

JULY 2014 MEETING

Wednesday, July 09, 2014 (1.0 PDH)

LOCATION:

Hess Club

5430 Westheimer

Houston, Texas 77056

713-627-2283

(Business casual dress code required)

TECHNICAL PROGRAM

Standard of Care for Engineers and Other Professionals Working in Texas

Speaker: [William E. Morfey](#), FPA Board Member, [FPA-SC-18](#) Subcommittee Chair, and Member Attorney with [Zimmerman, Axelrad, Meyer, Stern & Wise, PC](#), Houston

Mr. Morfey has a BA from the University of Illinois, 1997, and JD from South Texas College of Law, 2001. His practice includes a broad range of commercial litigation and trial work, including contract disputes, business torts, and construction litigation. He has handled a number of complex business litigation cases involving issues ranging from partnership disputes and recovery of fraudulently transferred assets to piercing the corporate veil and real estate fraud. His litigation work on both the plaintiff and defense sides have allowed him to achieve a full understanding of the dynamics of commercial litigation and have encouraged him to think "outside the box" in developing a litigation strategy for his cases.

PRESENTATION SUMMARY

To an audience of about 80 attendees, Mr. Morfey presented his subcommittee's recently peer-reviewed and published paper, "[Standard of Care for Engineers and Other Professionals Working in Texas](#)". This paper was written over a four-year period under the oversight of the FPA Structural Committee. The intended audiences for this committee paper include engineers, architects, surveyors, inspectors, builders, building owners, repair contractors, attorneys, and others that may be involved in the design, construction, inspection, forensic evaluation, and litigation related to structures and other facilities located in the state of Texas.



Mr. Morfey pointed out that anyone can be sued and therefore this paper is beneficial to all and is free to the public.

Ordinary care in the engineering/construction context is that degree of care that professionals of ordinary prudence would use under the same or similar circumstances. This level of care is often referred as the "Standard of Care." Texas courts have defined the method to determine whether professionals such as engineers, architects, and surveyors have exercised ordinary care. The goal of the subcommittee in writing this document is to provide professionals with a reliable methodology to determine their applicable standard of care. Demonstrating conformance to the standard of care is paramount whenever questions arise concerning the quality of the professional's work product.

There are four potential sources for the applicable standard of care:

- 1) The agreement (i.e., the contract) between the parties to a project;
- 2) Legislative standards (e.g., statutes, building codes, ordinances);
- 3) Standards specified by an executive authority (such as a professional governing body or administrative agency), and.
- 4) Standards developed by courts.

The first three sources are relatively easy to account for, in the sense that they tend to be contained in discrete

documents. All one needs to do is read a contract, review a book of codes, or study the applicable professional rules in order to find out what they say, if anything, about the particular matter at hand. The fourth source tends to be more problematic and is the focus of this presentation.



The professional working in the fields of engineering, construction, and repairs must be concerned with living up to the standards required to effectively discharge the responsibility to clients and avoid protracted involvement in litigation and potential liability for damages stemming from design and/or construction defects. Identifying and understanding the applicable standard of care in a particular situation is thus critical, because that is the yardstick against which a tribunal will measure the professional's conduct to see if it was deficient or not.

Mr. Morfey stressed that the courts frequently use the standard of a "reasonable" man. A reasonable man is not held to a personal standard, or perfection; rather one who is prudent and exercises good judgment. The paper is intended to provide the professional with tools to identify

the relevant standard of care in a given situation; however it is not intended to provide a "litmus test" such that a black or white answer can be developed in every case. Particularly in areas where emerging breakthroughs in knowledge and/or technology are changing the landscape of a professional's practice, the method explained in the paper may not be able to definitively select between two or more competing standards.

To download a copy of the slide presentation please [click here](#)

To read the published paper being presented by Mr. Morfey, [click here](#).

To read a summary of Mr. Morfey's July 2010 presentation to the FPA, [click here](#).