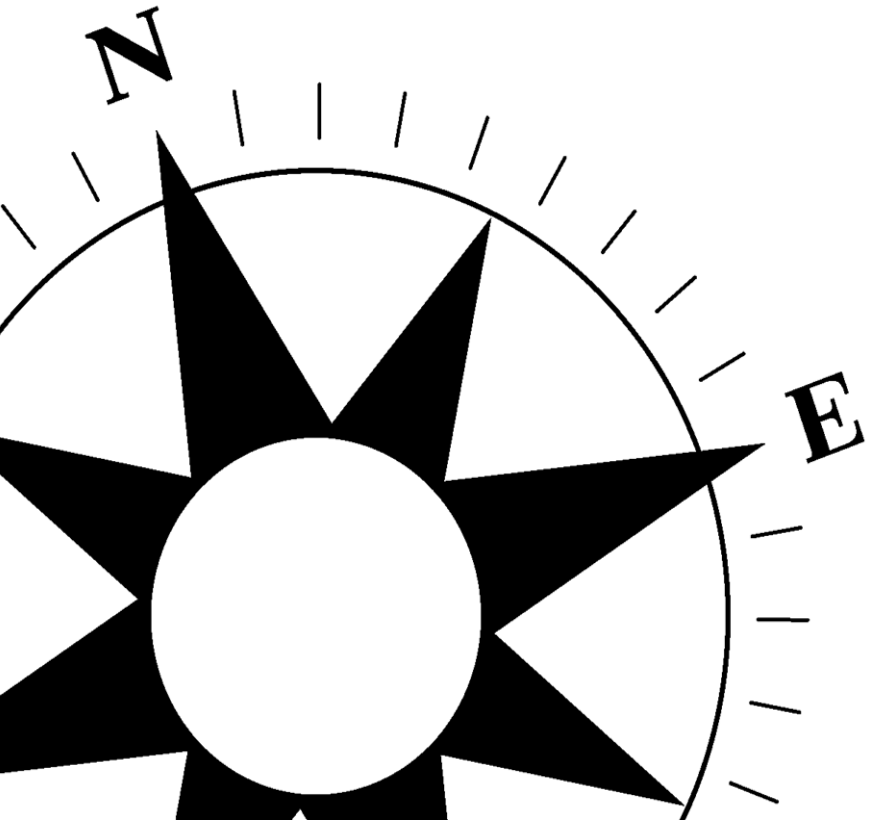
HOLMES MURPHY




# It's a Question of Ethics

**Nick Maletta**
**Client Executive/Shareholder**

**Holmes Murphy & Associates**

# Workshop Learning Objectives

1. Participants will understand their code of ethics and the rules that underpin ethical decisions
2. This program will illustrate examples and circumstances of ethical dilemmas faced by design professionals
3. After completing this program participants will understand the common complaints made against engineers
4. Attendees of this presentation will learn the steps they can follow to make ethical decisions

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

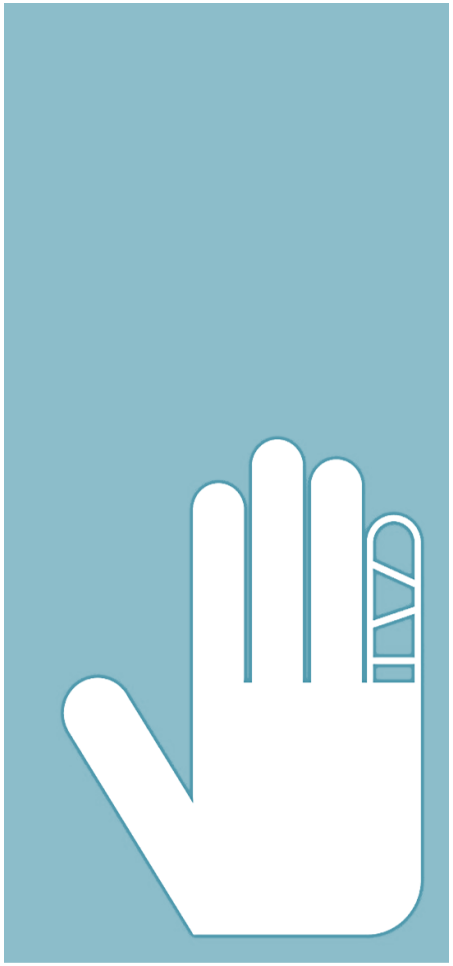
# Our Agenda

1. Review of the cannons
2. Relationship between cannons and rules
3. Issues faced and decisions made
4. Steps to making the right call

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# Does any of this sounds familiar?

1. My client asked me to do something that did not seem “right” to me.
2. While working on a project I saw something that caused me concern.
3. I was uncomfortable with actions taken by the building department or site officials
4. Only non-engineers saw the situation differently than I did
5. It is pro bono work, so some things don’t apply



© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# Discussion point

***What do we really mean by acting ethically?***

# Let’s not confuse ethics with….

- Feelings
- Religion
- Law
- Accepted norms
- Science

# Ethics, a definition

- Principles that govern a person's behavior or the conducting of an activity.
- **Synonyms:** moral code, morals, morality, moral stand, moral principles, moral values, rights and wrongs, principles, ideals, creed, credo, ethos, rules of conduct, standards (of behavior), virtues, dictates of conscience
- The branch of knowledge that deals with moral principles
- Defines how we ought to act or respond

# Code of Ethics

Canons

Ethical Standards

Rules of Conduct

# Know Your Cannons?

XL CATLIN

## What Are They

___1. Public HSW

___2. Competent in service offering

___3. Public statements; objective & truthful

___4. Faithful agent of employer or client

___5. Avoid deceptive acts

___6. Conduct that enhances profession

© 2017, XL Group Ltd. All rights reserved. I MAKE YOUR WORLD GO

# Complaints to the BER

XL CATLIN

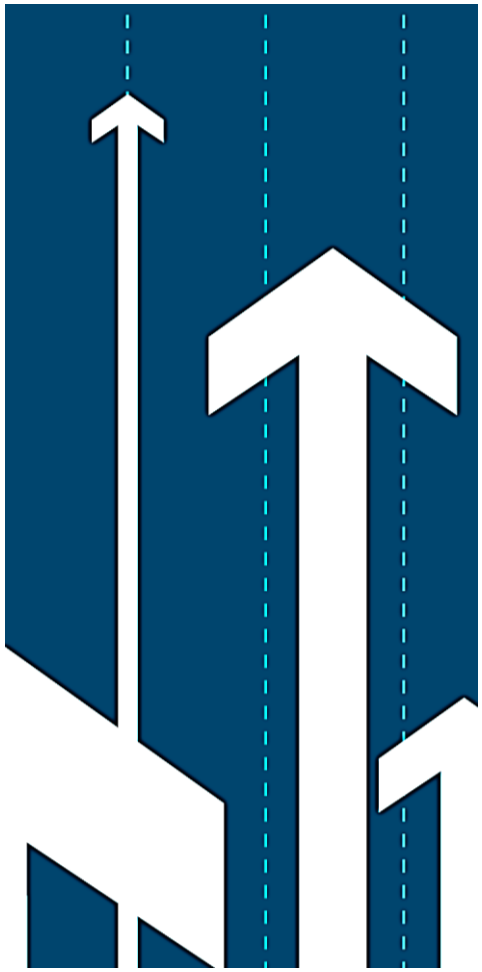
## Select five most common

| | |
|---|---|
| 1. Liability | 6. Employment related |
| 2. Advertising | 7. Expert witness |
| 3. Conflict of interest | 8. Promotional efforts |
| 4. Fees | 9. Value engineering |
| 5. Public criticism | 10. HSW & public safety |

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

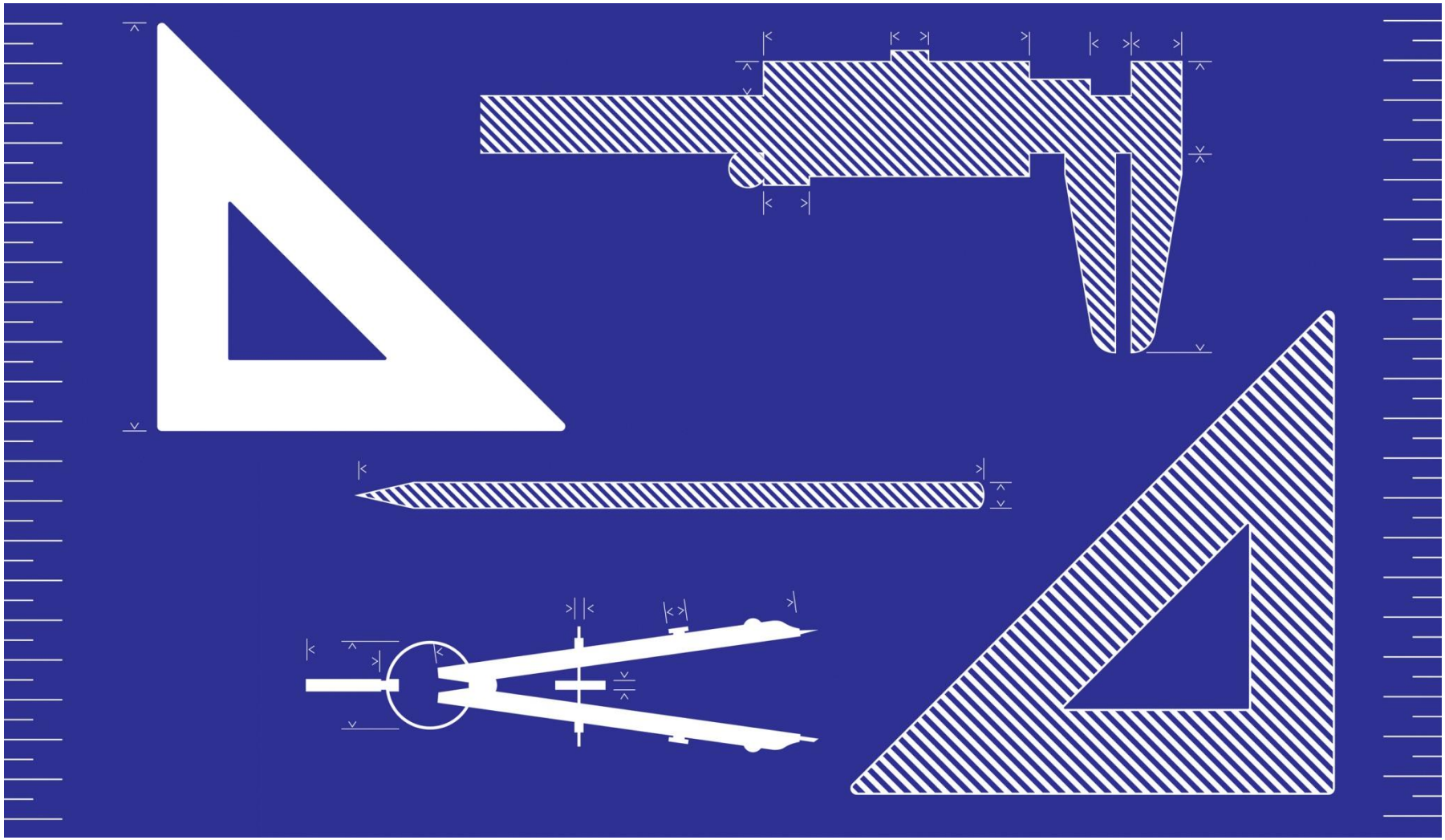
# 5 Most Common Complaints Categories

1. Conflict of interest (90)
2. Advertising (43)
3. Employment related (28)
4. Expert witness (26)
5. HSW & public safety (22)



© 2017, XL Group Ltd. All rights reserved. I MAKE YOUR WORLD GO

# Ethical Decision Making Models



© 2013, X.L. America, Inc.. All rights reserved. | *MAKE YOUR WORLD GO*

# Can ethics be taught?

?

- Most (psychologists) say yes
- A person in their 20s and 30s start to form real problem-solving strategies to deal with ethical issues
  - → Due to understanding role within society
- May be associated with higher education
- Behavior is influenced by his or her moral perception
- Ability to think morally develops in stages

# Stages of development

XL CATLIN

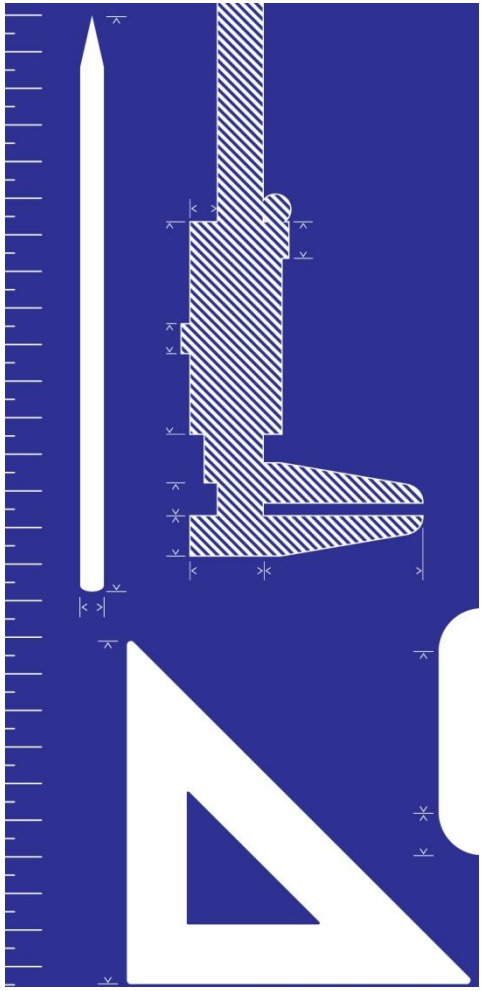
1 Pre-conventional

2 Conventional

3 Post-conventional

# Models for Resolving Ethical Dilemmas

- Establishing ethical standards is difficult
- On what do we base our ethical standards?
- How do these standards apply?
- Models for solving issues



# Ends-Based Thinking

- Do whatever produces the greatest good for the greatest number
- Cost / benefit analysis
- Sometimes called “situation-based”
- Relies upon assessing the consequences of the action

*Markkula Center for Applied Ethics at Santa Clara University*

# 21st Century Fox and Disney Merger

When companies merge, you face two different cultures that perform their work in two different ways.  The side effects of this integration can certainly be painful – layoffs, re-structuring, moves, etc.

Ultimately, the companies are trying to do what's best overall for the greatest number of people.

© 2017, XL Group plc. All rights reserved. I  MAKE YOUR WORLD GO

# Rule-Based Thinking

- A universal standard
- The rule is the rule is the rule; it applies to all in all situations
- Follow the principle

*Markkula Center for Applied Ethics at Santa Clara University*

# Behind United Airlines' Fateful Decision to Call Police – WSJ

Apr 16, 2017 - The recipe for the disastrous *decision* by *United Airlines*' employees to call ... remove a passenger from a fully booked flight was years in the *making*. ... Airline's *rules-based* culture in spotlight after man was dragged off flight

# Care-Based Thinking

- Golden rule: do unto others as you would have them do unto you
- Reversibility test
- Promotes interest of others

*Markkula Center for Applied Ethics at Santa Clara University*

# A Superintendent uses her son's insurance for a sick student

An attorney for Elwood Community Schools Superintendent Casey Smitherman says she used her **insurance** to help a sick **student** get treatment. ... "I think she's probably a **woman** with a big heart ...

# Board of Ethical Review

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

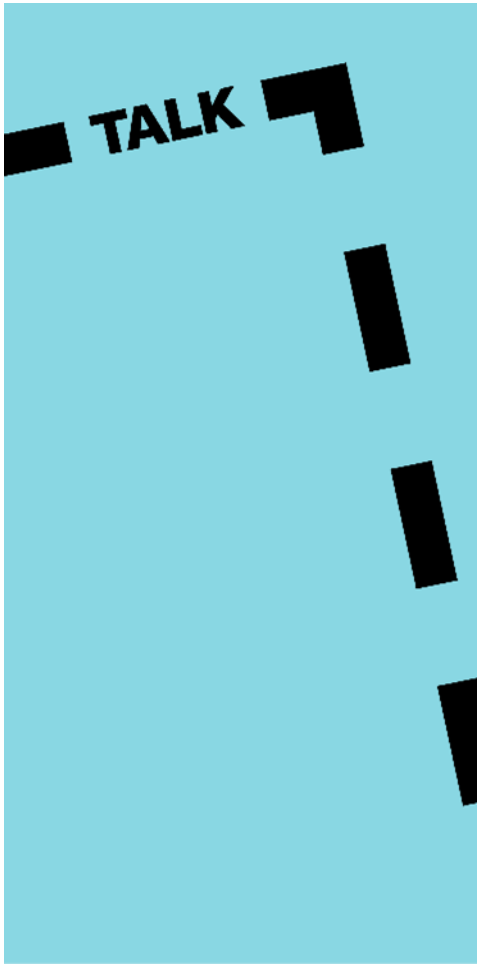
# About the BER

- Panel of engineering ethics experts that has served as the profession's guide through ethical dilemmas
- Seven licensed members who are appointed by the NSPE president
- The purpose of the BER is to render impartial opinions pertaining to the interpretation of the NSPE Code of Ethics, develop materials, and conduct studies relating to ethics of the engineering profession

# Public Health & Safety

- City engineer conducts a comprehensive traffic study that results in a public works improvement program
- Recommends the purchase of ROW to expand lane size from 11 to 12 feet, the current standard
- City council directs the engineer to retain the current lane configuration

- **What are the engineer's ethical obligations?**




© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# The Issues at Hand

- ✓ Public safety
- ✓ Engineer professional judgment
- ✓ Conformity with applicable standards
- ✓ Objective and truthful
- ✓ Faithful agents of employer
- ✓ Seal plans that are in conformity with applicable standards

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

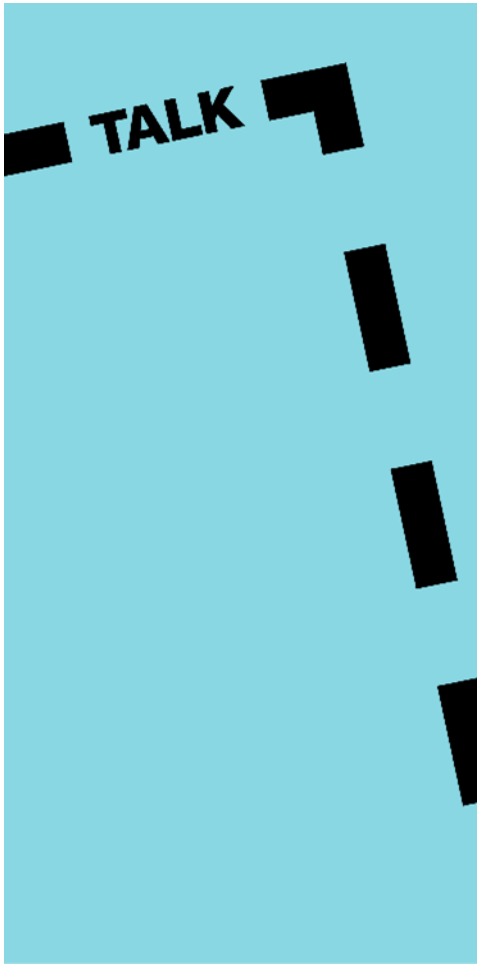
# The Decision

- The engineer is obligated to advise city leaders that the failure to follow the recommendations place the public health safety at risk
- And places the city at risk of non-compliance with federal and state standards

# Obligation to Former Employer

- Engineer, working in private sector, conducts a water rights analysis, seals final documents
- Engineer resigns from firm after submission to court and goes to work for the State, an objector to the analysis
- Engineer believes he should support his prior work. Current role has him isolated from the matter

- **What are the engineer ethical obligations under the circumstances?**




© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# The Issues at Hand

- ✓ Act as faithful agents for clients employers
- ✓ Disclose all known or potential conflicts that could influence their service
- ✓ Shall not disclose confidential information of client or employer
- ✓ Shall not, without consent, represent an adversary interest where the engineer has gained specialized knowledge

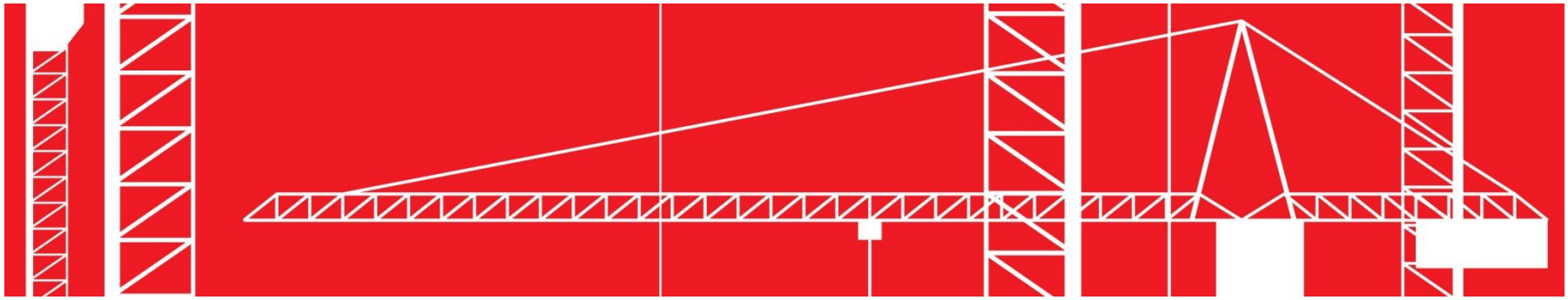
© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# The Decision

- Engineer has an ongoing duty to both former and current employer
- The engineer should be assigned other duties, isolated from the State's water rights case
- The State should respect the engineers ethical obligations in this matter

# Engineer's Conflict of Interest?

- County Hospital Board owns a hospital facility
- Engineer A, principal of local firm is on the board of the private health care provider
- Certain engineering work and surveying work needed to be performed at the hospital
- Engineer A  seeks and receives a contract to perform the work
- Design was made by the board, and Engineer A participated in this decision



# Question Before the BER

- Was it ethical for Engineer A to seek a contract with the private health care provider to perform the engineering and surveying services for the hospital?

# Applicable Rules

- Engineer in public service, shall not participate in decisions with respect to professional services solicited or provided by them or their organizations in private or public engineering practice
- Engineers shall not solicit or accept a professional contract from government body on which a principal or officer of their organization serves as a member.

# The Decision

- Engineer A was unethical to seek this contract to provide these services to the private health care provider

# LETS GET REAL

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# Hypothetical

Your boss is running late and asks you to sign him in to an Ethics Training Course. You do not know if your boss is a few minutes away, or an hour away.  What do you do??

# Options?

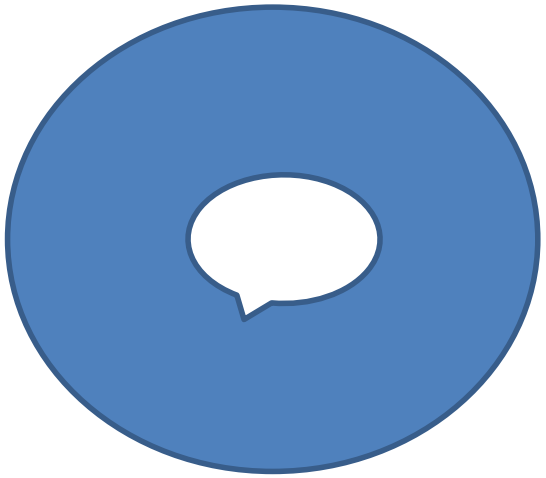
- Do you sign them in?
- What if you don't think your boss is going to actually go to the training?
- What happens if you are afraid, but there are negative consequences with the boss if they are not signed in?

- Curious, how many would sign them in? How many wouldn't?

Your residential development client wants to complete a large-scale development project (one of many) with an unreasonable scope, unattainable schedule and a “contingent” budget.  The client is a long term client of your firm and you have several projects in the pipeline. This seems to be how he normally functions and he typically secures the funds and become more reasonable as the project progresses.

# Option #1

## Easiest Option



Agree and prepare yourself for a delayed “value engineering” discussion.

# Option #2

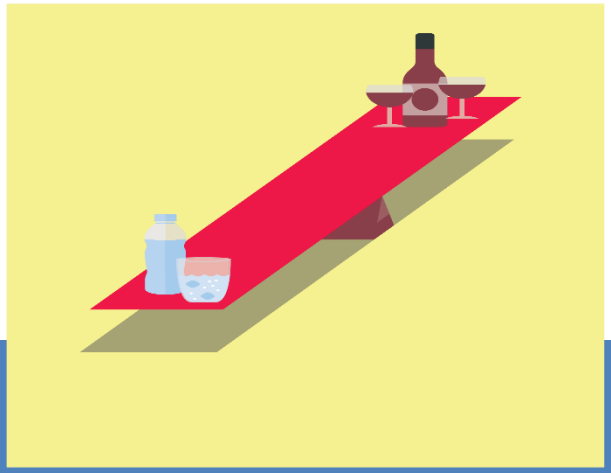
## Problem Solving

Try to scale back and work out some deals.  No one wants to disappoint a client.

# Option #3

## Face the Music

Discuss it honestly with your client. Provide realistic options and expectations.



You are leaving your job as vice president of the design firm of SEEYA Architects. You decided to establish your own firm.  You begin to put together your marketing materials.  What do you put on your website?

# Option #1

You include pictures of the projects led by you from SEEYA on your new firm website.  Its your work product so you can feature it on your new firm website.

# Option #2

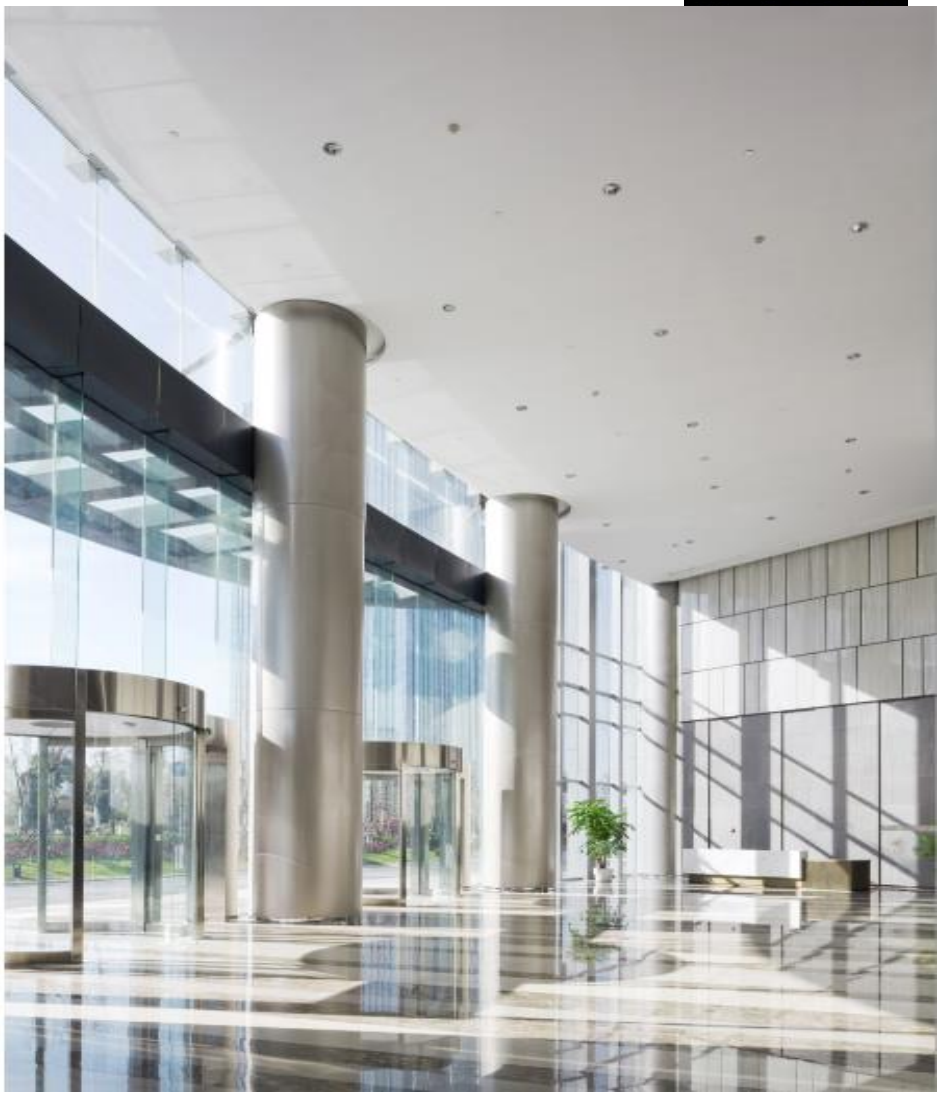
## Humble

Being sensitive to SEEYA you mention your involvement on the projects in your prior role. You do not include photos or project specifics.  That belongs to SEEYA. You hope people in the community know the scope of your work.

# Option #3

## Best Practices

Include photos of the projects from SEEYA but make sure that you credit the work as done during your tenure at SEEYA and identify and credit all included personnel on the projects.



# See Something :  Say Something

© 2017, XL Group plc. All rights reserved. I  MAKE YOUR WORLD GO

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# Do or Don’t Include in My Report?

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# WOW, What Happened?

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# Safety Communications

XL CATLIN

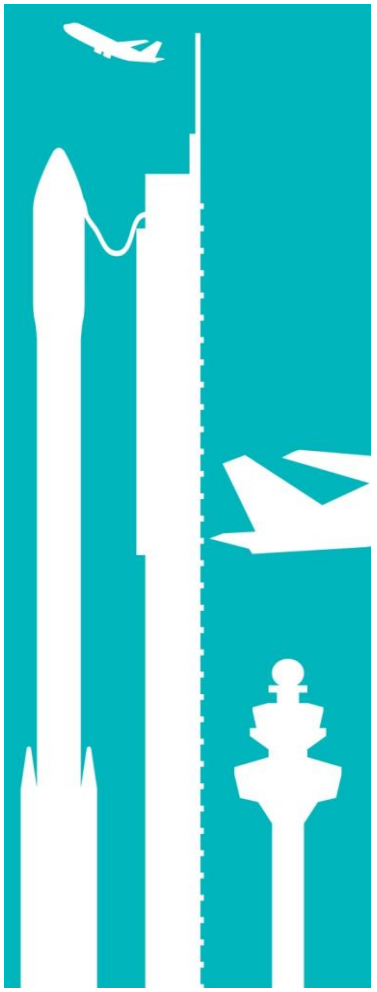
- Notify responsible party of concern
- Do not recommend a solution
- Clarify that it is outside scope
- Confirm in writing
- Discuss Sample Letter

# Sullenburger's Dilemma

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# The Situation

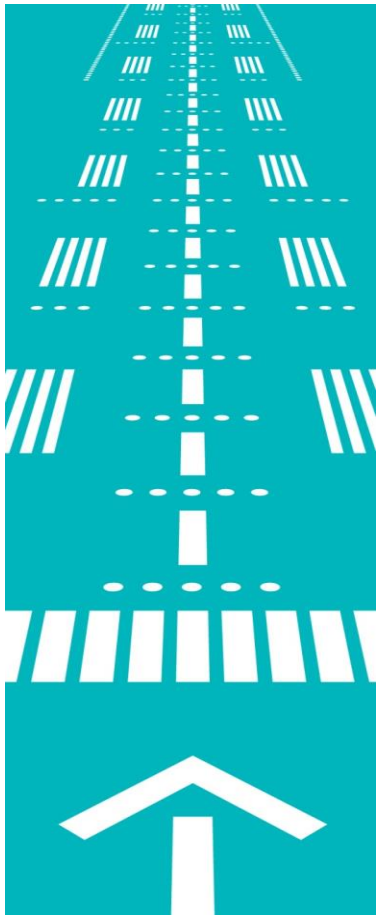
- You led the design effort for a new corporate campus located 1/2 mile away from an international airport
- You engage another AE for civil engineering and landscape services for the location.
- Your sub places a pond at the site for beautification and conservation.
- FAA guidelines suggest that ponds be placed at least 10,000 feet away



© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# Problem?

- Do you foresee an issue?
- What would be your action plan?



© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

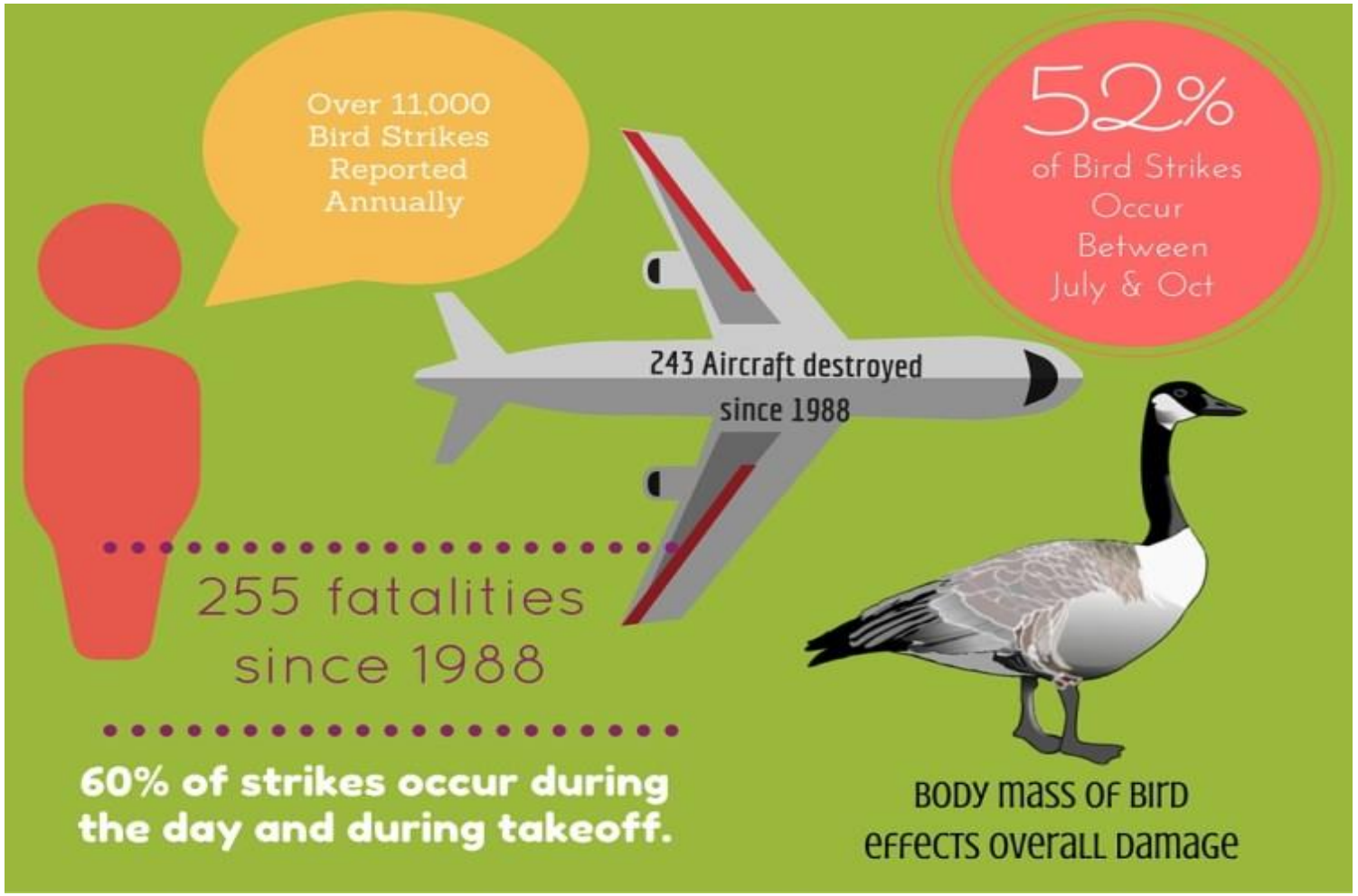
# FAA Wildlife Strike Data

- Wildlife Hazard Management Program
- Voluntary Reporting System
- A six fold increase in strikes from 1990 to 2013.
- Most during take off/landing.
- 97% birds – increase due to increase in populations (snow geese, red tail hawks, vultures)

*Sources: FAA & USDA "Wildlife Strikes to Civil Aircraft in the United States 1990-2015" and "Trends in reporting of wildlife strikes with civil aircraft and in identification of species struck under a primarily voluntary reporting system, 1990-2013"*

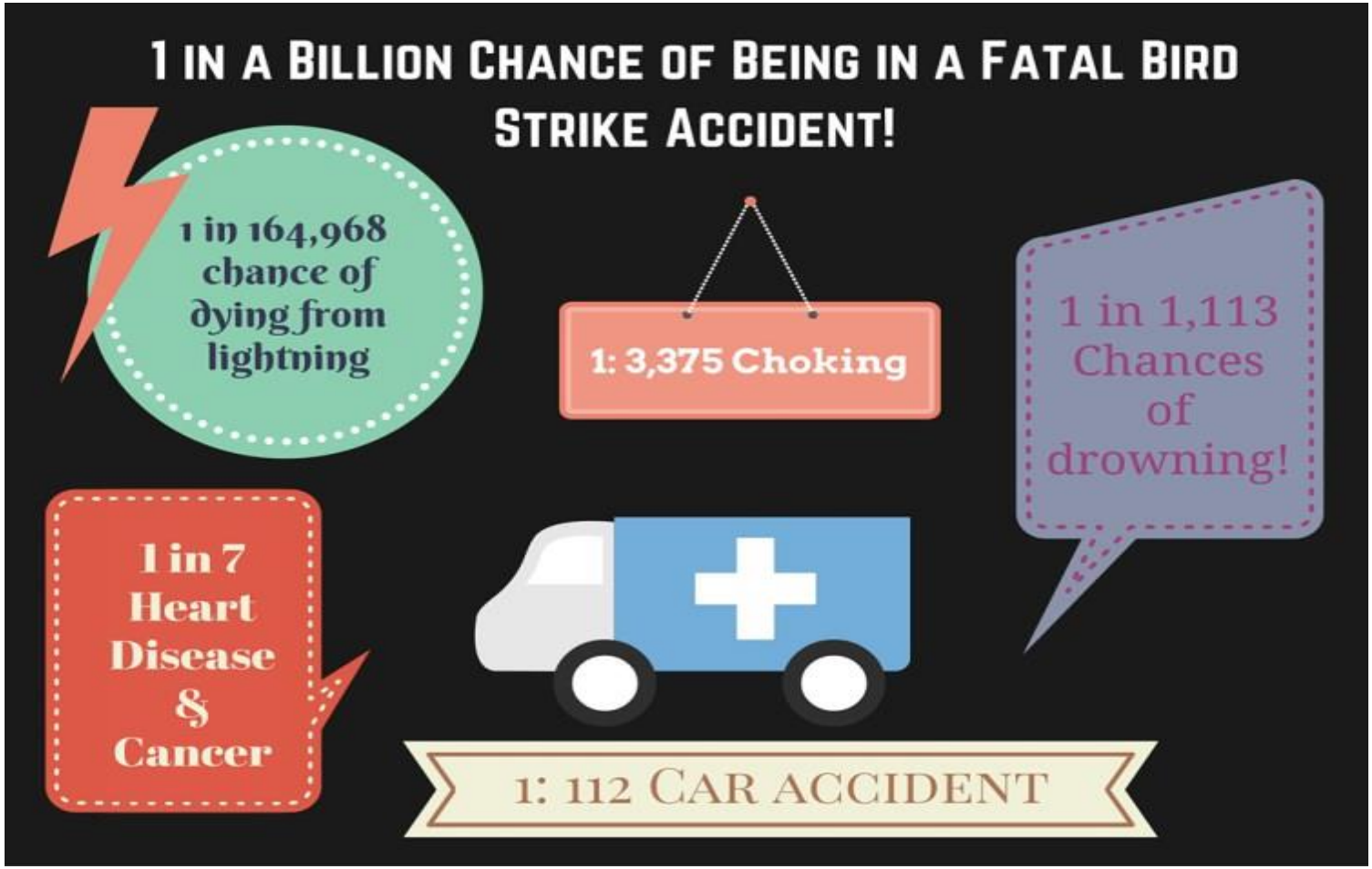
© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# The FAA Says……




© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

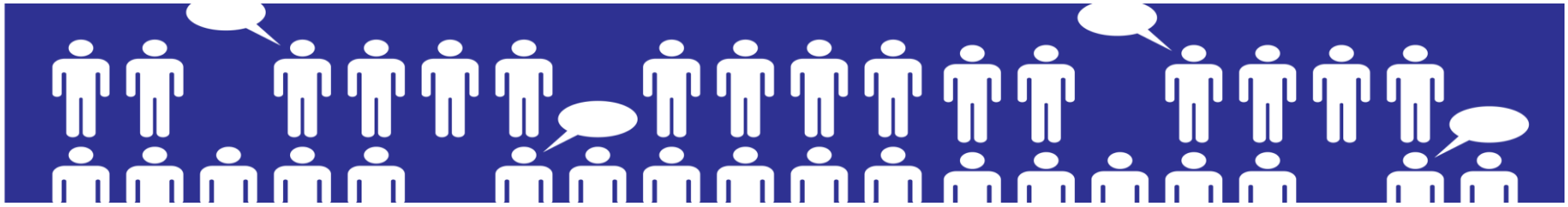
# Perspective




© 2017, XL Group plc. All rights reserved. I MAKE YOUR WORLD GO

# Possible Steps?

- Internal resources and discussion
- Contact your insurance broker /carrier
- Possible involvement of panel counsel
- Seek recommendations from USDA Wildlife Services and the County
- NSPE – not reporting – just information seeking
- Next steps?  How far would you take this issue?
  - Board of Ethics
  - Public notification



© 2017, XL Group plc. All rights reserved. I  MAKE YOUR WORLD GO

# The Rest of the Story

- Despite the FAA guideline, USDA Wildlife Services suggests using endophyte infected fescue as a vegetation solution for pond to discourage water fowl from visiting pond.  (discourages wildlife from eating: bad taste/toxic)
- Local Villages offered to take responsibility for pond – netting, loud sound/noise solutions.
- End client and local municipalities really want office complex so they advise ABC Design to proceed with pond design.
- ABC Design ***documents, documents, documents***, USDA, local municipality recommendations and proceeds with the design.
- Attorney recommends obtaining a hold harmless from parties involved for ABC Design files.

© 2017, XL Group plc. All rights reserved. I  MAKE YOUR WORLD GO

# Conclusion

# Roadmap For Resolving Issues

## Process

XL CATLIN

Identify the issue(s)

Gather the facts

Reference the code

Outside support

Document your path

Make a decision

# Public Responsibility

## Contract Provision

- Acknowledgement of your publ responsibility
- Client will not make contrary requests
- Client will act in a timely manner
- You will retain your professional judgment
- Client waives action against you

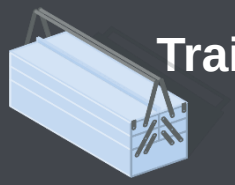
# Firm Wide Strategies to Manage Ethics

Keep Code of Ethics
**Visible**

**Discussion Forums**

**Contract Language**

**Designate an Ethics Officer**



**Ethics to Training Agenda**

**Outside Resources**

## Create an Ethical Culture

Lead by Example

# Tying It All Together

- This is not easy
- Trends are signaling potential challenges
- Make ethics a staple on your training agenda
- Leverage your association resources

Questions?
Thank you!