

DPRCG 2024 CONVOCATION

Claim Expose: Highway to the Danger Zone

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Learning Objectives

- Analyze real-world examples of successful and unsuccessful risk management strategies in the context of a federally-funded highway construction project
- Examine the unique challenges of resolving claims with public entities
- Learn how failure to document can result in claims and acquire specific tools to address those risks
- Understand the value of an enforceable limitation of liability clause

The Project: Highway 965 Improvements



- McClure hired by City to provide design, management, and coordination services for \$4.5M road construction project
- Project paid for, in part, by federal funds administered by Iowa DOT
- Release of federal funds conditioned on certain record keeping and reporting requirements

The Problem: IDOT Closeout Audit



- During project closeout, IDOT audit identified alleged deficiencies in record keeping
- IDOT “de-obligated” \$1.8M in project funds and sent bill to City
- City had non-delegable duty to audit construction per IDOT guidelines and did not appeal IDOT’s decision
- Nevertheless, City paid the bill and invoiced McClure, citing failure to provide funding administration services required by contract

The Claim (a/k/a The Kitchen Sink)



- Breach of Contract
- Professional Negligence
- Negligent Misrepresentation
- Fraud
- **Total claimed damages: \$1.8M**

Key Contract Provisions

McCLURE ENGINEERING COMPANY STANDARD TERMS AND CONDITIONS

LIMITATION OF LIABILITY: The Engineer's liability shall be limited to \$50,000.00 or the fee for the work performed, whichever is greater, or as specifically agreed to by separate agreement.

GOVERNING LAW: Unless otherwise provided, the Agreement shall be governed by the law of the principal place of business of the Engineer.



The Project Contract(s)



1. Phase II Improvements: \$376,200
 - **LOL: \$50k or fee, whichever is greater**
2. Additional Scope: \$108,200
 - **LOL: \$50k or fee, whichever is greater**
3. Construction Services, Inspection and Funding Administration: \$326,935
 - **Audit Services: \$27,775**
 - **LOL: \$50k or fee, whichever is greater**

TOTAL: \$811,335

Potential Outcomes



- **\$27,000** Fee for audit services only (line item)
- **\$327,000** Total fee on “funding administration” contract
- **\$800,000** Total fees on all three contracts
- **\$1.8M+** Total claimed damages

What happened next?

- 2+ years of litigation
- \$200,000+ in defense costs
- Motion to dismiss claims re intentional conduct (denied)
- Written discovery, document production, depositions, experts
- Motion for summary judgment
- Mediation
- Settlement

Lessons Learned



- Staff training and management
 - Oversight / supervision
 - Documentation and data preservation
 - Clearly defined project scope

Lessons Learned



- The power of an LOL clause
 - Clear and unambiguous
 - Tied to specific phase of service
 - Enforceable (choice of law)

Lessons Learned



- Unique challenges with municipality claims
 - Jury vs. bench trial
 - Settlement strategy with public client

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