

Construction Law in North Carolina

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Is an Engineer ever immune from lawsuit? (Law note)

January 4, 2012



Can an Engineering firm be held liable in negligence despite provisions in a state law which allegedly gives design professionals immunity? That was the issue confronted recently by the Supreme Court in the state of Washington in a case entitled [Larry Michaels vs. CH2M Hill](#).

The Washington court analysed its state Industrial Insurance Act, which is similar to North Carolina's Workers' Compensation Act. These acts are often described as "grand compromises" between workers and their employers. Injured workers are given

a fast, no-fault compensation system for injuries in the workplace. Employers, in turn, are given immunity from civil suits. The workers get speed and certainty, while the employers are required to pay less than they would be in a lawsuit.

Washington state's Act, unlike North Carolina's Act, provides **some immunity for design professionals performing design services**, and the court had to wrestle with the applicability in a particularly gruesome case involving a catastrophic failure at the Spokane wastewater treatment plant.

One man was killed and another two other seriously injured in May 2004 when a digester dome (a huge, sports stadium-like contraption) collapsed at the wastewater treatment plant. The collapse caused Mr. Cmos to fall into heated sewage sludge, where he drowned. The lower court judge described the incident as **arguably one of the most disgusting and terrible deaths imaginable**. Mr. Evans was thrown from the dome and drenched with the sewage, while Mr. Michaels was knocked down by a cascade of sludge. The survivors, and the family of Cmos, sued CH2M for negligence.

CH2M was an engineering firm hired by Spokane as a consultant on a 10-year capital improvement project to upgrade the plant. One of the tasks the engineering firm oversaw was replacement and re-engineering of several transfer tubes between various

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digester domes at the plan. Ultimately a buildup of sewage occurred, shattering the dome on digester #3 and fatally injuring Cmos.

A series of unfortunate events took place on that day in early May of 2004 that all conspired to lead to the sewage buildup. After failed attempts to transfer the sludge to another digester, foam began leaking out of a pressure relief valve at the top of dome #3. The effluent ran down the outside of the dome and a concerned plant superintendent worried that the discharge might enter the Spoken River. The supervisor gathered Cmos, Evans and Michaels and asked if the three could assist him in diverting the sludge. Cmos and Evans climbed the dome with a fire hose to siphon foam while the superintendent and Michaels attached the other end of the hose to a drain.

The dome continued filling with sludge until it finally cracked and collapsed. Cmos, alive and conscious, dropped into 100 degree sewage sludge and died in excruciating physical pain, darkness and utter helplessness. Evans and Michaels suffered varying severe injuries including broken limbs and lung damage from aspirating the sewage.

The city hired an engineering firm to investigate the disaster. The firm concluded there were three main causes: 1) a blocked overflow pipe; 2) a malfunctioning monitoring system inside the digester; and 3) a failed attempt to transfer sludge out of the digester.

Tomorrow, we'll discuss the Court's analysis and ruling concerning **whether or not CH2M had immunity** from being sued, and Friday we'll discuss a few **take-away lessons** from the case. Stay tuned.....

Have you signed up for the blog to be delivered directly to your in-box? If not, do so now, so you'll be sure to catch part 2 of this article, and never miss any other posts here, either.

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