

## The Attorney’s Engineering Consultant

The ability of an attorney to choose the proper forensic engineer/expert witness has great bearing on the outcome of a given case. Many times, finding the proper expert proves difficult and perplexing. For example, an attorney looking for an expert may never have had a similar case and therefore, had not gained the experience in selecting the particular type of expert needed for adequate assistance. The exact type of expert needed, with the proper experience and education, might be difficult to determine. Moreover, the attorney, not having previously worked with said expert has no gauge to determine how that particular expert may behave in court. The expert may seem great on paper with all the right technical, professional and educational credits, but may baffle a judge and jury by making, what seems to them, illogical or unfounded conclusions. The attorney must be able to ascertain the width and breadth of the expert’s abilities:

- Will the expert be able to take advantage of a wide range of multimedia to aid in the understanding of his argument?
- Are his models, displays, charts, videos and demonstrations thorough and easily followed?
- Is the expert capable to construct logical arguments and convey same to fellow, previously, uninformed citizens?
- Above all else, does the expert portray himself in a professional, objective manner so that his credibility can never be questioned?

A solution for this attorney conundrum is to use a firm that specializes in providing technical experts. Here the attorney would explain the case that requires the expert. This firm, then, would go

through its database of experts until they selected one who they felt met all the requirements of the particular case. This method, even though on the face looks like it would be a good solution, does have a few drawbacks. First, the company providing the service charges a fee, sometimes exorbitant, for this service. Usually, their charges are based on a percentage of the expert’s fee and can amount to as much as 40% of the fee charged to the attorney. Another consideration is that sometimes, these firms will have their own in-house personnel that they try to place before they go out to their database of independent experts. Obviously, they do this to maximize the return to the company. These in-house experts are on salary with the company and their markup can be as much as 300% to the attorney. However, even with these potential drawbacks, many times these firms will provide a better expert than one that is picked without the proper knowledge by an attorney.

Another method that has proved to be superior to using a technical expert firm would be for the attorney to have a multi-disciplined, engineering consultant. This consultant would be well versed in forensic engineering and in the duties of an expert for the particular case. One engineer assisting in the selection of another engineer resolves numerous questions about competency. And, the fee being paid to the selected expert is his true fee and not one compounded by a “head-hunting” agency.

The consulting engineer is free to consult with the attorney, helping him to formulate the technical aspects of the case along with the types of witnesses needed, a potential game plan in the use of the experts, the development of good orderly deposition questions, etc. This consultant could be considered the manager of the expert team, keeping everyone focused and on-track. A consultant, who is not designated as an expert in the particular case, can develop information that is non-discoverable! The engineering consultant can be present for depositions and comment on technical testimony of importance that might be missed by the attorney.



The downside may be, from the attorney’s perspective, the fee paid to the consultant, and now, not being able to use the consultant as a designated expert.

Many times a consulting engineer working closely with an attorney can be of great assistance in mitigating judgments and awards. An example of this is of a failed earthen slope in a subdivision. The failure was caused by heavy rains as well as the nature of the soil. The developer of the property had his contractor repair the damage to the slopes and then turned in the contractor’s bill to his insurance company for payment. The insurance company felt that the bill, in this case \$400,000, was excessive and had their house attorney secure the services of a consulting engineer to do a cost estimate to evaluate the true costs and give direction. The engineer, while doing his cost estimate, recognized that the failure that occurred was one that could occur many times over in the future in the same housing tract due to the design of the subdivision and the nature of the soil. He advised the attorney to have a geotechnical engineer check his theory.

The theory was proven to be correct and at this point the consultant strongly suggested that the insurance company settle with the property owner and development if they could get a release from further slope failures in the subdivision.

The developer did not have an engineer to investigate the cause of failure and agreed to a negotiated payment of \$290,000. The insurance company was then released from further responsibility. This happened 25 years ago, and at this time, there has been more than \$5,000,000 worth of claims against similar failures in the subdivision. The settlement with the developer by the insurance company turned out to be a very good investment.

In conclusion, an engineering consultant used to assist in managing a case may well be prudent measure in securing a beneficial outcome in a case.

**Joseph S.C. Bonadiman, P.E.**

