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How Engineers Get Involved In Law Suites

Course No: LE2-024

Credit: 2 PDH

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1.0 Introduction

The purpose of this course is to provide the typical engineer a description of the legal process involved when an engineer gets involved in a lawsuit from the point of view of practicing engineering and architectural expert witness. This course discusses the difference between Civil and Criminal law, State and Federal Law as well as the normal legal steps in a lawsuit when an engineer gets sued. This course is not intended as legal advice but is intended to give the practicing engineer a basic understanding of the process of construction related lawsuits involving engineers, including practical cases this author has been involved in.

This author is a licensed engineer in New Jersey, Pennsylvania, and Florida as well as a registered architect in New Jersey that has been involved in building design for over forty years. For the past thirteen years this author owned his own expert witness company specializing in lawsuits involving building and building site related construction defect lawsuits. Prior to that this author was head of the structural and architectural departments of a mid-size consulting firm.

2.0 Civil Law vs Criminal Law

Civil law deals with disputes between individuals or organizations normally seeking monetary compensation. The burden of proof is usually "preponderance of the evidence" meaning the plaintiff (party with the allegations) must prove it is more likely than not that their claim is true.

Criminal law, on the other hand, involves offenses against society, where the government prosecutes individuals for breaking laws and seeks punishment like incarceration or when companies versus individuals are sued - fines. The burden of proof is "beyond a reasonable doubt," requiring the prosecution to prove the defendant's guilt to a high degree of certainty.

Engineers are typically only charged in criminal cases when their actions involve intent, gross negligence, or willful disregard for safety that results in harm or death, whereas they get involved in civil cases for negligence, breach of contract, or errors and omissions that cause financial or property damage. Criminal charges are brought by the government, while civil lawsuits are usually initiated by private parties that incurred damages they claim were caused by the engineer.

The tryer of fact (Jury, Judge in a bench case, or Arbitrator) deciding a civil case needs to be at least fifty-one percent convinced that the person being sued (defendant) is guilty and that level of guilt is much lower than the criminal standard – lawsuits where the juries rendered a non-guilty verdict in a criminal case can often still be found liable for monetary damages in a subsequent civil suit where the burden of proof, which is the party initiating the complaint's (plaintiff) responsibility, is much lower.

This course is geared towards Civil lawsuits which is the vast majority of suits against Engineers as Civil cases are far more common. Criminal cases for engineers typically require proving intentional, illegal acts, such as falsifying documents or gross negligence.

2.1 2007 Interstate 35 Bridge Collapse



The Interstate 35W bridge spanning the Mississippi River in Minneapolis collapsed into the Mississippi River during rush hour Aug. 1, 2007. The steel and concrete structure fell into the river, killing 13 people and injuring 145 others. The bridge had been built over 40 years prior and had been designed by Sverdrup & Parcel (at which this author formerly worked though not in the bridge division).

The cause was linked to a design error in the steel gusset plates, used to connect structural truss members together as the bridge's original design had the gusset plates specified at half their code required thickness, a flaw that went unnoticed during the initial design and subsequent reviews and that flaw was compounded by the added weight from a resurfacing project and construction materials on the bridge on the day of the collapse.

No criminal charges were filed against the engineering firm, which generally means there was no alleged gross negligence, or willful disregard for safety, however it did result in a multi-million-dollar civil suit and was a major factor leading to the downfall of one of the larger engineering consulting firms in the country.



3.0 Why Design Firm Engineers get Involved in Lawsuits

In the case of civil lawsuits involving damages from building construction projects– the lawyers representing the building owner normally start by suing anyone involved in designing, constructing, or inspecting the building area where the incident occurred. Damages alleged can be a building failure, walls or building leaks, the building not functioning correctly, delays in construction, payment disputes, or bodily injury occurs during construction. As civil suits result in a monetary award, the more firms involved in the suit the more chance the overall award will be large even if the individual firm's settle out of the case is not necessarily individually large.

Most design firms, contractors with their own engineers, construction management firms and inspection firms are covered by liability insurance, and those insurance companies have to weigh the cost of settlement early versus the cost of further litigation just to get their client out of the case. Getting insurance companies to settle early to avoid the prohibitive costs of litigation is a recognized, albeit controversial, strategic approach designed to achieve a plaintiff's minimum desired outcome or to finance further litigation. This approach often exploits the economic reality that, for many companies, settling a lawsuit for a small amount ("nuisance value") is cheaper than paying attorneys to defend it. Though during the course of the lawsuit, the individual engineer that signed and sealed the construction drawings is sued along with the firm employing them, most often it is the same insurance policy that covers both the engineering firm and the individual engineers acting within the scope of their duties working for that firm.

Since most design engineers have liability insurance and that insurance covers the fees of the attorney needed to defend lawsuits against the engineer, what a normal liability policy covers is discussed as follows:

3.1 Professional Liability Claims (Errors & Omissions)

Professional liability claims are one of the most frequent and costly issues faced by A&E firms. These arise from mistakes in designs, miscommunication with clients, or failure to meet contract terms. A simple oversight in design could result in a structural failure or major project delays, leading to substantial legal claims.

Example of an Error:

A structural engineer's miscalculation led to the collapse of a support beam during a project, resulting in a lawsuit for damages against the firm.

Example of an Omission

An architect (or engineer) does not show the roofing flashing detail the building code requires to be on the construction drawings and the roof leaks. The contractor typically will claim his job was to follow what the drawings & specifications required and that specific detail was omitted. Though the designer will often claim that the contractor should have been familiar with the building code requirements – if that building code or industry standards stated those details needed to be shown on the design drawings and they were omitted by the design professional - in this author's experience the design professional is generally found at fault.

It is noted that malpractice insurance is a type of errors and omissions insurance designed primarily for healthcare professionals, while E&O alone is used more in the fields of technology, insurance, real estate, and accounting. The two policies are similar, but not quite the same.

Errors and omissions insurance cover your business activities, while malpractice insurance is generally related to patient injuries. In short, E&O insurance covers negligence that causes financial harm, while malpractice insurance covers negligence that leads to bodily harm.

3.2 Construction Defect Claims

Description

Construction defect claims can occur when a design firm's design is blamed for a problem that arises during or after construction. This can include structural failures, water intrusion, code violations, or other defects related to the firm's work on the project. In this author's experience water intrusion due to improper installation of the building code required water resistant barrier has been one of the most frequent types of construction defect claim.

Example

An architect or engineer shows the flashing detail between the wall and a roof and the laps on the flashing are not shown in shingle fashion that directs the water over and outward onto the layer below and rather the water is directed toward the interior of the building wall resulting in rot and mold of the interior walls construction. This typically results in a legal argument as to who is at fault, the designer or the contractor, and if the building code and or industry standard does not clearly state the designer is responsible to show it on the drawings often both parties partake in the monetary settlement of the damage caused by the defect.

3.3 Breach of Contract Claims

Description

Breach of contract claims are common in the A&E industry and arise when a firm is accused of not meeting the terms of its contract. This can involve project delays, failure to deliver promised services, or disputes over the scope of work. Clients may seek damages for lost revenue or additional costs incurred due to the firm's failure to meet agreed-upon deadlines.

Example

A contractor sues an engineering firm for delays in providing timely engineering reviews of the contractor's shop drawings on a project, claiming the delay caused costly overruns and penalties. It is noted that the Construction Management Association of America (CMAA) notes that clear contracts and effective communication are key to preventing breach of contract claims in the construction and design industries.

3.4 Third-Party Bodily Injury Claims

Description

Engineering firms may face third-party bodily injury claims if someone is injured on a job site or due to their design work. These claims typically fall under general liability insurance but can also involve professional liability if the injury is tied to a design error. For example, if a structural flaw causes an accident, the firm could be held liable. Engineering firms can also be tied into the claim if they provided inspection or oversight of the construction.

Example

An inadequately braced wood truss roof system at a construction site fell resulting in an injured construction worker and subsequent lawsuit against the engineering firm responsible for the design who did not specify the code required bracing. Such claims can result in both large legal defense costs and potential large settlements, particularly if the injury is severe.

3.5 Property Damage Claims

Engineers can be held liable for property damage caused by their designs or work. If a building element fails and causes damage to property, the firm responsible for that part of the project may face a property damage claim. This type of claim can arise from construction errors, design defects, or negligence in project supervision.

Example

An Engineers poor design of a roof not accounting for the Building Code required snow drift led to a collapse under heavy snowfall, causing extensive damage to the building's interior and exterior. Property damage claims can involve high repair costs, legal fees, and possible compensation for lost income or additional expenses incurred by the building owner.

The following are examples of collapses during construction as a result of inadequate lateral bracing:



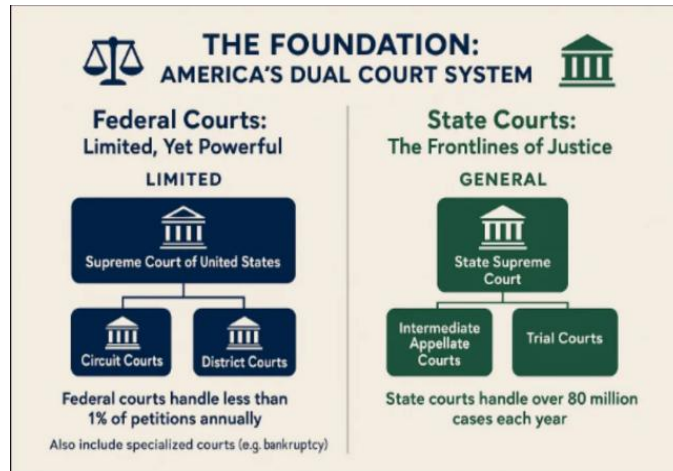
A steel framed hanger building that collapsed during construction



Wood trusses that collapsed during construction

4.0 State Court vs Federal Court

State Court manages most criminal cases, and most Civil cases such as contract cases and tort cases (personal injury) as they are most often based on that State's laws.



When allegations involve violation of Federal Law, one of the most common involving Engineers and Architects being the ADA (Americans with Disabilities Act) Federal Court has jurisdiction. When the plaintiff and defendant are from different States this also can move the jurisdiction to Federal Court.

It is noted that while many states have adopted or adapted the federal rules, and those Federal rules normally form the basis for the State's rules, each State's specific rules can vary, and some States even rely on case law rather than formal codified rules.

In federal civil court, Federal Rule of Civil Procedure 26(a)(2)(b) governs expert witness reports. This rule mandates that retained expert witnesses provide a written report, unless otherwise stipulated by the court or parties. The report must include a detailed statement of the expert's opinions, the basis and reasons for those opinions, facts or data considered, any exhibits used, the expert's qualifications, a list of publications in the past 10 years, a list of prior testimony in the past 4 years, and a statement of the expert's compensation. States, however, vary whether expert witness reports are required.

Not all engineering mistakes necessarily mean that a negligence case, more often referred to as an errors and omission case, exists. To win an engineering claim regardless of whether it is in State or Federal Court, the client must satisfy the following legal elements:

- The engineer owed the client a duty of professional care. This is usually satisfied if you hired the engineer to perform some scope of work.
- The engineer breaches a duty of care owed to the client. A breach might occur from the engineer failing to follow the standards expected in their professional community (negligence) or failing to follow specific provisions in the engineer-client contract (breach of contract).

- The client suffered monetary losses. This may take the form of increased project costs, loss of investment, fines or penalties that have been levied, or loss of future development profits.
- There is a causal link between the breach of duty and the client's losses.

This author has been involved in a high-profile Federal lawsuit covered live by all the major news networks where the Judge knew (in my opinion) the correct ruling would be highly controversial and unpopular. When this author testified that the building in question that was to host a concert had building code violations involving serious safety concerns to the building occupants the judge concurred but, in his ruling, he but “punted” the case to State Court as building codes were based on State laws and thus were a matter for State Courts to rule on not Federal Courts.

5.0 Common (Case) Law



Common law is a body of law based on judicial decisions and precedent, rather than on written statutes passed by a legislature. These previous judicial decisions become case law and serve to clarify future legal decisions. Though often used in civil law cases, common law is rarely used in criminal cases.

Written motions by attorneys normally quote case law to show how case law further expands on what statutes containing that law literally states in civil cases were as in criminal cases the definition of the crime is normally dependent on the statutory language than a previous judge's interpretation of that law.

5.1 Examples of case law:

In 2019 the Engineer Joint Contracts Document Committee published a list of engineering related court cases such as the following:



5.1.1 Florida Inspection Statute of limitations

Issue: Does the design/construction statute of repose protect an engineering firm that conducted an inspection of a newly built structure for a prospective purchaser? *Manney v. MBV Engineering, Inc.* District Court of Appeal, Florida (2019).

Summary: In 2002 Manney retained MBV Engineering to review the construction drawings and inspect a newly built house that Manney was planning to purchase. MBV informed Manney that the structural integrity of the house was excellent. Manney purchased the house.

Thirteen years later Manney retained a structural engineer who reported that the house had significant structural defects, including a design defect in the foundation. Shortly after learning of these defects, Manney filed a lawsuit against MBV alleging negligence in the 2002 inspection. MBV filed a motion to dismiss based on Florida’s 10-year statute of repose, which requires that claims “founded on design, planning, or construction of an improvement to real property” be commenced within 10 years of the first actual possession of the improvements. The trial court found that MBV’s inspection work “related to the planning, design, and construction” and therefore MBV was entitled to the protection of the statute of repose.

As a result, the trial court dismissed Manney’s lawsuit because it commenced more than 10 years after first possession. Manney appealed.

Decision: The appellate court reversed the trial court’s ruling. The court reasoned that MBV did not “design, plan, or construct” the house, and held that a claim based on negligence in analyzing the design and inspecting the construction was a step removed from a claim “founded on” design or construction errors. The appellate court concluded that MBV was not shielded by the statute of repose and instructed the parties to return to the trial court for further proceedings.

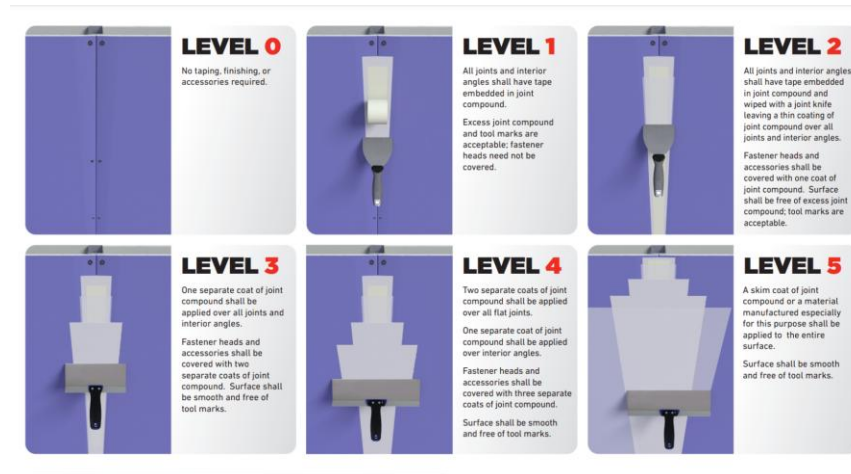
Comment: The trial court had taken a broad view, perhaps reasoning that the purpose of statutes of repose is to avoid stale claims that are very difficult to adjudicate many years after the event. The trial court’s standard was whether the claim “related to” design or construction—a standard arguably consistent with the intent of the statute of repose. The appellate court took a narrower view, focusing on the precise words of the statute (only claims “founded on” design or construction are barred).

The result of the *Manney v. MBV* decision is that the architect and construction contractor that allegedly committed errors in the design/construction are shielded from liability, while the inspector that failed to detect those errors is not.

Although not much information is given in the published case regarding the nature of the defects, during further proceedings MBV may be able to pursue a defense that the owner knew or should have known about the defects much sooner than 13 years after the house was constructed. It is also possible that the errors were not detectable through a standard inspection.

One minor point of interest about the Florida statute of repose is that the repose period starts “after the date of actual possession by the owner...” This differs from the approach taken by most statutes of repose, which measure the repose period from the date of substantial completion.

5.1.2 Army Corps Drywall Project’s Ambiguous Contract Specifications.



Issue: Interpretation of ambiguous drywall finishing specifications. Appeal of Kiewit Phelps. Armed Services Board of Contract Appeals (2019).

Summary: The U.S. Army Corps of Engineers and Kiewit Phelps (a joint venture) entered into a \$524 million contract for construction of a new facility for the U.S. Strategic Command at Offutt Air Force Base near Omaha, Nebraska. The drywall work was subcontracted to Cleveland Construction, Inc. (CCI), for \$16 million. HDR Architecture was the designer of the project.

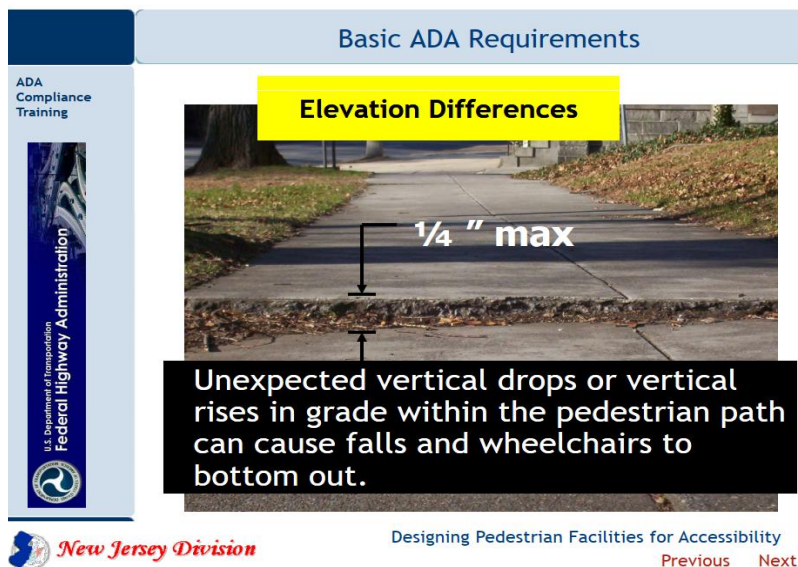
Drywall finishing refers to the application of joint tape and drywall compound (“mud”) to prepare the drywall for decorative finishes such as paint or wallpaper. There are six levels of drywall finishing, ranging from 0 (blank drywall), to Level 1 (fire-taping), to Level 5. Levels 2-5 differ in the number of applications of joint compound that are layered on the joints.

On the project, a substantial number of square feet of drywall was required to be installed in locations that ultimately would be concealed or inaccessible, and never seen after completion, for example, where drywall extended above the ceiling level.

Paragraph 3.11.6 of the drywall specifications instructed the contractor to “Apply Joint Compound and Tape in accordance with fire-rated design.” Based on their bid submittals, CCI and the other drywall bidders all had concluded that this was referring to Level 1 finish, and was the minimum level required project wide. For various exposed locations, the specifications stated specific levels of finish, primarily 4 and 5. The specifications then stated, “all remaining locations, unless noted otherwise, Level 4 Finish.” Based on their bid submittals, CCI and the other drywall contractors had interpreted this to mean “all remaining exposed locations.”

During the first 18 months of drywall work, CCI finished concealed locations with Level 1 (fire taping) only. Subsequently, the owner and architect informed CCI that Level 4 Finish was required at all locations, even if concealed. This ultimately cost CCI an additional \$5.4 million (claimed). A dispute over responsibility for the increased costs ensued, eventually reaching the Armed Services Board of Contract Appeals (ASBCA).

Decision: The ASBCA determined that both the Corps (Government) and the subcontractor had reasonable interpretations of the specifications. CCI's interpretation was supported by trade practices, the conclusions of the other bidders, the fact that the painting specification clearly stated that concealed locations would not be painted, and the 18 months of acceptance of the Level 1 finishing. The Government's position was supported by credible testimony from HDR that it had indeed intended the specification "all remaining locations...Level 4" to apply everywhere, not just to remaining exposed areas. The ASBCA concluded that when there are two reasonable interpretations, a specification is ambiguous, and when a specification is ambiguous, it will be construed against the drafter (here, the Government) under the rule contra proferentem.



Comment: The ASBCA pointed out that the result might have been different if the ambiguity had been "patent." In that case, the contractor would have had an obligation to seek clarification. The board explained that "patent" in this context means "obvious, gross, glaring, so that...contractor had a duty to inquire about it at the start." The board concluded that the ambiguity was not patent, as evidenced by the 18 months of unchallenged Level 1 work.

EJCDC has contractual requirements and bidding rules that demand that the contractor (bidders) bring ambiguities to the owner's attention: this case and others cited by ASBCA may provide guidance for future examination of these EJCDC clauses.

5.1.3 New Jersey Sidewalks

The New Jersey legislature passed a law (statute) allowing individual municipalities to pass an ordinance requiring property owners to be responsible for the upkeep of sidewalks adjacent to their property even if that sidewalk was owned by the municipality. Several Judge's rulings on settled cases expanded on that law to state that though it always applied to commercial owners that it was not intended to apply to residential properties unless that residential property owner caused a defective condition in the sidewalk (even though the statute does not differentiate between commercial and residential owners).

The judge's ruling in *Stewart v. 104 Wallace St., Inc.*) states:

The duty to maintain abutting sidewalks that we impose today is confined to owners of commercial property. See *Yanhko v. Fane*, supra, 70 N.J. at 537 (Pashman, J., dissenting); *Davis v. Pecorino*, supra, 69 N.J. at 8; *Murray v. Michalak*, supra, 58 N.J. at 225 (Proctor, J., dissenting); *Krug v. Wanner*, supra, 28 N.J. at 180 (dictum); *Moskowitz v. Herman*, supra, 16 N.J. at 228 (Jacobs, J., dissenting). While we acknowledge that whether the ownership of the property abutting the sidewalk is commercial or residential matters little to the injured pedestrian, see *Davis v. Pecorino*, supra, 69 N.J. at 12 (Clifford, J., dissenting), we believe that the case for imposing a duty to maintain sidewalks is particularly compelling with respect to abutting commercial property owners.[6] As we observed in *Krug v. Wanner*, supra, For the protection of its patrons, every commercial establishment must maintain its premises, including means of ingress and egress, in reasonably safe condition. And although the paved sidewalks fronting a commercial establishment are primarily for the use of the public generally, their condition is so beneficially related to the operation of the business that the unrestricted legal duty of maintaining them in good repair might, arguably, be placed on it. [28 N.J. at 179-80 (citations omitted)]

*160 The rule we adopt today rationalizes our law by enabling an injured person to recover damages for injuries sustained on the sidewalk in front of a store as well as those sustained in the store. We recognize that the rule adopted today will increase the expenses of many businesses and will be proportionately more burdensome to small firms than to large ones. However, we anticipate that appropriate insurance will become available and that the cost of such insurance will be treated as one of the necessary costs of doing business. As for the determination of which properties will be covered by the rule we adopt today, commonly accepted definitions of "commercial" and "residential" property should apply, with difficult cases to be decided as they arise.

Even though New Jersey's State laws (statutes) do not separate the responsibility of the residential owner versus that of a commercial (business) owner with respect to required maintenance of the adjacent municipal owned sidewalks - case law does. Case law makes a commercial owner responsible for a trip and fall that occurs on a municipally owned adjacent sidewalk with a tripping hazard but does not make a residential property owner responsible for a similar trip and fall. In this author's opinion, changing the statute by the legislature to match the case law set by a judge and changing the related ordinances to match, would be a clearer way for the average person to understand what is required of the adjacent property owner as well as a clearer way to ensure the intent of the law passed by the legislature matches the law as enforced by the courts.

6.0 Normal Lawsuit Steps

1. Plaintiff issues Complaint.
2. Defendant's Answer to the Complaint.
3. Affidavit (Certificate) of Merit (for State Court) against the Engineer.
4. Discovery by both sides.
5. Motions by the Attorneys.
6. Site Visit.
7. Expert Reports.
8. Depositions.
9. Mediation.
10. Arbitration.
11. Trial.
12. Appeals.

6.1 Complaint

A civil complaint against an engineer is filed by the damaged party (plaintiff) and typically lists allegations of wrongdoing, which may include a combination of professional negligence, failure to adhere to engineering standards, errors or omissions in designs on the part of the Engineer (defendant), all of which lead to losses or damages of the plaintiff. It may also specify the legal elements needed to prove negligence, such as the engineer's duty of care, breach of that duty, resulting damages, and a causal link between the breach and the harm. In general, because the complaint is preliminary it does not list the specifics of the alleged fault of the engineer rather it is alleged in general terms so often it is not until much later in the case when the engineer first learns what they are specifically being accused of.

VIZCAYA CONDOMINIUM
ASSOCIATION, INC.,

Plaintiff,

v.

NORTHFIELD MASS ASSOCIATES,
L.L.C.; BNE INVESTORS VII,
L.L.C.; MILLENNIUM HOMES;
ACIES GROUP, LLC.; ACROW
CORPORATION OF AMERICA; ALL
STATE CONSTRUCTION COMPANY,
INC.; AS BARLIN ASSOCIATES,
INC.; BEST GATE & FENCE, INC.,
a/k/a BEST GATE AND FENCE OF NJ;
C&S FOUNDATIONS, INC.; CAPORASO
EXCAVATING, INC.; CLEM'S
ORNAMENTAL IRON WORKS, INC.,
A/K/A CLEM'S CARFARO'S
ORNAMENTAL IRON WORKS INC.;
CONSTANT AIR, a/k/a CONSTANT AIR
SERVICES LLC; DAN'S HEATING &
AIR CONDITIONING, INC.; DE MAC
CONCRETE, INC., a/k/a DEMI
CONCRETE, INC.; DUBROW'
NURSERIES, INC.; FM HOM
IMPROVEMENT, INC.; FULLERTON
GROUNDS MAINTENANCE LLC
HARMONY HEATING CORP.; JF
FENCE, INC.; M&S BUILDERS, LLC
a/k/a MS BUILDERS AND DEVELOPER
LLC; MOBILITY ELEVATOR & LIFT
CO.; MONTE BELOS CONSTRUCTION
INC.; NK CONSTRUCTION; PRESTIGE
PLUMBING INC. a/k/a PRESTIGE

PLUMBING AND HEATING CO., INC.;
RB CONTRACTORS, INC.; RITEWAY
CONSTRUCTION, INC.; ROMITCH,
INC.; RSR CONTRACTING, LLC.;
SEAL TIGHT, INC., a/k/a SEAL
TIGHT CONTRACTING LLC; SJ CARNEY
ROOFING COMPANY, INC.; SJP
CONTRACTING, a/k/a SJP
CONSTRUCTION INCORPORATED;
SUSSEX COUNTY CONCRETE & MASONRY
CORP.; TEKCON CONSTRUCTION,
INC.; THOMAS CLARK FIBERGLASS,
LLC; THYSSENKRUPP ELEVATOR
CORP., V.S.S. LLC, a/k/a VSS
CONSTRUCTION, LLC; D. LOUREIRO
MASONRY CONTRACTOR, INC.; JHB
CONTRACTORS, LLC; AJILIA
CONTRACTORS; TERINO STUCCO, LLC;
ALL STATE RESTORATION, INC; BLUE
LINE DRYWALL AND BUILDER, INC;
COASTAL INSULATION & INSTALLED
PRODUCTS, LLC a/k/a COASTAL
INSULATION CORP.; JHC FIRE
CONTAINMENT SOLUTIONS, INC.
d/b/a JHC FIRE STOP, INC.; JOA-
LYN ENTERPRISE INC. t/a JLE
INSULATION; SYNTHETIC STONE,
INC; CHESTER, PLOUSSAS, LISOWSKY
PARTNERSHIP, L.L.C.; LESSARD
DESIGN, INC.; LESSARD URBAN,
INC.; A&S COMFORT AIR, INC.; ARCO
AIR CONDITIONING, INC.; MG
HVAC, LLC; YEREVAN CORP.;
IVLD, LLC; NORTH HVAC, INC.;
MONAIR INC.; TRI-STATE GUNITE,
LP; MERKEL REBAR, INC.; RAYMOND
POOL PLASTERING; JOHNS MANVILLE,
INC.; PATWOOD CONTRACTING
COMPANY A/K/A PATWOOD ROOFING
COMPANY; STAKPOL, LLC; V&V
GENERAL CONSTRUCTION; FM
CONSTRUCTION GROUP, LLC;
AMERICAN PANEL TEC; OASIS
GENERAL CONSTRUCTION; RB
CARPENTRY BUILDERS, INC.; GALE
ASSOCIATES, INC.; JOHN DOES 1-20
(representing contractors and

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY

DOCKET NO.: ESX-L-7766-17

Civil Action

**FOURTH AMENDED COMPLAINT;
CERTIFICATION PURSUANT TO
RULE 4:5-1; JURY DEMAND;
AND DESIGNATION OF TRIAL
ATTORNEY**

subcontractors, individually or
as companies), JOHN DOES 21-30
(representing engineers
individually or as companies);
JOHN DOES 31-40 (representing
architects individually or as
companies); JOHN DOES 41-50
(representing manufacturers);
JOHN DOES (51-60) fictitiously
named individuals; ABC CORP. (1-
10) fictitiously named entities;
JOHN DOE BROKERS/PRODUCERS (61-
80) fictitiously named
individuals and ABC CORP.
BROKERS/PRODUCERS (11-30)
fictitiously named entities,

Defendants.

NORTHFIELD MASS ASSOCIATES, LLC,

Third-Party Plaintiff,

v.

CHESTER, PLOUSSAS, LISOWSKY
PARTNERSHIP, LLP, KHACHATURIAN
ENGINEERING ASSOCIATES, INC.,
LESSARD DESIGN, INC., LESSARD
URBAN, INC., M&Z ENGINEERING
ASSOCIATES, P.C., ALL STATE
RESTORATION, INC., BLUE LINE
DRYWALL AND BUILDER, INC.,
COASTAL INSULATION & INSTALLED
PRODUCTS, LLC a/k/a COASTAL
INSULATION CORP., JHC FIRE
CONTAINMENT SOLUTIONS, INC.
d/b/a JHC FIRE STOP, INC., JOA-
LYN ENTERPRISE, INC. t/a JLE
INSULATION, SYNTHETIC STONE,
INC., INTEGRA MANAGEMENT, INC.,
GALE ASSOCIATES, INC.; JOHN DOES
1-10, ABC CORPORATIONS 11-20
(fictitiously-designated third-
party defendants being the
persons and/or entities
performing construction services
on behalf of the

This case primarily involved leaks that allow rainwater to enter a large condominium complex.

The named parties to the complaint listed to the left were provided to show the general approach often used to name all parties even remotely involved in the construction and each party then needs to hire an attorney, even if they were not involved in the incident to get them out of the lawsuit by settlement or by a motion to dismiss.

6.2 Answer to the Complaint & Interrogatories

Defendant generally replies to the allegations of the complaint often in vague terms such as ‘admit’ or ‘deny’ or “without knowledge” in correlation to each numbered paragraph in the complaint summons. Normally each answer to the lawsuit must address every allegation individually as some courts view any allegation not clearly admitted or denied as an admission.

Interrogatories are requests by each side for discovery (evidence) and responses to these requests are often delayed with refusals stating the request is “unduly burdensome” which often needs to be ruled on by the Judge.

6.3 Affidavit (Certificate) of Merit

The purpose of these affidavits is to ensure that malpractice claims are not frivolous and that there is a reasonable basis for the lawsuit, and it is required to be filed early on in the lawsuit, or the suit may be dismissed. The Affidavit (Certificate) of Merit has to be signed by a similarly licensed professional in the same state.

Federal courts generally apply federal procedural law, including the Federal Rules of Civil Procedure, which generally do not mandate an affidavit of merit but they have the discretion to also follow State law requirements (such as requiring a Certificate of Merit) where that State’s law applies to the substantive issues and does not contradict Federal law. The law firm of Segal and McCambridge’s website (<https://www.segalmccambridge.com>) lists the following states that require a Certificate of Merit:

Currently, the following 12 states require a Plaintiff to file a Certificate of Merit prior to or with a lawsuit alleging professional negligence against architects, engineers, and other licensed professionals:

State	Statute
Pennsylvania	Penn. R. Civ. P. §1042.1
Oregon	OR. Rev. Stat. Ann. §31.300
New Jersey	N.J. Stat. Ann. §2A:53A-26
Nevada	Nev. Rev. Stat. Ann. §40.6884
Minnesota	Minn. Stat. §544.42
Maryland	MD. Code Ann., Cts. & Jud. Proc. §3-2C-02
Georgia	GA. Code Ann. §9-11-9.1
Colorado	Colo. Rev. Stat. §13-20-602
California	Cal. Code §411.35
Arizona	Ariz. Rev. Stat. §12-2601
South Carolina	S.C. Code Ann. §15-36-100
Texas	Tex. Civ. Prac. & Rem. Code §150.001

Most states give a time period from when the defendant provides his answers to the complaint where the plaintiff needs to file the affidavit of merit. If the state requires the affidavit of merit and it is not properly submitted that may be grounds for dismissal of that case against the engineer. Most states do not require a specific example of what the alleged engineering malpractice was and a simple statement such as:

“Based upon my review and my analysis of the records which I have reviewed, and/or the facts of this matter, and within a reasonable degree of engineering certainty, there is a reasonable probability that the care, skill, or knowledge exercised or exhibited by the project engineer John Smith dba Smith Engineering during his services for the building constructed at 1 Some Road, Anytown, New Jersey fell outside acceptable professional engineering standards and practices.”

It is noted that some states, such as the Texas Statute listed below, require that the Certificate of Merit spell out the alleged wrongdoing by specifically citing what was done wrong part of the Engineer and why it was wrong and led to potential damages.

“CIVIL PRACTICE AND REMEDIES CODE TITLE 6. MISCELLANEOUS PROVISIONS
CHAPTER 150. LICENSED OR REGISTERED PROFESSIONALS Sec. 150.002.
CERTIFICATE OF MERIT.

....

b) The affidavit shall set forth specifically for each theory of recovery for which damages are sought, the negligence, if any, or other action, error, or omission of the licensed or registered professional in providing the professional service, including any error or omission in providing advice, judgment, opinion, or a similar professional skill claimed to exist and the factual basis for each such claim.”

6.3.1 Examples of Affidavit (Certificate) of Merit Cases

This author’s first Affidavit of Merit against an engineer turned out to be wrong as I accepted the word of my side’s attorney who told me the engineer being sued was the design engineer of record when in fact, he was not even involved in the project.

This author’s policy since then is to always have in my files what that violation was and what shows the engineers involvement, which is most often a drawing with the signed and sealed by the engineer in question that showed a code violation, and the corresponding code section violated, that could have led to the damages alleged.

In one instance the opposing attorney was so sure that there was no reasonable grounds to for me to have written an affidavit of merit against his engineer client because the area where the incident occurred was not in my clients contractual scope of work - that I was immediately deposed after the Affidavit was issued and at that deposition required to reveal the specific grounds for the affidavit of merit which in my case was the design drawing that showed the specific violation, and the corresponding building code violated.

The case involved a fall of a disabled person over the threshold of the entrance door to a doctor’s office that did not meet ADA requirements but even though the contractor’s alteration to building did not involve the front door – the building code, as well as the ADA, required that a portion of the project cost be devoted to bringing the entrance to the building up to ADA (which matched the building code) requirements.

In one instance an attorney called and asked if I were willing to write an affidavit of merit against an architect who appeared to be surprised that I would not just take his word that the architect deserved to be sued. The lawyer explained that the architect had been a horrible expert witness and I explained that the Affidavit of Merit was supposed to show that the design professional did not practice the same standard of care as the average licensed design professional and that being an expert witness was not the architect's normal licensed design activity and thus not something that Affidavit of Merit was intended for - so the attorney then explained that Judge told him of how bad a practicing architect he was during the trial.

I told him I would review the trial transcript and when I did, I could tell the architect was nervous and was scolded by the judge for not bringing his job file with him to court to which the architect explained his office was literally across the street and could get it next trial break which he did. The architect had made the mistake of handing his files directly to the opposing side's attorney (which in my opinion should have been prevented by his attorney) and that file contained an email that showed his attorney (the same one that called me) had written the conclusion of the architect's expert report as well as a significant portion of the entire report and the judge then scolded the attorney and dismissed the case. As the attorney's client was not awarded any damages the attorney was apparently now trying to recoup his losses by suing his own expert. I told him I did not feel an Affidavit of Merit was warranted against the architect and had always hoped the attorney would be the one sued for malpractice.

6.3.2 Can a design professional write an Affidavit of Merit against a different type of design professional?

Though most states state that the person writing the affidavit of merit has to be a similarly licensed professional – there are often gray areas as to what is a “similar profession.” For example, is a structural engineer allowed to write an affidavit against a mechanical engineer – or is a civil engineer allowed to write one against a landscape architect – or can an architect write one against an engineer? Each of these professions in general have a basic understanding of what the other does but in general have not done that type of design themselves.



Unless the State in question has previous case law spelling out what a “similar profession” is than it is up to the judge to determine this but this author’s recommendation in the case of design professionals that produce drawings is does your license allow you to produce the same drawing and if it does there should be allowed to write an affidavit of merit. If a different licensing board licensed the design professional in question than it could be questioned whether you are a similarly licensed professional.

This author was indirectly involved in a New Jersey case where an engineer wrote an affidavit against an architect, and it was challenged by the opposing attorney. The judge ruled that the two professions were not similar and that became case law that still applies that states an engineer in New Jersey could not write an affidavit of merit against an architect or vice versa.

6.3.3 Examples of Affidavits of Merit Cases



Fiberglass cover shop drawings

This author’s engineering firm was involved in lawsuit where a fiberglass cover over a wastewater treatment plant tank collapsed. This author’s engineering firm produced a bid drawing for the tank and cover that required the fiberglass cover to be designed (signed and sealed) by the fiberglass cover manufacturer’s professional engineer

and this author's firm listed the prescriptive building code design criteria on its drawings such as the required design load conditions such as snow, wind and seismic. Signed and sealed shop drawings and calculations for the cover were submitted to this author by this author's firm bid specifications. This author commented on the submitted calculations that there were no calculations submitted that covered the potential of the thin and long cover buckling in compression. This author was careful not to provide directions on how to do that calculation as that would tie our firm into the cover's design liability. The written response back from the fiberglass cover professional engineer is that he was a pioneer in the fiberglass field that had been doing designs like this for many years and that there was at that time no code or industry required design requirements for thin fiberglass buckling in compression.

My written response was that he was the contractor's design professional responsible for the design (not our firm) and that the shop drawings met our bid specifications in that it used the required design loading conditions and was signed and sealed by a professional engineer it was approved as noted.

The cover then collapsed as a result of what appeared to be the thin sections buckling in compression. The owner sued the fiberglass manufacturer, and the fiberglass manufacturer attempted to tie our firm as a third party into the lawsuit for being also responsible for the design as I had made comments on the design. As the attorney suing our firm did not (or could not) provide the required Affidavit of Merit against our firm the case against our firm was dismissed.

This author suggests that design engineers who by the construction contract require another engineer to perform the design to be careful not to assume the liability for errors and omissions of the contractor's engineer by clearly requiring in the design contract drawings or specification what your firm is responsible for and what the other contractor's engineer is responsible for. It still is appropriate to verify the contract design criteria are met (i.e., the correct code and loads are used) though directions on how another engineer is to do the design is not appropriate.

Painting a Bridge



Our firm had a project whose scope was simply to paint an existing small highway bridge. Shortly after the bridge was painted someone had tripped and fallen on a small step that had always existed between the sidewalk adjacent to the bridge and the continuation of that sidewalk across the bridge. That sidewalk was not to be painted or changed at all by the painting project.

However, as the attorney who brought the case makes a percentage of whatever a jury or settlement awards it is often in the attorney's interest to tie in as many parties as possible. Often with the hope that the party, or their insurance company, may be willing to settle for an amount less than what they would likely have to pay their attorneys to go all the way through with the case. Luckily in our firm's case the plaintiff could not get a professional engineer to say there were reasonable grounds to involve our firm and as it occurs early in the case the attorney's fees involved in this frivolous suit were minimal.

6.4 Discovery



Discovery is when both sides request all documents expected to be used during trial from each other. In the case of building construction related disputes this normally involves:

1. Construction Contract between the owner and contractor and the sub's contracts.
2. Contract between the Architect and the owner.
3. Contract between the consulting engineers and the architect and/or owner.
4. Contract between Construction Manager and the owner.
5. Design Professional permit drawings approved by the building official.
6. Contract specifications (sometimes referred to as a project manual) or they could be on the drawings for small projects.
7. Change Orders, Construction Directives or Requests for Information.
8. Any related field Inspection Reports.
9. Any Building Official records (permit application, permit inspections).
10. Any related construction progress Photos or defect photos.
11. Any related field testing results such concrete or masonry.

12. Any related Shop drawings (the contractor submits what products he will use to the Architect/Engineer for approval).
13. Contract specifications (sometimes referred to as a project manual) or they could be on the drawings for small projects.
14. Change Orders, Construction Directives or Requests for Information.
15. Any related field Inspection Reports.
16. Any Building Official records (i.e., permit application, permit inspections).
17. Any related construction progress Photos or defect photos.
18. Any related field-testing results (i.e., concrete or masonry).
19. Any expert reports to date. Construction progress meeting minutes or notes related to construction progress.

20. Any Special inspection reports or correspondence (the building code requires that special inspections under the direction of the engineer/architect be submitted as a report to the building official).

For the design professional it is their contract with the owner that normally defines what their duty was to the owner. The construction contract's design drawings and specifications in discovery are normally what shows the result of their design and any errors and omissions contained in those design documents are normally the key evidence used against the design professional. The design professional's contract with the owner will also show the extent of the design professional's duty during construction such as approval of the contractor's work and approval of subsequent payment requests - and if the design professional has that role, they are often tied into the lawsuit for not discovering mistakes made by the contractor even if they had no role in causing those mistakes. Contractor's project delays or cost overruns on the project will often be blamed in part on the design professional if the design professional time or design changes during construction were more than considered reasonable.

6.5 Motions by the Attorneys

Each side's attorney will make motions to either try and get their client dismissed from the case, get specific rulings from the judges, ask for sanctions against the opposing side, either try and suppress discovery or require more discovery and extend the trial dates. All motions are ruled on by the judge or in the case of arbitration the arbitrator.

6.6 Expert Engineer Reports

An engineering expert witness' role is to break down complicated subjects so that triers of fact who normally are an average lay person and not a design professional can make informed decisions. Should the dispute be of a simple nature easily understood by a lay person and expert report is not warranted.

The plaintiff's expert report is meant to show why the engineer failed to meet their Standard of Care – which is defined as the expected level of skill, knowledge, and diligence that a competent professional engineer would exercise under similar circumstances. It is not about achieving perfection or never making mistakes but rather providing the reasonable and prudent care expected by other engineers in the same field and what is normally done in that location. This standard serves as a benchmark for acceptable performance and defines the boundaries of potential professional negligence.

The plaintiff's report is normally most effective when it does not just merely state what that expert's opinion is but rather shows in layman's terms the evidence that proves that there was an error or omission made by the engineer. This is often by showing the specific design drawing error in question and showing how that design error or omission violated the building code requirement and by also showing and clearly explaining that code requirement. The plaintiff's expert report also needs to show how that error or omission led to damages normally in the form of photos of the damage and cost estimates of the required repair.



In construction-related cases a good plaintiff's report clearly distinguishes what was the contractor's fault and what was the engineer's (or architect's) fault. Standard Construction contracts such as the American Institute of Architects (AIA) A201– 2007 General Conditions of the Contract for Construction states that the Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules, and regulations as that is the design professional's job. Simply put the contractor's job is to build what was shown on the design professional's drawings and the design professional's job is to show what the contractor is supposed to build on the drawings with the required information shown on those drawings that are required for the building shown on the drawings to meet building code requirements.

The defendant engineer's expert report normally is due approximately thirty days after the plaintiff's expert report and normally takes the form of a rebuttal report primarily pointing out what was wrong with the plaintiff's expert report. This author wrote a rebuttal report for a case involving a nurse that slipped on a recently mopped hospital floor that had not yet dried. Plaintiff's expert claimed the floor as it was mopped violated the Building, Maintenance, and the Fire Codes, because each have language that floors that lead to exits have to allow safe egress and plaintiff's expert alleged a recently wet floor from mopping does not allow safe access. This basically implies that every time a floor is mopped whose floor is not slip resistant when wet (until the floor is dry) -which is the majority of common floors - three code violations exist.

The common and accepted practice of dealing with recently mopped floors known by the average reasonable person is putting "slippery when wet" signs on the floor until it dries. As the role of any expert report is to help an average person who may not understand a complex issue when the expert makes a simple issue more complex in order to make the allegation seem more serious can backfire if it violates common sense like what happened to the plaintiff's expert.

Visiting the site where the allegations occurred is a vital part of the case unless the conditions that are alleged no longer exist such as cases that involve demolition of a structure after the alleged conditions occurred.

This author has replaced an expert on a roof leak case that the judge through off the case because that expert never visited the site, and in the judge's opinion, could not reasonably understand the alleged condition. This author has also had the unfortunate experience of not making a site visit because my sides attorney told me the alleged renovations my sides contractor performed, that were the subject of the case, were demolished and no longer existed – however, the judge (in this case an arbitrator who was a former construction manager) himself had his doubts and visited the site only to discover the alleged defects were still the same way my sides contractor had left them. The only saving grace was that the opposing expert's attorneys told him the same thing, and he too did not visit the site – and the arbitrator stated that though he was incredibly dissatisfied with both experts he did not think it appropriate to throw both off the case.

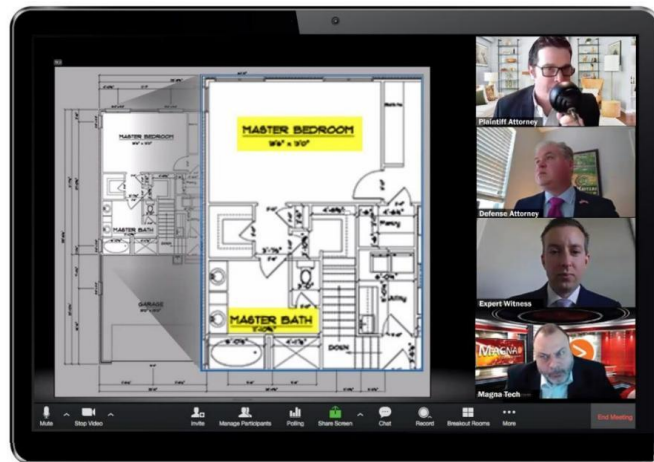
The results of site visits are most often recorded in the form of photographs by the experts of the conditions and measurements made as these are the clearest ways to show the results to the trier of fact which become crucial evidence.

6.7 Depositions

Depositions normally either occur in the office of the attorney requesting the depositions or remotely by Zoom or equivalent. Attorneys for both sides attend but the judge does not. The purpose of the depositions is to allow the parties to gather information under oath before trial. It is a key part of the discovery process, where lawyers can question witnesses and parties about the case, understand their perspective, and preserve their testimony. This helps both sides prepare for

trial, identify potential weak points in the other side's case, and potentially settle the case without going to trial.

Normally the plaintiff and defendants are deposed as well as the witnesses likely to be used at trial. In this author's experience the experts are less often deposed than the fact witnesses but might be deposed if their expert report shows something that an attorney could use to exploit their credibility.



6.8 Settlement

Approximately 95% of those cases this author has been involved in have settled prior to going to court. Often the engineer's attorney is provided by his errors and omissions insurance company who judges the costs and risks of going to trial. Often both the expert's reports will weigh heavily on the insurance companies' assessment on their cases' strengths and weaknesses in settlement negotiations.



Settlement gives certainty to both plaintiffs and defendants. Defendants can control their costs, avoid a rogue jury giving an exceptionally large verdict, and avoid having to pay defense costs. Plaintiffs also benefit from a quicker resolution to their case and from knowing what they will receive before they agree to the settlement. With benefits for both parties, it is common for negotiations to eventually be effective in resulting in a settlement- especially if both parties to the disagreement are represented by attorneys so they understand their rights and have a good idea of what the case is actually worth.

6.9 Court Ordered Arbitration & Mediation

Prior to trial there is often court ordered short mediation or arbitration that attempts but rarely succeed in resolving the disputes.



Standard construction contracts like those by the American Institute of Architects often require binding arbitration (different than court ordered Arbitration) rather than a civil trial to resolve disputes. This arbitration is not related to court ordered relatively brief mediation or arbitration but is more like a civil trial that is less formal but still resulting in a settlement.

Most construction related arbitrations are heard and decided by a neutral third party (or panel of them for complicated cases. Arbitrators do not have to be lawyers, but they can be (for example) engineers, construction managers, or developers can also be trained in arbitration. This can minimize some of the concerns above and reduce the time required to educate a judge or jury about the nuances of a dispute. Carefully selected arbitrators are more likely to understand and focus on the key material issues and are typically not as easily swayed by lawyers' emotional arguments or "expert" witnesses that might lose people in technical minutia.

Because there is no crowded court docket competing for attention, arbitration hearings can often be scheduled within months, not years. Even when millions of dollars are at stake, hearings can commence more quickly than in court, where criminal trials take priority over civil ones, especially in federal courts. In many arbitration fora, the arbitrator(s) is (are) required to issue a ruling within 30 days, unlike state or federal court without no such definitive deadlines.

The applicable rules of evidence and procedure might not be as strictly followed. This fact cuts both ways. While it often makes the proceeding smoother with less time spent fighting over, for example, the admissibility of a fact, document, or opinion, it also means more information is likely to get in front of the arbitrator.

Arbitration is generally less expensive than litigation, which is often criticized for the time and expense of pretrial discovery. As such, it is significant that with a few exceptions, arbitration limits discovery. The lack of multiple pre-hearing motions and limited pre-hearing depositions, as well as the finality of the award, substantially reduce attorneys' fees and overall costs. But of course, without knowing at the time of entering a construction contract, you may ultimately wish you had the ability to take those extra depositions, which an arbitrator may not allow to occur.

However, unlike in court, the parties must pay for arbitration. There are initial filing fees based on the amount of the claim, and arbitrators typically charge hourly rates which may be \$500 an hour or more that must be paid in full prior to any hearing. Some feel that the arbitrator being paid by the hour makes the arbitrator less incentivized to keep the total hours as low as a judge in a Civil Trial not getting paid by the hour who is responsible for keeping the court cases moving along and not having them becoming backed up.

6.10 Trial

Both plaintiffs and defendants in civil cases generally have the option to request a jury or bench trial, but the final decision of which often requires agreement from both sides. While a jury trial is often the default, a bench trial (judge only) can be chosen for faster, more technical, or less emotional proceedings. It is often thought that though two different juries can swing wildly between a low and high settlements, a judge will likely result in a more straight forward reasonable settlement. However, as the plaintiff's attorney may be basing his fee on a percentage of the settlement, they may not agree to a bench trial in hopes of a larger settlement.



In a civil trial, both sides present evidence and arguments to a judge or jury, who then decide if the plaintiff claims are more likely than not true. The judge rules on legal questions and ensures the trial follows proper procedure, while the jury determines the facts and applies the law as directed by the judge. Trials typically involve opening statements, witness testimony and cross-examination, closing arguments, and a jury verdict or judge's decision.

In a civil trial where an engineer is the defendant, the process is similar to other civil trials, but with a focus on technical expertise and potential liability related to the engineering work.

The trial will likely involve expert witnesses, analysis of engineering designs and practices, and the presentation of evidence related to negligence or breach ideally broken down in terms that a layman can understand.

Even though items such as the expert reports or the design documents exist in discovery, they are not admitted into trial until they are presented to the judge, and the opposing side can object. This process also typically involves the expert witness “voir dire” which is a preliminary examination - often called “qualifying the expert” - where attorneys question a witness regarding their education, experience, and methodology to determine their competence to testify. If the judge rules the expert acceptable, then the expert report is presented as a formal part of the case record and admitted into evidence if allowed by the judge.

6.11 Appeals

The losing side can appeal their case to an appeals court in both State and Federal Courts. Appeals courts in civil cases review decisions from lower trial courts to identify legal errors, rather than re-trying the case or reviewing facts. Excessive awards can also be appealed. Appeals courts examine the trial record, legal briefs, and oral arguments to determine if procedural mistakes or misapplications of law occurred, ultimately affirming, reversing, or remanding the case for further proceedings.

7.0 Recommendations for Engineering Contracts

Many lawyers recommend that the engineer's contract with the owner (or architect) contain the following to help limit their exposure to large settlements as the contract is not merely a pricing document; it is the engineering firm's primary risk mitigation tool. A weak contract makes the Professional Liability (E&O) insurance policy the primary defense, meaning the engineering firm shoulders the deductible, defense costs, and reputation damage.\

Steps often recommended (allow should be verified by the firm's attorney prior to using):

- **Clear Standard of Care Definition:** The contract must explicitly state that the engineer's services are rendered in accordance with the professional Standard of Care for engineers at the time of service—no higher. Avoid ambiguous terms like “best efforts” or “guaranteed results,” often invite a breach of warranty claim.
- **Waiver of Consequential Damages (The Money Trap):** This is perhaps the most critical clause. It limits the engineer's financial exposure by having the client waive the right to recover indirect losses such as lost profits, loss of use, or financing costs caused by design errors or project delays. Without this waiver, a minor error could result in damages exceeding the total value of the engineering design contract and insurance limits.
- **Strict Limitation of Liability:** Where enforceable, limit your financial liability exposure to the client—ideally to the amount of your fee or the proceeds of your E&O insurance policy, whichever is greater. This is the last financial defense against an excessive lawsuit.
- **Indemnification and Defense:** Your contract must obligate the client (or the general contractor) to defend and indemnify the engineer against claims arising from their own negligence. This creates a legal firewall against being dragged into costly litigation over contractor errors, means, or methods. Attorneys can help engineers draft clauses to ensure they are compensated when forced to litigate a matter that is clearly the contractor's fault.
- **Intellectual Property and Licensing:** Retain ownership of the design documents until full payment is received. The client receives a non-exclusive license for the project's construction. This is a vital tool for payment leverage.
- **Mandatory Dispute Resolution:** Include a clause requiring mandatory mediation or binding arbitration before any party can resort to court litigation. These mechanisms are faster, cheaper, and private, protecting the engineer's reputation. In this author's opinions standard industry contracts such as by the American Institute of Architects (AIA) for architectural led projects, or the Engineers Joint Contract Documents Committee (EJCDC) for engineering led projects, are the best to use in conjunction with the firm's lawyers recommended modifications.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its use or modification.

SUGGESTED FORM OF AGREEMENT
BETWEEN OWNER AND CONTRACTOR FOR
CONSTRUCTION CONTRACT (STIPULATED PRICE)

Prepared by

ENGINEERS JOINT CONTRACT DOCUMENTS COMMITTEE

and

Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
a practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS

AMERICAN COUNCIL OF ENGINEERING COMPANIES

AMERICAN SOCIETY OF CIVIL ENGINEERS

This document has been approved and endorsed by

The Associated General Contractors of America



General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

THE OWNER:

(Name, legal status and address)

THE ARCHITECT

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
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