FEBRUARY • 2017

Civil Engineering

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Letters

The Engineer Was Negligent

THE COLUMN The Law in the June 2016 issue ("Engineer Found Negligent for Not Verifying Product Data," page 92) discussed a legal case in which a contractor installed an engineer-specified rain tank that later failed, causing financial damage to the project owner. The column explains that "the highest court in Virginia recently dove into the following two issues: (1) whether a contract between a contractor and an owner can absolve an engineer of liability and (2) the evidence required to establish a breach of the standard of care on the part of a professional engineer. These issues were of such significance to the architecture and engineering community that ASCE, the National Society of Professional Engineers, the American Council of Engineering Companies, and other associations filed amicus curiae briefs to support the engineer's position. In the end, the Supreme Court of Virginia found against the engineer on both issues."

In my opinion, both the engineer of record, William H. Gordon Associates, Inc., and ASCE should be ashamed of themselves. Here's a partial list of the damning facts presented by the plaintiff against the engineer of record:

- The rain tank product was explicitly specified by the engineer.
- The contractor noted in a request for more information that the site conditions might warrant further review of the product application.
- The tank was installed per the manufacturer's requirements.
- The faulty rain tank was eventually replaced with a different product.

I have read the friend-of-the-court brief, and in it the parties seem to warn that a decision against the engineer would discourage engineers from specifying cutting-edge products, arguing that engineers would be required to perform their own research on all new products prior to implementation. That's poppycock; in this case, the product was simply misapplied.

I am dumbfounded by the professional societies' statement in their brief that the contractor was "the party best positioned to anticipate and guard against the risks associated with manufacture and installation of the Rain Tank system." Product selection and incorporation into this specific site were what the owner hired the engineer to do.

Did we all forget how our minds were trained to apply methods and superior knowledge in problem solving? Where was the application of that superior knowledge in this instance? The first sentence on licensure on the National Society of Professional Engineers' website points out that "P.E. licensure is the engineering profession's highest standard of competence, a symbol of achievement and assurance of quality." Is this how we exemplify competence and assure quality to the public, by squirming out of our duty to protect them by hiding behind insurance clauses and legal protections?

Kudos to the State of Virginia for instilling confidence in the public that engineers should be accountable for engineering and that contractors and clients can count on that as well.

SCOTT JENNINGS, P.E., M.ASCE
President, SJ Construction Consulting, LLC, Honolulu
Chair, Construction Committee, ASCE Hawaii Section

ASCE's rules of policy and procedure state that ASCE's Executive Committee can authorize participation in an amicus curiae brief when it believes a case involves issues of significant importance to the general practice of civil engineering. While this case invoked strong opinions on both sides among committee members, the majority voted for participation so that the Society could weigh in on the lower court's apparent suggestion that an engineer can always be held liable for reliance on a manufacturer's representations, rather than by deciding whether it was reasonable for an engineer to rely on such representations. For additional information on ASCE's brief, please see www.asce.org/gordonbrief