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## Use of Multiple Experts in Civil Engineering Cases

By Gennaro G. Marino, Ph.D., P.E., D.GE – January 27, 2016

This piece was inspired by an article written by Weston Anson, published May 2013, in the GPSolo e-report on the ABA website. The article, entitled “The Multiple Roles and Types of Experts,” focused on IP and related business/financial issues, but for cases involving civil engineering problems, there is a varied perspective.

For the litigation team, an important initial step is to determine what types of expertise are needed and whether a consulting expert would be beneficial in addition to a testifying expert(s). Another important question is when should they be hired? For civil engineering related cases, once the case becomes valid, at least the primary expert should be hired in order to better understand the engineering issues. This would be especially true if the damage is ongoing on a construction site.

In most cases there is valuable factual evidence which can be collected firsthand which would be otherwise missed or not accurately collected, thus leaving you to rely on second-hand data. Furthermore, this hired expert will likely be able to provide advice early on in the case, such as what other experts will be required and when. It is important at this time to consider those hired specialists, at least initially, as consulting experts. This will allow for flexibility of hiring a different testifying expert(s) at a later time depending upon how the case progresses. Since consulting experts do not testify they cannot be subject to *Daubert* Challenge. Moreover, the early hiring of the consulting (primary) expert, in lieu of having a 30–45 day or less deadline to formalizing opinions, can provide valuable insight into understanding the various aspects and merits of the case. Finding out later unknown aspects of the case results in “swimming upstream” and exposure to lack of sufficient investigation and preparation.

In civil engineering cases, contracting consulting expert(s) from the beginning can be a tremendous help with fact discovery, including determining what discovery requests should be made through interrogatories, subpoenas, or fact depositions. Missing areas of discovery can result in incomplete expert investigations. At times, the chosen testifying expert (because of his past experience with the project) is later found not adept at the litigation process. As soon as this is discovered, it would be most beneficial to hire a consulting expert to assist him and potentially augment his testimony. This person can even exist in the same firm with the advantage of increased continuity and communication level.

In civil engineering related cases, there are typically two types of experts. These types specialize in either the technical (causation), or the damage claim (effect) aspect of the problem. In the technical area, the disciplines which can be involved may include general civil, hydrologic, environmental, transportation, geotechnical, and structural engineers. For damages, experts can be related to various types of contractors or estimators for ground, foundation, and building damages, or those who specialize in construction problems, such as delays or added costs. Moreover, within these disciplines, the expertise required may need to be further refined to the specific case conditions.

In cases of significant size, multiple technical (knowledge) and damage experts will likely be required. For example, geotechnical engineers would work with foundation damage experts, while the structural engineer on the same case would work with the building repair contractor. It is not unusual to find a technical expert who also specializes in damage aspects of the case.

As a final note, it is important to consider, when there is a multi-disciplinary team of experts, that all should be sufficiently informed of each other's work and of the data collected to ensure that it is incorporated into their investigations.

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