



## Alerts

### Engineer Who Placed His Seal On Allegedly Defective Design Plans Did Not Have An Independent Tort Duty To Owner

**August 12, 2014**

*Professional Lines Alert*

*McConnell v. Servinsky Engineering, PLLC*, Case No. 2:13 CV 00048 (USDC W.D. Va. May 20, 2014)

Plaintiff owner entered into a contract with a Michigan engineering firm that operated as a limited liability company to design a post foundation for a building in Virginia. One of the principals in the firm was licensed in Virginia and he personally performed the design services and put his seal on the plans. The post foundation failed and four attempted fixes designed by the same engineering firm were also unsuccessful. The owner filed an action in the United States District Court for the Western District of Virginia asserting claims against the engineering firm and the engineer individually for breach of the professional standard of care, alleging that he was personally liable for the damages because he attached his engineer's seal to the allegedly defective design plans and the Michigan statute which permitted professionals to do business as limited liability companies stated that members would still be liable for negligent acts while performing professional services. The owner's amended complaint also alleged claims for breach of implied warranty and breach of an implied contract against the engineer individually. The engineer moved for judgment on the pleadings and the motion was granted by the District Court and the engineer was dismissed.

#### **Question Before the Court and How the Court Ruled**

*Whether placing an engineer's seal on a set of design plans and the engineer's status as a professional creates an independent tort duty?*

No. The court held that an engineer performing a professional service pursuant to a contract between the owner and his limited liability company does not assume an independent tort duty. Although adherence to professional standards is an implicit term of any contract for services with a professional engineer, this alone does not create an independent tort duty. The court also held that merely placing the seal as a stamp of approval on plans also did not create an independent tort duty. Virginia state courts had held that a claim for breach of professional duties was properly brought as a contract claim unless there was damage to a person or other property.

#### Service Areas

Professional Liability



The court also held that the Michigan statute governing the practice of a professional through a limited liability company, also did not apply to create an independent common law duty. The court found that Virginia had two statutes similar to the Michigan statute which had been construed by the Virginia courts as not intended to abrogate the common law and give rise to new causes of action against professionals absent clear legislative intent.

The court further found that the plaintiffs claim against the engineer individually was precluded by the economic loss doctrine finding that a structurally deficient building is an economic loss rather than an injury to property. The court also held that there were no claims for breach of implied warranty or breach of implied contract because the owner's written contract was with the limited liability company, not the engineer.

### **What the Court's Decision Means for Practitioners**

This court declined to hold that a statute governing professionals doing business as a limited liability companies gave rise to an independent cause of action for professional negligence against an individual engineer who affixes his seal to a set of design plans. The contract here between the owner and the limited liability engineering company governed the relationship between the parties. The court noted that the recent trend in some states is to decline to apply the economic loss doctrine and to recognize the existence of independent common law causes of action for professional negligence. In the same vein, the California Supreme Court recently held that a principal design architect owed a common law duty of care to future homeowners even where the architect had no control over actual construction, *Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP*, S 208173 (July 3, 2014).

For more information, please contact [Cassidy E. Chivers](#).

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