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Jamie Frankel offers perspective on prior calamitous events. Relationships, supply chains, working capital, experience, and wisdom will be key for survivors.

DesignIntelligence (DI): Our focus is on risk management in the post-COVID era. You suggest that COVID is causing disintermediation. Why is this disintermediation different from those we may have experienced in the prior recessions of 1987, 1990, 1997, 2001, or 2008?

Jamie Frankel (JF): Risk as we knew it pre COVID has been redefined by the unknown. Black Monday and the tragedy of 9/11 are only relative benchmarks to the risk we're now experiencing. COVID has disintermediated relationships, norms, expectations, and many of the historic definitions of risk. COVID has removed and/or altered the important economic role of intermediaries in the supply chain. Some of those "intermediaries" are human capital, material supplies, and legal tender.

Specifically:

- a. Capital has either been diverted or lost.
- b. Human capital has been sidelined by disability, death or dismissal.
- c. Projects have been placed on hold or are now being redesigned or abandoned.
- d. Redeployment of the world's economic engines is uncertain.
- e. We don't have economic or political visibility equal to what we had three months ago.

DI: Disintermediation is not a household term. Can you restate or redefine that in simpler terms? Does disintermediate simply mean disconnect?



JF: Historically, intermediaries have played an important role in our commercial world. We knew where they were and how to access them to achieve our business goals. The world order has now been disintermediated by the "Three D's," Death, Disability and Displacement. What we depended on may no longer be available to us post-COVID. Contract terms and conditions that informed our commercial lives, are and will be changing. When the economic engines of the world are re-engaged there will be a rush for the commodities to move our projects forward. Those terms and conditions are going to be governed by a new paradigm.

DI: How will the industry ensure future supply chain continuity? Might there be a new set of rules?

JF: The rules we live by are the rules of "respect." The written or common law contract terms we've lived by throughout our business lives have allocated risk accordingly. The contract clauses that guided our performance are now moving into a phase of uncertainty. Price and supply certainty are now open to new supply and demand forces that haven't been experienced by today's project managers, professionals, and owners in the private or government sectors. Price and Cash my trump contract certainty, post COVID. To some, it might be "better" to breach a contract in the world's

supply chain than to perform a pre COVID obligation and perhaps not face the consequences of that breach until sometime in the distant future, if at all.

DI: Citing force majeure or some other reason?

JF: No. Citing the lack of respect and the need to become economically viable after having been shut down for many months. Survival may trump force majeure.

DI: So, it's not force majeure, it's for their own survival. Are there no rules to the game anymore?

JF: There are still rules, and there may be consequences for breaking those rules of respect set forth within contract terms and conditions. But because of the need to survive economically, even though you were first in line pre-COVID, you may not get your goods at all, or not when you expected to, because someone may have jumped that line. They may jump the line by taking your employees from you by offering them 20% more, or they may jump the line by taking your supplies by offering 20% more to the vendor, all in order to "survive."

DI: This scenario you're painting is almost a wild-west scenario, every man and woman for themselves. The respect that had been developed potentially through societal behaviors and

legislation is now lacking the government leadership you're saying society had. It drives us to go back to every man for himself, lowering the bar for respect.

IF: You're correct. You don't need a written contract if you can rely on a handshake, and a handshake is simply mutual respect. I'm anticipating mutual respect will change because of the COVID disintermediation factor. Even a signed contract may not be respected post-COVID. We need to guard against that.

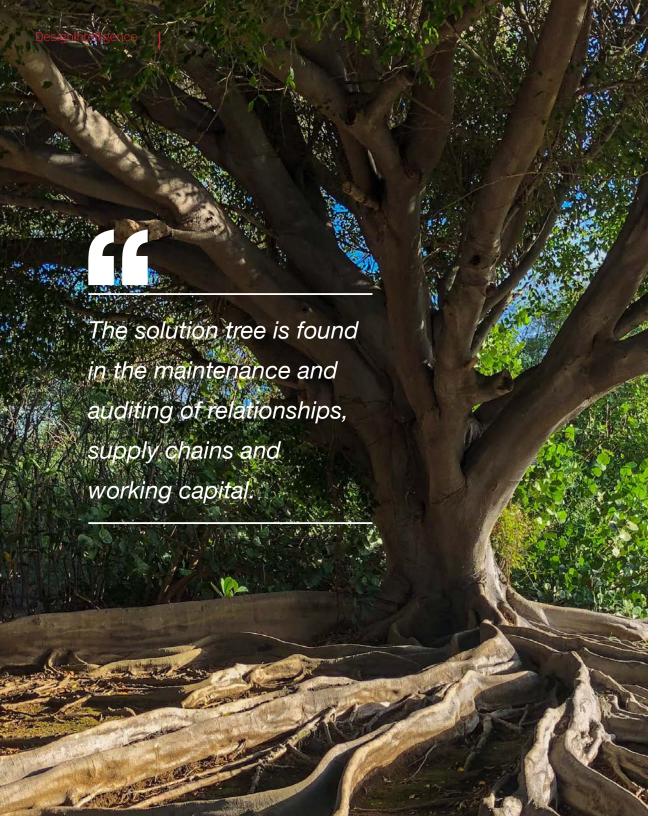
I believe to perform and move projects forward in today's COVID marketplace, those that have the labor and access to a reliable supply chain are going to look at existing projects that can move forward for one reason or another and place their labor and material supply on those projects. Contractors, subcontractors, and material suppliers may be taking on work they didn't have pre-COVID because they have access to money, labor and material, post COVID.

DI: For their own survival...

JF: Depending upon how long COVID commercially impacts the A/E/C community, that's correct. Owners, CMs, and contractors will be searching for backlog and larger margins coming out of this first wave of COVID recovery.

- DI: Given this potential scenario, what can designers, builders and owners do to manage their risk? Money solves many of these problems. Are there other solutions? How can we guard against these conditions in a wild-west environment?
- **JF:** It seems there are three keys to the solution:
- *There has to be a continuity of* relationships. Every major contract in the chain of design and construction needs to be maintained throughout this indeterminate period of COVID.
- 2. Subcontractors and critical material suppliers will need to provide assurances of ability to perform. ("Trust but verify"). Financial resources and contracts for material *supply will need to be audited*. *Supply* of labor and back up labor sources will need to be audited if quarantines are imposed due to failed testing for the virus.
- *Set up a "auditing protocol" to* examine domestic and international suppliers and their labor sources. That audit should be updated every two week and needs to include financial resources.





We started this conversation by going back to 1987. Those people who experienced and lived through Black Monday of 1987 as well as the technology and housing busts of 1990-91 and 2008 are the people I want on my team. I'm more comfortable with team members that have experienced the dislocation or disintermediation of 2008 and hopefully gained the wisdom of an experienced advisor because they've been on the playing field a long time. I'm looking for wisdom on my projects. I want my advisors, suppliers and team members to have that wisdom.

DI: In this near-term future, you're saying take nothing for granted. Trust but verify. And that those with experience, perspective and wisdom will be valuable. Great advice.

Additional funds are available now from the government, tax free or interest free. Is now the time to harvest refunds and R&D credits from the IRS?

JF: Design, construction, and manufacturing are some of the industries for which research and development tax credits were designed to benefit by the U.S. Government. Similar opportunities are available in Europe and abroad. The R&D tax credit was initiated by the United States in the early '80s to provide tax incentives to keep U.S. companies competitive with our competitors in those

foreign countries that were underwriting manufacturing, design and construction companies. Three to five years ago the architectural, engineering and construction industry started to recognize they could harvest such credits.

I'm informed that R&D tax credits can be harvested going back three tax years and therefore can be a meaningful source of cash in the near term. I'm also informed that these tax credits can be realized by way of paying a reduced amount of current federal tax or can be realized by way of seeking a tax refund for prior tax years. I'm suggesting that our clients examine this possibility in the near term to gain desperately needed working capital in this COVID era. They should do that by way of their tax advisors who practice in this area.

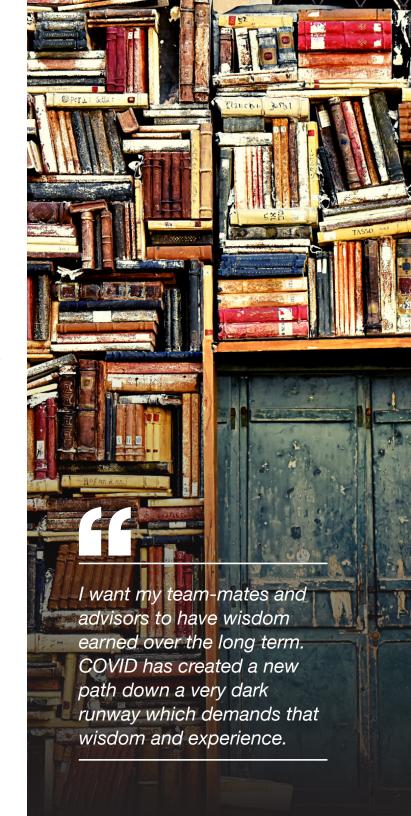
DI: That's an opportunity for firms who have struggled with how to begin or gain momentum in their research efforts. But it begs another question. When the world opens its doors again, is this a time of opportunity and aggregation, or a time for reflection and retrenchment? Where do you see design firms in six months to a year or two from now? Will the answers of the past serve a new tomorrow?

JF: If the COVID disintermediation takes a deep cut at our economy, we're going to

lose a lot of the more expensive talent who are not yet equity holders in their design or construction firms. We experienced this in '87,'90, '91, and '97 and 2008. This means to me that when the economy heats up again, we may not have the experienced team members needed to service client demand. This picture gives rise to added uninsured risk which can't usually be sustained over the long term.

I anticipate the consequences of COVID disintermediation will give rise to consolidation within the A/E/C community as well as the development of new products within that community. That consolidation will be funded by private equity as it has been in the past. Firms available for consolidation will have trimmed their overhead obligations to free themselves from the bloat created during the period of growth and profits experienced within 2012-2019 time-period. They will become targets.

Certainly, we're going to see technology take a bigger piece of the built environment economy. Smart cities are being developed by technology companies such as Sidewalk Labs / Alphabet / Google. I think we're going to see those smart city entrepreneurs look at 50, 60, 70-year-old women and men owning design firms and say:



- They didn't have an exit strategy.
- Whatever strategy they had pre-COVID won't apply post-COVID.
- We can pick off the talent or make solid acquisitions in the months ahead as COVID unfolds.

DI: What is the next generation of ownership thinking?

JF: Consider yourself a 50-year-old person that has an opportunity to acquire equity in a firm. Is that generation willing to take the risk and leap of financial faith now that the world has turned upsidedown?

DI: Do they want to commit what cash they have to an entity that's no longer what it was?

JF: Senior equity holders in today's A/E/C community will need a new exit strategy that combines value with private equity where possible or stay harnessed to their firms until the world transitions through the political and geopolitical COVID-led crisis. That timeline is a long way from being defined. I doubt it will be during the next 18-24 months.

DI: Economics and risk management are based on confidence. What does that mean when we have much less

confidence and ability to predict and extrapolate than we used to... it's an intriguing question to ponder?

Jamie, this has been a fascinating journey. You've shared much of the wisdom and perspective you talked about. Any final thoughts?

JF: Thank you Michael. You and your colleagues at DesignIntelligence are performing important work and I'm humbled to be a small part of the light you're providing on our path along this dark and uncharted COVID highway.

DI: Thank you. Your perspective is going to be helpful to many people.

Jamie Frankel is a partner in the national law firm Venable LLP. He advises owners, architects, engineers and construction companies on projects and transaction related to the built environment. Jamie counsels on project structuring, transactional documentation, and dispute resolution. He brings a multidisciplinary background and creative problem-solving skills to every client matter. Jamie also offers intermediary and business advisory services. He created the Curtain Wall Risk Management Program (CWRM) in 2014 to address the risks associated with innovative, high-performance façade systems.

Previously, Jamie founded a construction industry practice group within a major national law firm. He was also an assistant attorney general in the Claims and Litigation Bureau for New York State. In that role, he defended state agencies engaged in developing highways, buildings, and other infrastructure projects. Jamie also served as general counsel of AIA-New York for 14 years.