GOLDBERG SEGALLA
ATTORNEYS AT LAW

News & Updates

POTENTIAL FOR MULTI-PARTY CONSTRUCTION SUITS PART OF JOB AT ARCHITECTURE AND ENGINEERING FIRMS

In 2013, after a rupture in the underground pipes carrying drinking water through Hammond, Indiana, turned a bubbling leak into a multimillion-gallon gusher, the city's water department sued five contractors and subcontractors that were building a municipal sewer.

In the suit, the Hammond Water Works Department alleged, in part, that those working on the sewer project — a construction company, a paving company, and two engineering firms — caused the rupture in the drinking-water system by allowing heavy equipment to be driven or parked above the subterranean pipes despite verbal warnings and surface markers showing their locations. In so doing, the suit alleged, the companies were responsible for the damage and should pay for system repairs, which had a price tag in the hundreds of thousands of dollars.

But there were problems with the suit, which alleged that by damaging the drinking-water system some of the defendants had violated an agreement by which they were to make sure the sewer project complied with Indiana's Damage to Underground Facilities Act. Defense counsel, in a successful July 2017 motion to dismiss their engineering-firm client as a defendant in the case, argued that the firm couldn't possibly have breached such an agreement with the Hammond Water Works Department because no such agreement existed; the engineering firm's contract was with the Hammond Sanitary District, not the Hammond Water Works Department, and even that contained few if any of the conditions alleged in the suit. Also, the engineering's firm's scope of work was not subject to Indiana's Damage to Underground Facilities Act. Responding to one cause of action in the complaint, lead trial counsel for the civil engineering firm's defense team — Larry D. Mason, who joined Goldberg Segalla as a Partner in May 2017 — wrote, "Plaintiff has invented a duty that simply does not exist."

The Hammond case is emblematic of construction and design lawsuits today, in an age when multi-party litigation is the norm, Larry says. "Lawsuits are filed against everyone with the goal of throwing everything up against the wall to see what will ultimately stick. It creates a lot of expensive and unnecessary litigation for the 'innocent' defendants in a case. This case was an outrageous example of a plaintiff doing exactly that."

For architecture firms, as well as for engineering firms such as Larry's client in the Hammond case, the potential for being drawn into multi-party lawsuits merely for being involved at some stage in a certain construction project is part of the job and not a happy one. Frivolous litigation harms architecture and engineering professionals in several ways, notes Larry. It raises their insurance premiums. It places a costly burden on their operations by forcing them to cooperate in their defense through discovery activities. And it strains relationships by pitting architecture and engineering firms against other contractors and subcontractors on a project, firms or companies with which they may have worked or may work again. The Hammond case was emblematic of multi-party construction suits not only because it included multiple defendants but because it was politically fraught, too. Despite our client's history of doing work for the City of Hammond, the engineering firm suddenly found itself thrust into the role of municipal adversary, an odd position that could jeopardize its ability to get city jobs in the future.

Litigating such cases requires a nuanced understanding of what successfully defending a client means and how that can change from one situation to the next. Goldberg Segalla's Construction Practice Group, chaired by Christopher J. Belter, keeps the big picture in mind as we handle clients' legal needs at all project stages, including cases in project inception, planning, and finance; design-defect and construction-related claims; worksite-injury litigation and emergency response; and payment, performance, and collection remedies.

Besides architects and engineers, our clients include contractors, subcontractors, construction managers, building owners, renewable and traditional energy firms, environmental consultants, insurers, suppliers, and others involved in construction and development.

The most common kinds of architecture and engineering litigation we handle are defective-design cases and those alleging negligent inspection or supervision. Goldberg Segalla also handles environmental cases, which fluctuate with shifts in the political landscape that bring regulatory changes. Since the Obama Administration strengthened environmental regulation the Trump Administration has relaxed many federal enforcement activities. But the need for environmental compliance at the state level has not diminished.

"The insurance market has ever-increasing competition in the environmental space, with improved product offerings to accommodate the myriad of environmental risks that architecture and engineering professionals may face," Larry says. "The economy has resulted in numerous opportunities for real estate redevelopment in places previously not believed to be available for non-industrial use. This has generated some of the more recent environmental risk challenges."

These include claims against a civil-engineering company for alleged negligence in failing to discover abandoned underground gasoline storage tanks at a site being redeveloped and claims against the engineering firm Larry defended in the Hammond case, which was alleged to have

contaminated the City of Hammond’s water supply with the water-pipe rupture.

Currently, Larry is assisting one of the firm's global insurer clients in the development of its insurance policies covering environmental liability claims against engineers, contractors, property owners, and product manufacturers — work that includes evaluating possible risks to the environment. Examples include claims stemming from the following:

Defective and/or negligent design and/or construction of water-filtration systems that result in damage to the environment
Defective and/or negligent design and/or construction of waste-management units that result in damage to the environment
Defective and/or negligent design and/or implementation of environmental remediation surveys and/or plans and/or solutions
Defective and/or negligent design and/or manufacturer of products used in environmental cleanup activities

“We have the skills to address the needs of our current and prospective clients,” Larry says. “There is nothing so unique on the emerging-risks horizon that we are not able to handle.”

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