

Appellate court upholds Expert Testimony Requirement to Establish Prima Facie Case of Professional Negligence

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To maintain a professional negligence claim against a design professional, including architects, engineers and surveyors, litigants are required to present expert testimony on both the applicable standard of care and the alleged violation of the standard of care by the design professional. If no such expert testimony is rendered, no claim of professional negligence may stand.

Recently, in *City of Huntington Woods v Orchard, Hiltz and McCliment, Inc.*, the Michigan Court of Appeals reaffirmed the longstanding law in Michigan that requires expert testimony be rendered to establish a prima facie case of professional negligence. In *Orchard*, the defendant (OHM), entered into a contract with the City of Oak Park, to which OHM agreed to provide design engineering services for the rehabilitation of a roadway in Oakland County. OHM entered into a second contract with Oak Park, to which it agreed to provide construction engineering services for the rehabilitation and reconstruction of the same roadway.

The final plans and specifications prepared by OHM specified that a specific type of binder was to be used in the asphalt on the roadway, a representative of the manufacturer of the geogrid material was to be available when the material was installed and a seasonal suspension of paving was to occur from Nov. 14 to April 16. The plans and specifications also required that a change order be issued when any deviation from the plans occurred.

A second municipality, Huntington Woods, argued that it was the intended beneficiary of the contracts that OHM signed with Oak Park. Huntington Woods sued OHM, alleging that OHM “breached the OHM contracts by providing negligent design or negligent inspection ... resulting in defective pavement in the Huntington Woods portion” of the rehabilitation project. After some debate at the trial court level, it was determined that the claims advanced by Huntington Woods against OHM were for professional negligence only, and not breach of contract. This is significant because different legal theories are argued in professional negligence cases verses breach of contract cases.

The case continued to trial, and a jury returned a verdict in favor of Huntington Woods. OHM appealed. The crux of OHM’s argument on appeal was that Huntington Woods failed to present expert testimony to establish the appropriate standard of care, and that OHM violated the standard of care. OHM also

APPELLATE COURT UPHOLDS EXPERT TESTIMONY REQUIREMENT TO ESTABLISH PRIMA FACIE CASE OF PROFESSIONAL NEGLIGENCE Cont.

argued that the municipality failed to establish, through expert testimony, that any alleged breach of the standard of care was the cause of Huntington Wood's damages (i.e., the premature and rapid deterioration of the roadway).

The appellate court agreed with OHM, reversing the lower court's ruling and requiring judgment be entered in favor of the defendant. The court reaffirmed the long established Michigan law that a professional negligence claim requires proof of wrongdoing based upon a breach of the applicable standard of care.

Although it was undisputed at the appellate court level that OHM did not construct the roadway in full compliance with the final plans and specifications that it prepared, the court found that the municipality failed to present sufficient evidence to establish that the non-compliance with the final plans and specifications fell below the applicable standard of care. Specifically, the court ruled that because there was no expert testimony regarding whether OHM's conduct fell below the applicable standard of care, the jury was left to speculate whether OHM's failure to strictly comply with the final plans and specifications fell below the standard of care.

Based upon the defendant's argument, the court determined that judgment in favor of Huntington Woods was inappropriate. It ruled that because the municipality failed to present expert testimony that OHM's failure to comply with the final plans and specifications was a breach of the applicable standard of care (or was a cause of its damages) judgment in OHM's favor was appropriate. Therefore, the hard-and-fast rule survives another day and the rule in Michigan remains that in order to maintain a *prima facie* case of professional negligence, a party must present expert testimony regarding the applicable standard of care and breach of the standard by the design professional.

Failure to understand the parameters surrounding professional negligence actions in a construction setting may bring about detrimental consequences. For more information regarding this topic, please contact the author of this article or any member of the Plunkett Cooney Construction Law Practice Group.

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