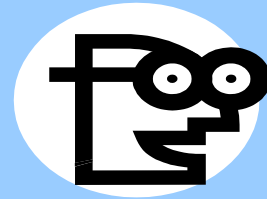
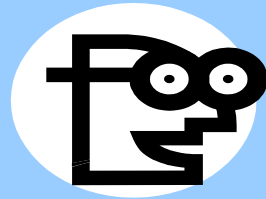
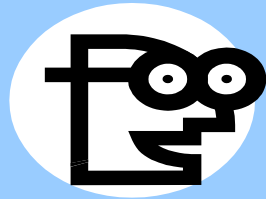




# CE 401 CE Seminar General Questions:



**It's QUESTION TIME !!**



# CE 401 Civil Engineering Seminar

## Professional Liability

### DISCUSSION GROUP ACTIVITY

Timely Initial Posts: 100.0%

Last Update 13-Mar-26 7:18 AM

Section 2

Week 9 Discussion Question Activity Report

Question	Group	Leader	1	2	3	4	5
1	A	Torres	3 Knerr	Muthukrishnan	O'Donnell	Torres	
1	C	Adkins	1 Adkins	Burke	Temple		
1	E	Clark	2 Clark	Eilers V	Farmer		
2	B	Jordan	2 Freeland	Jordan	Kinzer	Salbego	
2	D	McGinnis	1 Davis	McGinnis	Terrill		
2	F	Dunn	3 Cannon	Dunn	Harwood		
3	A	O'Donnell	2 Knerr	Muthukrishnan	O'Donnell	Torres	
3	C	Burke	1 Adkins	Burke	Temple		
3	F	Cannon	3 Cannon	Dunn	Harwood		
4	B	Salbego	3 Freeland	Jordan	Kinzer	Salbego	
4	D	Davis	1 Davis	McGinnis	Terrill		
4	E	Eilers V	2 Clark	Eilers V	Farmer		
5	A	Knerr	1 Knerr	Muthukrishnan	O'Donnell	Torres	
5	D	Terrill	2 Davis	McGinnis	Terrill		
5	F	Harwood	3 Cannon	Dunn	Harwood		
6	B	Kinzer	2 Freeland	Jordan	Kinzer	Salbego	
6	C	Temple	3 Adkins	Burke	Temple		
6	E	Farmer	1 Clark	Eilers V	Farmer		

Font Legend

non-bold No post made, time for posting remains

**Bold / Bold** Post made within Time

Non-Bold Leader-No Consensus Posted, -5 Points

non-bold

**Bold**

*Ital. non-bold*

Late Post before consensus, 20% loss

**Post is made after consensus, 60% loss**

*No Post Made, 100% loss*



# CE 401 Civil Engineering Seminar

## Quiz 8:

### **Quiz 8**

**Range: 7-10; Average 9.7**

**W/ Text Historic 4-10; Average 6.9**

**0.867 (26 of 30) Perfect Scores on Quiz 8**



# CE 401 Civil Engineering Seminar

## The Law

### Story Time



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# CE 401 Civil Engineering Seminar

## The Law

### Story Time



**Should have placed them in the basement!**



# CE 401 Civil Engineering Seminar

## Professional Liability

### REVIEW OF THE LAW VIA ANECDOTES

- *Lawyers often bear the brunt of such jokes*
  - *Some lawyers act in ways that put the targets on all lawyers*
- *When you find a lawyer up to his neck in sand, what do you need?*



# CE 401 Civil Engineering Seminar

## Professional Liability

### REVIEW OF THE LAW VIA ANECDOTES

- *Lawyers often bear the brunt of such jokes*
  - *Many lawyers act in ways to put the target on all lawyers*
- *When you find a lawyer up to his neck in sand, what do you need?*

***MORE SAND!!!***



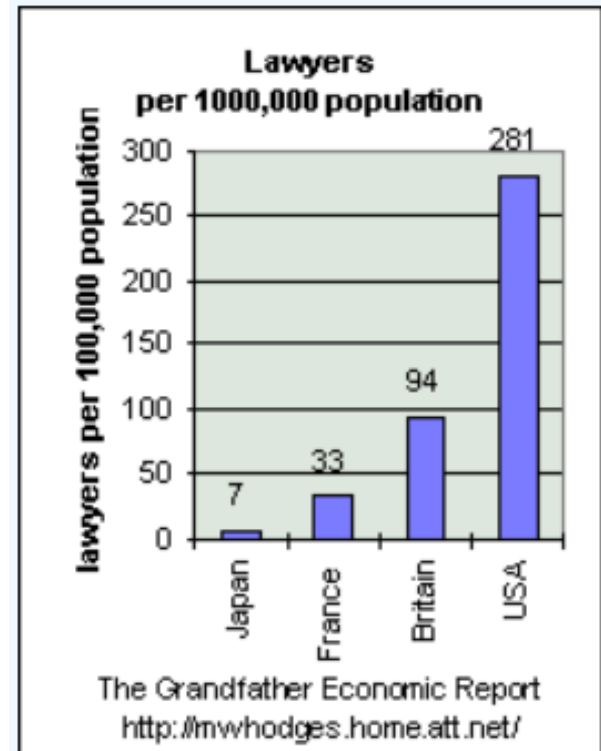
# CE 401 Civil Engineering Seminar

## Professional Liability

### IS THE LEGAL SYSTEM BROKEN?

• **“An incompetent lawyer can delay a trial for months or years. A competent lawyer can delay one even longer.”** Evelle Younger.

• **“When two dogs fight for a bone, and the third one runs off with it, there's a lawyer among the dogs.”** Unknown





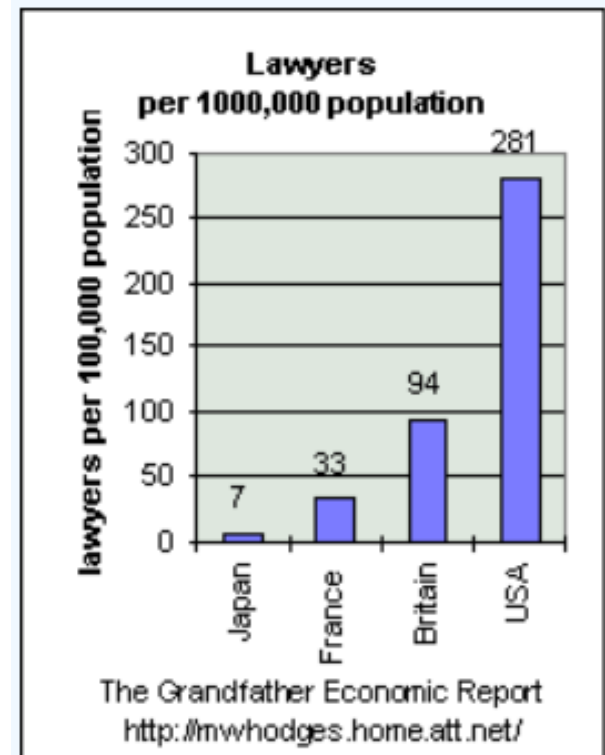
# CE 401 Civil Engineering Seminar

## Professional Liability

### IS THE LEGAL SYSTEM BROKEN?

• **“Avoid lawsuits beyond all things; they pervert your conscience, impair your health, and dissipate your property.”** Jean De La Bruyere

**“By all reasonable measures, the American tort system is a disaster. It resembles a wealth-redistribution lottery more than an efficient system designed to compensate those injured by the wrongful actions of others.”** David E. Bernstein





# CE 401 Civil Engineering Seminar

## Professional Liability

### **IS THE LEGAL SYSTEM BROKEN?**

- ***Many believe the Civil Justice System is broken and use Anecdotal Stories to illustrate their point***
- ***They argue the system is vulnerable to:***
  - ***Too many claims that do not have substantive basis***
  - ***Filed by people seeking unjust enrichment***
  - ***From Juries that seem to act for inexplicable reasons***
- ***Some compare the legal system to a run-away Bus***



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**AND NO ONE WANTS TO GET IN ITS PATH**





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## Professional Liability

### IT LEAVES INNOCENT VICTIMS IN ITS PATH





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**THERE MAY BE NO ONE BEHIND THE WHEEL**





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**BUT IF THERE IS, IT IS PROBABLY NOT A LAWYER**





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## Professional Liability

### IS THE LEGAL SYSTEM BROKEN?

- ***Many blame All Lawyers for the run-away Bus***
  - *Some lawyers are undoubtedly on the bus*
  - *Some lawyers may still be trying to get on the bus*
  - *But, the bus is out of control due to litigious people, AND*
  - *Most lawyers are not on it, and would like it to STOP*
- ***Many say the system is NOT BROKEN***
- ***Many say change the system, e.g., TORT REFORM***



# CE 401 Civil Engineering Seminar

## Professional Liability

### **IS THE LEGAL SYSTEM BROKEN?**

**• *PROPONENTS OF TORT REFORM HAVE BEEN ACTIVE FOR AT LEAST 50 YEARS,***

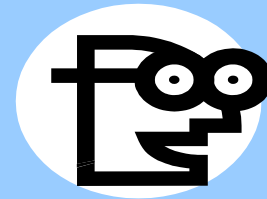
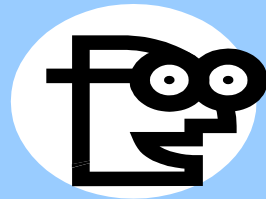
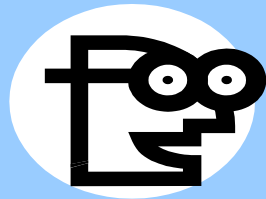
**• *Tort Reform was Top 5 Issue Facing the Engineering Profession in 1972***

**• *Tort Reform is probably a Top 5 Issue Facing the Engineering Profession today.***

**• *BUT NO SIGNIFICANT CHANGES HAVE OCCURRED OVER THE LAST 50 YEARS***



# CE 401 CE Seminar General Questions:



**It's QUESTION TIME !!**



# CE 401 Civil Engineering Seminar

## Professional Liability

### TORT REFORM

***•Those who promote TORT REFORM want to change the Rules of Civil Procedure:***

- To reduce the number of frivolous lawsuits***
- To increase the speed of the system, and***
- To reduce the cost of the system***

***•Those who oppose TORT REFORM cite societal benefits from the Civil Justice System, including:***

- Safer Cars***
- Better Medical Care***
- Cleaner Environment***



# CE 401 Civil Engineering Seminar

## Professional Liability

### TORT REFORM

- ***The TORT REFORM debate continues, and will continue***
  - ***Proponents: Nearly every profession, and a majority of the public***
  - ***Opponents: Plaintiff's Attorneys, and many inside the bureaucracy***
- ***In our legal system, change is difficult, by design***



# CE 401 Civil Engineering Seminar

## Professional Liability

**THE PROFESSIONS, INCLUDING ENGINEERING, AS WELL AS EVERY MAJOR BUSINESS SECTOR WANT TORT REFORM BECAUSE THEY BELIEVE THE CURRENT SYSTEM IS:**

- Too Slow
- Too Expensive
- Discourages Innovation
- Yields unjust outcomes too often
- Destroys existing business relationships
- Increases the cost to provide the services and products, **AND**
- Even when the system “proves” a party is “right,” the “right” party still ends up a loser at the end of the process



# CE 401 Civil Engineering Seminar

## Professional Liability

**THE PROFESSIONS, INCLUDING ENGINEERING, AS WELL AS EVERY MAJOR BUSINESS SECTOR WANT TORT REFORM BECAUSE THEY BELIEVE THE CURRENT SYSTEM IS:**

- **Even when the system “proves” a party is “right,” the “right” party still ends up a loser at the end of the process**
- ***If the winning party still loses, then the losing party also loses, right?***
- ***So, Who Wins In This System?***



# CE 401 Civil Engineering Seminar

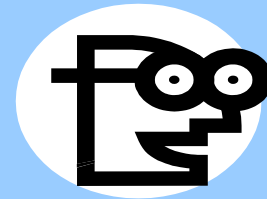
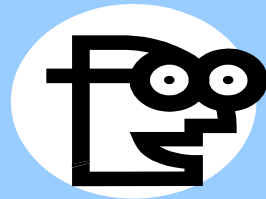
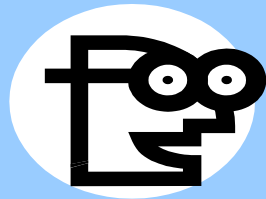
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- ***Even when the system “proves” a party is “right,” the “right” party still ends up a loser at the end of the process***
- ***If the winning party still loses, then the losing party also loses, right?***
- ***So, Who Wins In This System?***
  - ***The Lawyers, and***
  - ***The Experts***



# CE 401 CE Seminar General Questions:



**It's QUESTION TIME !!**



# CE 401 Civil Engineering Seminar

## Professional Liability

### RISK MANAGEMENT/ALLOCATION

***Risk is real and cannot be eliminated!!!***

- ***Some Risk can be transferred to others:***
  - ***To Insurers With purchased insurance***
  - ***To or From clients With contracts***
- ***Some risk must be retained and managed***
  - ***No risk transfer device is perfect or complete***
  - ***Retained risk is essentially self insured***



# CE 401 Civil Engineering Seminar Professional Liability

***Risk is real and cannot be eliminated!!!***

***RISK MUST BE MANAGED***





# CE 401 Civil Engineering Seminar

## Professional Liability

### **WHAT IS THE ROOT CAUSE OF THE PROBLEM?**

- **A risk is an action or condition that holds a chance of danger or failure.**
- **Life is full of risk, and when risk materializes, people sustain losses**
- **Some risk materializes due to actions/inactions of others, which creates conflict between the two people about the losses**



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## Professional Liability

### **WHAT ABOUT THE CONFLICT AFTER RISK MATERIALIZED?**

- **At this point, what options do these people have?**



# CE 401 Civil Engineering Seminar

## Professional Liability

### **WHAT ABOUT THE CONFLICT AFTER RISK MATERIALIZED?**

- **At this point, what options do these people have?**
  - **Walk away if loss is no one else's fault, or loss is small**



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## Professional Liability

### **WHAT ABOUT THE CONFLICT AFTER RISK MATERIALIZED?**

- **At this point, what options do these people have?**
  - **Walk away if loss is no one else's fault, or loss is small**
  - **If can't walk away, confront the alleged wrongdoer and ask for compensation or remediation with a mutually agreeable settlement**



# CE 401 Civil Engineering Seminar

## Professional Liability

### **WHAT ABOUT THE CONFLICT AFTER RISK MATERIALIZED?**

- **At this point, what options do these people have?**
  - **Walk away if loss is no one else's fault, or loss is small**
  - **If can't walk away, confront the alleged wrongdoer and ask for compensation or remediation with a mutually agreeable settlement**
  - **If settlement not possible, file a lawsuit and seek relief from the court**
- **For most, the goal should be to avoid court, but ..... often parties cannot reach settlement**



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## Professional Liability

### **WHAT IS THE ROOT CAUSE OF THE PROBLEM?**

- **Disputes reach the courts when the parties cannot resolve matters themselves**
  - **The System Handles 1 to 2 million lawsuits each year,**
    - **25,000 to 32,000 per year in Kentucky, 2016-2021**
    - **286,289 Civil Cases Filed in Federal District Court in 2019.**
  - **Some of those lawsuits are frivolous, but most are not**
- **The Courts' purpose is to find a fair and just resolution for each of these disputes**
- **By design, the process is adversarial,**



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## Professional Liability

### **WHAT IS THE ROOT CAUSE OF THE PROBLEM?**

- YES!! The system is not perfect (Can yield an unjust outcome), and just as the critics contend, the system is Slow and Expensive, by design!!!!**
- But, when parties cannot resolve disputes and the injured party is not willing or able to walk away, what option does the injured party have?**



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## Professional Liability

WHAT IS THE ROOT CAUSE OF THE PROBLEM?

•**YES!!** The system handles very many lawsuits and some of them are frivolous, just as the critics contend:

•*Some claims do not have substantive factual or legal basis*

•*Some people try to use the system to gain unjust enrichment*

•**But, when the court receives a complaint, how can it determine if the complaint is frivolous?**



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## Professional Liability

### WHAT IS THE ROOT CAUSE OF THE PROBLEM?

- **What makes a lawsuit frivolous?**
  - **The lawsuit that has no factual or legal basis, or**
  - **The Lawsuit is filed to annoy, disturb, or harass the opposing party, and**
  - **When filed, the plaintiff knows the lawsuit has little to no chance of succeeding in court.**
- **An action is NOT frivolous simply because the defendant believes it has been falsely accused**



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## Professional Liability

### WHAT DOES THIS PROBLEM CAUSE?

- Is a lawsuit frivolous simply because the defendant wins the case?
- Is the defense of a lawsuit frivolous simply because the plaintiff wins the case?
- When the court receives a new complaint:
  - **The court does not know the facts, and**
  - **Each party provides evidence to the court that proves or refutes the allegations using the adversarial rules of civil procedures**
  - **That requires pleadings, discovery, and sometimes a trial.**
- The court is not competent to inquire about the plaintiff's motivation or inner thoughts about the strength or weakness of the case. However, the Rules of Civil Procedures should expose parties who abuse process to gain advantage



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## Professional Liability

### WHAT DOES THIS PROBLEM CAUSE?

- **The Vast Majority of lawsuits ARE NOT Frivolous!**
  - Plaintiff's seek compensation for alleged damages from alleged wrong doers
  - Each party presents its evidence to the judge/jury
  - The judge/jury decides on liability and damages
  - Each party pays its own way
- **How many plaintiffs believe they have been wronged? **Nearly all of them!****
- **How many defendants believe they have been falsely accused? **Nearly all of them!****



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## Professional Liability

### WHAT DOES THIS PROBLEM CAUSE?

- Some lawsuits are Frivolous, without merit, without a substantive or legal basis, or meant to merely harass/harm.
  - **Falsely accused defendants must either defend (and win) at great cost for lawyers, experts, expenses, lost time, etc., or**
  - **Falsely accused defendants must settle, also at great cost**
  - **Most falsely accused defendants make this decision on pure economic grounds, e.g., which great cost will be less.**
- For Truly Frivolous Lawsuits, what is the plaintiff's real goal?



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## Professional Liability

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  - Falsely accused defendants must either defend (and win) at great cost for lawyers, experts, expenses, lost time, etc., or
  - Falsely accused defendants must settle, also at great cost
  - Most falsely accused defendants make this decision on pure economic reasons (which great cost is less)
- For Truly Frivolous Lawsuits, what is the plaintiff's real goal?  
**To extort a settlement from or destroy the defendant, NOT to win in court! LEGALIZED EXTORTION!!!**
- **How would loser pays affect the filing of frivolous lawsuits?**



# CE 401 Civil Engineering Seminar

## Professional Liability

### WHAT DOES THIS PROBLEM CAUSE?

- I think we all agree that every frivolous lawsuit is a lawsuit that should never have been filed?
- Is there such a thing as a FRIVOLOUS DEFENSE? Yes!!
  - A defense that denies clearly valid allegations and uses the Rules to extend and protract litigation to
    - Delay ultimate judgments, or
    - To bankrupt a plaintiff
  - A defense that refuses to comply with valid discovery requests to withhold evidence of its wrongdoing?
- FRIVOLOUS DEFENSES CAN BE AS ABUSIVE AS FRIVOLOUS COMPLAINTS!!!!
- How would Loser Pays affect the use of FRIVOLOUS DEFENSE?



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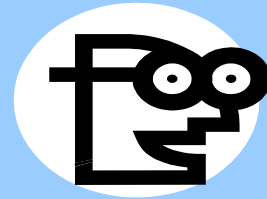
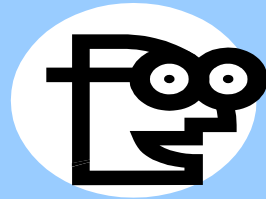
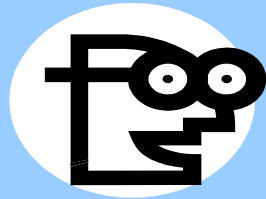
## Professional Liability

### WHAT DOES THIS PROBLEM CAUSE?

- **FRIVOLOUS COMPLAINTS**
  - **DRIVEN BY A GROWING LITIGIOUSNESS IN OUR CULTURE,**
  - **BY THOSE SEEKING UNJUST ENRICHMENT BY GAMING THE SYSTEM**
- **FRIVOLOUS DEFENSES**
  - **DRIVEN BY A GROWING LITIGIOUSNESS IN OUR CULTURE,**
  - **BY THOSE SEEKING TO AVOID OR DELAY FINAL JUDGMENT BY GAMING THE SYSTEM VIA THE RULES OF CIVIL PROCEDURE**
- **Tort Reform may help, but Fixing this probably requires cultural changes**



# CE 401 CE Seminar General Questions:



**It's QUESTION TIME !!**



# CE 401 Civil Engineering Seminar

## Professional Liability

### KEY ELEMENTS OF PROFESSIONAL LIABILITY INSURANCE

- ***Term:***
- ***Premiums***
- ***Basis for Coverage of Claims:***
- ***Deductibles per Claim:***
- ***Aggregate Limits of Coverage:***



# CE 401 Civil Engineering Seminar

## Professional Liability

### **KEY ELEMENTS OF PROFESSIONAL LIABILITY INSURANCE**

**Term: The time period the policy is effective,  
typically 1 year for PLI policies**



# CE 401 Civil Engineering Seminar

## Professional Liability

### **KEY ELEMENTS OF PROFESSIONAL LIABILITY INSURANCE**

**Premiums: The price of the insurance policy, typically a percentage of gross revenues for PLI policies for engineering companies.**

**The Premium Rate varies depending on the insurer's assessment of the risk posed by the insured's business**



# CE 401 Civil Engineering Seminar

## Professional Liability

### KEY ELEMENTS OF PROFESSIONAL LIABILITY INSURANCE

**Basis for Coverage of Claims: PLI Policies are Claims Made which means:**

- **Claims made while the policy is in force are covered.**
- **Claims made before purchase or after expiration of policy are NOT covered.**



# CE 401 Civil Engineering Seminar

## Professional Liability

### **KEY ELEMENTS OF PROFESSIONAL LIABILITY INSURANCE**

**Deductible: Amount the insured pays on each claim before insurance protection begins.**

**Deductible amounts vary from low (\$5,000 per claim) to very high (\$100,000 or more).**

**The lower the deductible, the higher the premium**



# CE 401 Civil Engineering Seminar

## Professional Liability

### KEY ELEMENTS OF PROFESSIONAL LIABILITY INSURANCE

**Aggregate Limits of Coverage:** Total liability coverage that the insurer promises to provide.

**Coverage limits are aggregate for the policy term and vary from low (\$250,000) to very high (\$10,000,000 or more).**

**The higher the aggregate limit, the higher the premium.**

**Once the insurer spends the aggregate limit, there is NO MORE COVERAGE.**



# CE 401 Civil Engineering Seminar

## Professional Liability

- **WHY IS INNOVATION IMPORTANT TO SOCIETY?**



# CE 401 Civil Engineering Seminar

## Professional Liability

- **WHY IS INNOVATION IMPORTANT TO SOCIETY?**
  - *Improves efficiency and effectiveness*
  - *Produces a higher standard of living*
- *Do these benefits of INNOVATION come without a cost (risk)?*



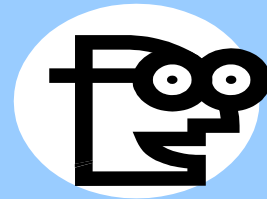
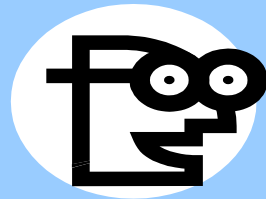
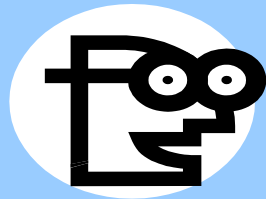
# CE 401 Civil Engineering Seminar

## Professional Liability

- **WHY IS INNOVATION IMPORTANT TO SOCIETY?**
  - *Improves efficiency and effectiveness*
  - *Produces a higher standard of living*
- ***Do these benefits of INNOVATION come without a cost (risk)?***
  - *The exposure to risk is a Cost for a business/person.*
  - *And innovation is synonymous with risk-taking*



# CE 401 CE Seminar General Questions:



**It's QUESTION TIME !!**



# CE 401 Civil Engineering Seminar

## Introduction & Incident At Morales

### Discussion Question #1

Statutes of Limitation and Repose establish the time available for a plaintiff to file a lawsuit, and each statute has a triggering event that starts the clock. Missing either filing deadline will bar action on the claim in court.

- 1. What event starts the clock for a Statute of Limitation?**
- 2. What event starts the clock for a Statute of Repose?**
- 3. Do Design Professionals prefer to work under a Statute of Limitation or a Statute of Repose, and why?**

<b>A</b>	<b>Torres</b>
<b>C</b>	<b>Adkins</b>
<b>E</b>	<b>Clark</b>



# CE 401 Civil Engineering Seminar

## Professional Liability

### LIABILITY EXPOSURE VS LIABILITY

#### • **Liability Exposure: What one COULD OWE:**

- The potential liability based on future, unrealized probable damages and the probability of occurrence.
- **Liability Exposure = \$Probable Damages \* Probability of Risk Occurring**
  - Each project adds liability exposure to the previously accumulated liability exposure.
  - Under a Statute of Repose, the liability exposure of previous projects ends upon expiration of the time.
  - Under a Statute of Limitations, the liability exposure never expires for any project

#### • **Liability: What one DOES OWE:**

- The state of being responsible for something
  - The legal obligation to pay a debt, or
  - The legal obligation to pay for adjudicated damages



# CE 401 Civil Engineering Seminar

## Professional Liability

### STATUTES OF LIMITATION AND REPOSE

#### • Statute of Limitation

- Specifies Maximum Time To File Lawsuit
- Clock Starts to run when Plaintiff knows or should have known of a cause of action (Imputed Knowledge; No Willful Blindness)
- Not a safe haven because the liability exposures due to latent defects never end

#### • Statute of Repose

- Specifies Maximum Time To File Lawsuit
- Clock Starts to run when Project is Substantially Complete
- Provides the Engineer a time certain for liability exposure to end



# CE 401 Civil Engineering Seminar

## Introduction & Incident At Morales

### Discussion Question #1

- **Many design defects are latent,**
  - Not readily discoverable and
  - Evidence of the defect may remain hidden for a long time after the completion of the project. **(Warehouse built in 1980, Latent Defect “discovered” in 1999.)**
- **Liability exposure for a latent design defect can remain for a long time under a Statute of Limitations statutory system**
  - The nature of this liability exposure is cumulative,
  - Each new project adds new exposure to the design professional
  - The cumulative liability exposure does not end upon retirement
  - Some of the liability exposure may not end upon death
- **Liability exposure, even for latent design defects, will end at a time certain under a Statute of Repose statutory system**
  - Generally, some number of years after substantial completion of the project.
  - The time period for SOR system is usually longer (perhaps 7 years) than for a SOL system (typically 1 year)



# CE 401 Civil Engineering Seminar

## Professional Liability

### STATUTES OF LIMITATION

State	Statute	Written contract	Oral contract	<u>Injury</u>	<u>Property damage</u>
Kentucky	Ky. Rev. Stat. Ann. § 413.080 et seq.	10 (15 years for contracts entered into on or before July 15, 2014)	5	1 (injuries from motor vehicle accidents, 2 years)	5 (real property); 3 (personal property)

[For Information about the Statutes of Limitation in all states, use the following link: https://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html](https://www.nolo.com/legal-encyclopedia/statute-of-limitations-state-laws-chart-29941.html)



# CE 401 Civil Engineering Seminar

## Professional Liability

### STATUTES OF REPOSE

#### KENTUCKY:

Construction: 7 years from substantial completion of improvement to real property. K.R.S. § 413.135(1).

Products: 5 years from sale date or 8 years from manufacture date (rebuttable presumption of no defect). K.R.S. § 411.310.

For Information about the Statutes of Limitation in all states, use the following link:

<https://www.mwl-law.com/wp-content/uploads/2013/03/statute-of-limitations-for-all-50-states.pdf>



# CE 401 Civil Engineering Seminar Introduction & Incident At Morales

## Discussion Question #2

The Kentucky Court of Appeals (Shultz vs Cooper) upheld and enforced a contractual provision that starts the Statute of Limitations clock upon substantial completion of the project, just as it would under a Statute of Repose. If you work in a state like Kentucky, without a Statute of Repose, you can use appropriate contract language to make a Statute of Limitation operate as if it is a Statute of Repose. This is but one example of how a person can be wise about contract provisions to shape the legal landscape that will govern work under the agreement.

- 1) In 3 or 4 sentences, discuss why the ability use contracts to shape the legal rules that will apply to work under the contract is not only important to understand but important to take advantage?**
- 2) In addition to the ability to supersede Statutory Law with respect to the Statutes of Limitations and Repose addressed by Shultz vs. Cooper, cite at least one additional statutory or common law framework that engineers can redefine to their advantage with attentive use of contract language.**

<b>B</b>	<b>Jordan</b>
<b>D</b>	<b>McGinnis</b>
<b>F</b>	<b>Dunn</b>



# CE 401 Civil Engineering Seminar

## Professional Liability

### STATUTES OF LIMITATION AND REPOSE

- **Kentucky Supreme Court Struck Down Kentucky's Statute of Repose-Unconstitutional**
- **Kentucky Court of Appeals has ruled that Engineers can make the Statute of Limitation operate like a Statute of Repose with Contract provision that says the SOL clock starts upon substantial completion.**
- **Remember parties can have a Loser Pays Rule by mutual agreement in their contract**



# CE 401 Civil Engineering Seminar

## Professional Liability

Beneficial Legal/Law Changes By Contract

**So Far, We Have Seen Examples:**

- **How Overtime is Computed and Compensated**
- **When the Statute of Limitations clock begins**
- **The Use of Loser Pays for disputes between contracting parties**

**Others To Consider:**

- **Adoption or Exclusion of Warranties and Guarantees**
- **Dispute Resolution Procedures Prior to Litigation**
- **Dispute Resolution Methods Rather than Litigation**
- **Limitation of Liability**
- **Venue Specification**
- **Applicable Law Specification**



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## Professional Liability

**TERMS in Contracts are the AGREEMENT, negotiated by the parties**

**Terms Engineers Should Not Want In Contracts:**

- **Higher Standard of Care for Negligence**
- **Indemnities**

**Matters which Contracts Cannot Alter:**

- **First Principles of Law**
- **Definition of**
  - **Individual Torts such as Negligence or Strict Liability, or**
  - **Breach of Contract**



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## Introduction & Incident At Morales

### Discussion Question #3

The Rockefeller Foundation says that innovation is so important because it “solves problems today in a way that positions us to address the unforeseen problems of tomorrow. ”The bottom line seems to be that innovation improves the efficiency and effectiveness of what people do and how people live, resulting in a higher standard of living. However, innovation carries risk, in fact some say innovation is synonymous with risk-taking because “organizations that create revolutionary products or technologies take on the greatest risk.”

**1. Explain the risks associated with innovative civil engineering design and construction solutions, and**

**2. Discuss whether these risks are the same for the innovating civil engineer and the engineer's client?**

A

O'Donnell

C

Burke

F

Cannon



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## Professional Liability

**WHAT IS INNOVATION?**



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## Professional Liability

### **WHAT IS INNOVATION?**

- The “process of translating an idea or invention into a good or service that creates value or for which customers will pay.”
- Innovation “solves problems today in a way that positions us to address the unforeseen problems of tomorrow.”



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### **INNOVATION IN CONSTRUCTION CAN BE:**

- **A new design procedure that may allow more efficient use of labor or materials**
- **A new material, or a new use of an existing material that may satisfy a design criteria more efficiently**
- **A new construction method that may allow completion of an essential construction process that otherwise cannot be performed**



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## Professional Liability

### WHICH SOLUTION CARRIES LESS RISK FOR A DESIGN PROFESSIONAL?

- **OPTION A:** *The Tried-And-True Solution that has been replicated dozens of times successfully?*
- **OPTION B:** *An Innovative Solution that has never been tried, but holds promise for future savings?*



# CE 401 Civil Engineering Seminar

## Professional Liability

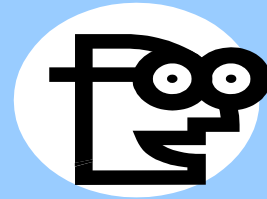
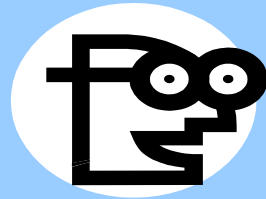
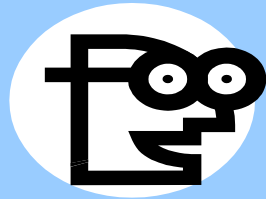
### WHICH SOLUTION CARRIES LESS RISK FOR A DESIGN PROFESSIONAL?

- **OPTION A:**      *The Tried-And-True Solution that has been replicated dozens of times successfully?*
- **OPTION B:**      *An Innovative Solution that has never been tried, but holds promise for future savings?*

*Of course, the tried-and-true solution has less risk*



# CE 401 CE Seminar General Questions:



**It's QUESTION TIME !!**



# CE 401 Civil Engineering Seminar

## Introduction & Incident At Morales

### Discussion Question #4

The American people have become highly litigious, seeking to use the civil justice system to gain unjust enrichment by asserting legal claims without a substantive legal basis, hoping for large pre-trial settlements or an inexplicable jury verdict that defies the facts. Magazines and news reports frequently detail stories that demonstrate these tendencies.

**1. In 2 to 3 sentences, explain how America's litigiousness affects the professional practice of engineering, including but not necessarily limited to:**

- The operating cost of an engineering business, and
- The scope of services that an engineer performs for the client's project.

**2. In 2 to 3 sentences, explain the impact that the operating cost of an engineering business and the scope of services that an engineer performs for a project impact the fees that the engineer must ask clients to pay.**

**3. In 2 to 3 sentences, explain how America's litigiousness affects the development of innovative design and construction solutions that could benefit clients, clients' industries, and society.**

B	Salbego
D	Davis
E	Eilers V



# CE 401 Civil Engineering Seminar

## Introduction & Incident At Morales

### Discussion Question #4

In 3 or 4 sentences, explain how this litigiousness affects the professional practice of engineering. Please include in your explanation, how these circumstances affect the cost of providing engineering services and how these circumstances affect the development of innovative solutions that could benefit clients, clients' industries, and society.

1. Professionals use defensive practice measures (aka Defensive Medicine) to ward off or prevent lawsuits and resulting losses, each of which increases the scope of services that clients pay to receive: **(SCOPE EXPANSION-ALL)**
  - a) More tests
  - b) More analyses
  - c) More reviews
2. The cost of Professional Liability Insurance is higher due to the litigiousness in America. **(OVERHEAD COST-ALL)**
3. Reluctance to offer innovative solutions, in lieu of more costly tried and true solutions, can increase cost of projects over the long term. **(OPPORTUNITY RISK-ALL)**
4. Cost of defending suits increases operating costs. **(OVERHEAD COST-ONE ENGINEER ONLY)**



# CE 401 Civil Engineering Seminar

## Introduction & Incident At Morales

### Discussion Question #5

For decades, the professions in the United States have advocated and worked to implement "Tort Reform," e.g. changes in the Rules of Civil Procedures intended to reduce the number of frivolous lawsuits and decrease the cost and time required to resolve lawsuits. However, these efforts have not produced substantive changes.

The adoption of a "loser pays" rule appears on most tort reform proposals.

1) In 2 to 3 sentences, describe how a "loser pays" rule could affect a plaintiff's willingness to initiate litigation, especially when the facts and law do not unequivocally support the plaintiff's allegations.

2) In 2 to 3 sentences, describe how a "loser pays" rule could affect a defendant's willingness to settle with a plaintiff without lengthy, expensive litigation especially when the facts and law do not unequivocally contradict the plaintiff's allegations.

3) In 2 to 3 sentences, explain why the United States hasn't and probably will not adopt a loser Pays rule of law.

**A**

**Knerr**

**D**

**Terrill**

**F**

**Harwood**



# CE 401 Civil Engineering Seminar

## Introduction & Incident At Morales

### Discussion Question #6

The litigiousness of the American people has demanded that the professional practice of engineering be guided by loss prevention, dispute avoidance, and alternatives (other than litigation) for dispute resolution. Engineers have learned over the last several decades that client selection is one of the most important, if not the most important loss prevention tools that engineers can use.

1. In 2 to 3 sentences, explain why client selection is so important toward the goal of loss prevention and dispute avoidance.
2. In 2 to 3 sentences, identify and explain client characteristics that may be indicative of high or low client-imposed risk.
3. In 2 to 3 sentences, identify and explain the circumstances that could lead a design professional to decline a new client.

<b>B</b>	<b>Kinzer</b>
<b>C</b>	<b>Temple</b>
<b>E</b>	<b>Farmer</b>



# CE 401 Civil Engineering Seminar

## Professional Liability

### **GOALS FOR A SUCCESSFUL PROJECT**

- **A Satisfied Client, and**
- **A Project performed in manner that "Avoids Disputes and Prevents Losses", e.g., a Project that is:**
  - **On Time**
  - **Within Budget**
  - **Functions Properly, and**
  - **Has No Latent Defects**



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### **LOSS PREVENTION**

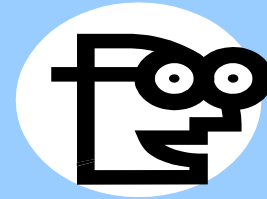
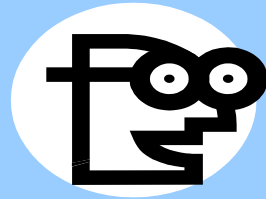
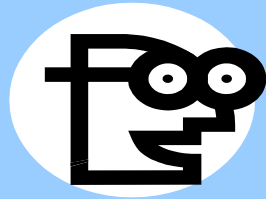
- 1. Select Clients With Care**
- 2. Evaluate Project Risks Carefully**
- 3. Understand the Contract Before You Sign**
- 4. Document Relevant Project Activities**
- 5. Apply Internal Quality Control**
- 6. Assign experienced, qualified personnel to the job**

**These six are the main components of a Loss Prevention Program in Engineering Practice, but you can do more if you choose**



# CE 401 CE Seminar General Questions:

**The End**



**It's QUESTION TIME !!**



# CE 401 Civil Engineering Seminar

## Professional Liability

### **INNOVATION IN CONSTRUCTION CAN BE: EXAMPLE**

- **How should an engineer handle seepage through two dissimilar materials in an earth structure like a dam, or sewer and water line trenching?**
- **The seepage water must be filtered to prevent internal erosion of soil particles.**



# CE 401 Civil Engineering Seminar

## Professional Liability

**FILTERING OF SOIL PARTICLES for SEEPAGE FROM FINE GRAINED SOIL  
INTO GRAVEL OR LARGER MATERIAL**

**Issue: Water movement erodes silt and clay into voids within the gravel leading to a “Piping Failure”, clogged drainage media, clogged sewer lines, and collapse**

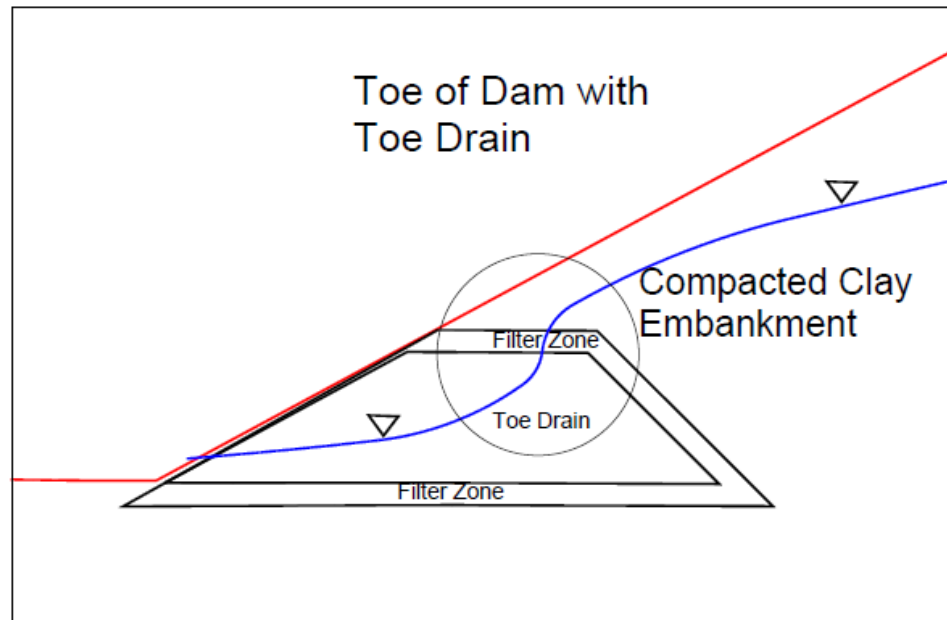


# CE 401 Civil Engineering Seminar

## Professional Liability

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# CE 401 Civil Engineering Seminar

## Professional Liability

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**Issue: Movement erodes silt and clay into voids within the gravel leading to a “Piping Failure”, clogged drainage media, clogged sewer lines, and collapse**

**Original Solution:**

**In Use When I Started Practice. Layers of progressively coarser material to separate the fine-grained soil particles from the gravel void system: Fine Sand (3 to 6 inches); Medium Sand (3 to 6 inches); Coarse Sand (3 to 6 inches); Pea Gravel (3 to 6 inches)**

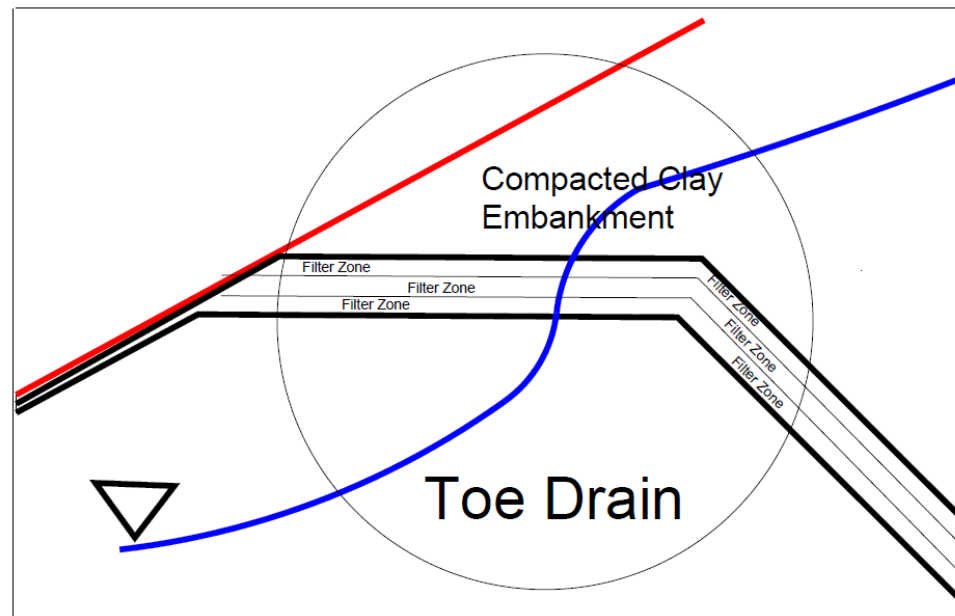


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## Professional Liability

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# CE 401 Civil Engineering Seminar

## Professional Liability

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**Innovative Solution:**

**Filter Fabric which is the industry standard today. Replaces all the various sand and gravel products noted above and all the labor required to create this layered filtering system.**



# CE 401 Civil Engineering Seminar

## Professional Liability

### FILTERING OF SOIL PARTICLES for SEEPAGE FROM FINE GRAINED SOIL INTO GRAVEL INTO GRAVEL

**Issue: Movement erodes silt and clay into voids within the gravel leading to a “Piping Failure”, clogged drainage media, clogged sewer lines, and collapse**

