

## CASE STUDY

## SmartPM Helps Columbia Ventures Focus on Facts in GC Claim



### CHALLENGE

The sticky situation in which Columbia Ventures (CV) found itself is, unfortunately, a very common story - especially in an urban multifamily project.

**“The GC was moving along with construction, we were receiving regular schedule updates, budget updates, everything was running relatively smoothly,”** said Josh Thigpen, Senior Development Manager and Partner at Columbia Ventures, a commercial real estate developer focusing on multi-family and mixed-use development. **“Then a few unexpected things happened in the last third of the project that pushed out the schedule, but no official claims or notices were issued from the GC to CV as required by our agreement.”**

“Fast forward to the end of the project, the GC is delivering late and contractual Liquidated Damages (LDs) are in play. When LDs enter the picture, both sides are losing. The GCs are experiencing fee erosion and LDs are the last thing a developer wants because they never truly make you whole.”

As the GC internalized the implication of the LDs, Thigpen received a laundry list of hardships and challenges, in the form of a delay claim, covering nearly the entire duration of the project. Yet the GC offered little, if any, acceptable backup or justification. Thigpen wanted to hear out the GC as maintaining relationships are important to CV, but the GC didn't have the necessary supporting documentation. Plus, they were attempting to pull the data together after the fact, which becomes very challenging for all.

As an Owner, Columbia Ventures believed they had upheld their side of the agreement. While pursuing legal

action was certainly an option, Thigpen preferred to find a compromise in order to settle the claim expeditiously and get the project completed.

With negotiation on his mind, the first thing Thigpen did was to perform his own deep dive analysis of the GC's schedule, factoring in all the correspondence between the two companies. The next step was to hire a construction attorney to re-analyze the executed agreement, which helped CV ensure and solidify the validity of their contractual position.



### SOLUTION

After completing those steps, Thigpen turned to SmartPM to start building CV's defense against the GC's claim. CV was already using the powerful, cloud-based platform regularly to ensure the reliability of its contractors' schedules. (In fact, CV specifies the use of SmartPM in its construction agreements to ensure timely updates and accurate information.)

The use of SmartPM was a two-part process - internal and external. Internally, Thigpen used the platform to study past schedule updates, trends, quality, delay days involved, changes log, and critical path impacts. Externally, he brought in some SmartPM representatives to provide their expertise.

**“There were a handful of unforeseen challenges and design changes we wanted to put forth as an ‘olive branch’ to the GC as a way to kickstart negotiation to get to an expedited claim resolution,”** he stated.



**“These were things that, if the GC had submitted a timely Claim as required by our agreement, we likely would have reviewed and approved them - pending the appropriate level of backup and justification. Since the GC hadn’t done this, we did it on their behalf, even though it took considerable time and carried significant risk if we were in the wrong.”**

Thigpen knew this would involve regression analysis, scheduling trial-and-error, digging into hypotheticals, and creating several new baselines or models. When he realized that the level of analysis was beyond his training, he added the SmartPM folks to the equation.

Consequently, Thigpen came to the negotiating table with a truckload of visual data - charts and graphics showing all pertinent workflows and critical paths, allowing him to present a compelling case for countering the GC’s relatively evidence-free claims. He and a colleague spoke for Columbia Ventures, along with two senior representatives for the GC, hoping for a fair and equitable resolution.

## **RESULTS**

**“SmartPM was instrumental in removing emotion in order to let the facts and data dictate negotiation,”** Thigpen explained. **“I took a 30-page PDF schedule and consolidated it into just half a page of relevant data for discussion.”**

Despite the hard evidence, the GC was skeptical of the findings Thigpen was presenting primarily due to their inexperience with SmartPM and this kind of analysis. Though he was questioned on multiple occasions about the validity of the data, Thigpen’s response was always the same.

**“I kept saying, ‘This [SmartPM] is an internationally recognized method of schedule analysis. We are using your information; these were your schedules. We’re just trying to filter down to understand what would have occurred if you followed the contract and did your job.’ Ultimately, you could say that **SmartPM was the data in the room.**”**

The GC’s original delay claim constituted about a dozen separate issues; CV ended up entertaining around six. **“We avoided legal. That’s a bonus because it generally takes more money and more time.** As a smaller company, our time is one of our most valuable assets. The impacts of legal go well beyond the project as well - it affects pipeline, it affects so many things.”

This was also a great use case for CV. Thigpen explained that in the future, he would follow a slightly different procedure, one that would likely alleviate some of the learning curve later on.

**“I’m going to involve SmartPM representatives earlier in projects,”** said Thigpen. **“Literally, bringing the human side of SmartPM into the OAC and preconstruction meetings early on, so everyone can understand how the product works and how we will be employing it throughout the project. Give the GC an opportunity to get all of their questions answered and concerns addressed, prior to construction starting and potential issues arising.”**



No one wants to be in a claims situation; however, Thigpen believed this was the perfect, albeit unfortunate, audition to witness the effectiveness of SmartPM.

**“This is why you invest in some of these tools,”** he said. **“Not because you want to, but because you have to. It’s a form of insurance. This particular piece of insurance (SmartPM) is something you can look at weekly, monthly in real time, but you can also look at it in arrears. You can use it at any point in the construction process and it is going to prove its value.”**





## **ABOUT COLUMBIA VENTURES**

Columbia Ventures is a commercial real estate developer with offices in Atlanta, GA and Savannah, GA that focuses on urban infill multi-family mixed-use campus development. We're a team of curious, entrepreneurial collaborators driven to achieve the highest and best uses of the spaces we develop. We embrace the complex. We pursue the truly meaningful.



## **ABOUT JOSH THIGPEN**

As a true cradle-to-grave development manager, there are very few aspects of a project that Josh is not responsible for. From feasibility, financing, and design through construction, closeout, and transition – Josh takes pride in executing at the highest level on every Columbia Ventures deal via a hands-on approach. With an extensive construction and design background, he also enjoys mentoring the broader team and supporting much of the Columbia Ventures pipeline.

Josh is one of those rare Atlanta natives, while currently residing with his wife and three boys in Cobb County. He holds an undergraduate degree from Georgia Tech and a graduate degree from George Washington University. When not working, you will find Josh and the Thigpen family either camping, hiking, beaching, or generally just traveling.