

# SOIL, TOIL & TROUBLE: ENGINEERING AND THE LAW

## Engineers vs. Lawyers

## The legal perspective

- |    | Engineers vs. Lawyers   | The legal perspective  |
|----|---|--|
| 1  | <b>Understand what you can be sued for</b>                        | Engineers generally face two grounds of liability: contract liability and professional negligence. You can be sued if you breach the terms of a contract or if your conduct falls below the expected standard of care. |
| 2  | <b>Always have a retainer agreement</b>                           | Retainer agreements establish your responsibilities in writing and can prevent misunderstandings that lead to lawsuits.  |
| 3  | <b>Limit your liability in your retainer agreement (see back)</b> | Limitation of liability clauses and disclaimers help ensure that you are not held accountable for an opinion that you did not intend to give.  |
| 4  | <b>Always have insurance</b>                                      | Make sure your personal liability insurance coverage is up to date and applicable to each project you work on.   |
| 5  | <b>Have an up-to-date resume</b>                                  | An up-to-date resume can speak to your competence and knowledge if you are sued for professional negligence or retained as an expert.  |
| 6  | <b>Avoid bias</b>   | Your opinions and methodology must be honest, credible and impartial — whether preparing expert reports or appearing in court.   |
| 7  | <b>Keep thorough records</b>                                      | Notes and records that you keep during a project can be used to support your memories, defend your methodology and counter allegations against you.  |
| 8  | <b>Write expert reports yourself</b>                              | Every line of an expert report will be carefully scrutinized, so make sure that you write and edit reports yourself.   |
| 9  | <b>Maintain confidentiality</b>                                   | To avoid being sued for breach of confidentiality, always consult a lawyer before disclosing the contents of, or asking anyone to review or edit, a report that you have written.                                      |
| 10 | <b>Check your instruments</b>                                     | Always check your instruments in a manner consistent with manufacturer guidelines. This will help support your credibility as an expert.   |



## EXAMPLE OF DISCLAIMER PROVISIONS IN A CONTRACT:

Limitation of Liability. IN NO EVENT SHALL CONSULTANT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF REVENUE, OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF CONSULTANT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT ALLOWED BY LAW, IN NO EVENT SHALL CONSULTANT'S LIABILITY FOR CLAIMS ARISING OUT OF OR RELATING TO CONSULTANT'S SERVICES EXCEED THE VALUE OF THE BILLED SERVICES. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY NEGLIGENCE OF THE CONSULTANT OR ANY BREACH BY THE CONSULTANT. THESE LIMITATIONS, TO THE EXTENT ALLOWED BY LAW, APPLY TO ALL CLAIMS WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, INDEMNITY OR OTHER THEORY OF LIABILITY.

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The attached Report (the "Report") has been prepared by X (the "Consultant") for the benefit of the Y (the "Client") in accordance with the agreement between Consultant and Client, including the scope of work detailed therein (the "Agreement").

The information, data, recommendations and conclusions contained in the Report:

- are subject to the scope, schedule, and other constraints and limitations in the Agreement and the qualifications contained in the Report (the "Limitations")
- represent Consultant's professional judgment in light of the Limitations and industry standards for the preparation of similar reports
- may be based on information provided to Consultant which has not been independently verified
- have not been updated since the date of issuance of the Report and their accuracy is limited to the time period and circumstances in which they were collected, processed, made or issued
- must be read as a whole and sections thereof should not be read out of such context
- were prepared for the specific purposes described in the Report and the Agreement
- in the case of subsurface, environmental or geotechnical conditions, may be based on limited testing and on the assumption that such conditions are uniform and not variable either geographically or over time

Unless expressly stated to the contrary in the Report or the Agreement, Consultant:

- shall not be responsible for any events or circumstances that may have occurred since the date on which the Report was prepared or for any inaccuracies contained in information that was provided to Consultant
- agrees that the Report represents its professional judgement as described above for the specific purpose described in the Report and the Agreement, but Consultant makes no other representations with respect to the Report or any part thereof
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