT STOLTZ and JIM SWABOWSKI can be reached at pstoltz@wintrust.com and jswabowski@wintrust.com.

Wintrust ESOP Finance and Wintrust CE&A enjoyed participating in the recent 2019 M&A Next and Elevate AEC Conference and look forward to participating in future events.