



D23 Why Engineers Are Named in Construction Defect Lawsuits: When Conflicts Arise Between the Building Code, Engineering Judgment, and Common Sense

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After attending this presentation, attendees will better understand some of the common reasons engineers are named in construction defect lawsuits, various aspects of the building code, situations in which using engineering judgment may be problematic, and the challenges facing forensic engineers when a conflict arises between engineering recommendations, engineering plans, and the applicable building code.

This presentation will impact the forensic science community by sharing experience gained through involvement in nearly 500 construction defect claims (and expert testimony in more than 200 construction defect lawsuits). This presentation will also increase engineers' awareness of various conditions that should be assessed at the time of design and construction. Multiple case studies will be presented and the relevant findings and opinions on each matter will be discussed.

The building code provides relevant guidance for design professionals and contractors. Experience has shown that many design professionals and contractors are not well acquainted with some portions of the building code. In these instances, the variation between the engineering design and the applicable building code can become problematic. Engineers are frequently named in lawsuits when conflicts arise between the building code, engineering judgment, and common sense.

Many parties acknowledge that when multiple standards specify differing requirements for the same aspect of construction, the more stringent (or restrictive) standard shall apply; however, experience has shown that the more stringent standard is not always the "applicable" standard. The Building Code states: "Where there is a conflict between a general requirement and a specific requirement, the specific requirement shall be applicable." In more complicated litigated matters, engineering plans sometimes provide details which are less stringent than the adopted building code or general notes to a set of plans. In these cases, the specific requirement may be the "applicable" requirement, but not the more stringent (or restrictive) requirement implemented for construction. In situations such as these, engineering judgment and common sense should be used.

When variations between engineering design and the adopted building code exist, the arguments issued by opposing parties generally relate to engineering judgment. In some instances, engineering judgment may be inconsistent with the current or applicable building code. Perceived deviations, or inconsistencies, within engineering plans will frequently lead to lawsuits because forensic engineers may argue the relative importance of the building code versus engineering judgment.

Based on the review of numerous cases, differences are frequently found by outside parties who scrutinize the pre-design engineering recommendations, the engineering plans and the adopted building code. Differences between engineering plans and building codes can be one of the primary causes for a construction defect lawsuit.

Engineer Lawsuit, Building Code, Engineering Judgment