



Geo-Strata

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GAM: Geotechnical Asset Management

ALSO

Build and Forget or Manage for the Future?



See something? Say something!

It's hard for me to understand why some geoprofessional firms budget more for legal defense than the professional development needed to prevent claims in the first place. And it's particularly mystifying because the lessons folks need are so easily learned, as highlighted by case histories developed by ASFE/The Geoprofessional Business Association (GBA). One such history is presented here.

Doug Downs & Associates (DDA) assigned John Doe, a field representative, to perform a predemolition asbestos inspection of a small outbuilding at a construction site. The assignment was DDA's sole project involvement.

John discovered nothing worrisome... until he looked out the window and saw an ominous bulge in a recently completed retaining wall. John wrote "Noticed a bulge in the retaining wall." on his daily field report (DFR). Two weeks later, the retaining wall failed, leading to a multimillion-dollar damage claim. Attorneys for the owner's insurer sued every party involved in the project to gain the legal right to subpoena their documents and learn who may have been at fault, or – at the least – vulnerable. Which is exactly what happened in this case. After they read DDA's letter report conveying the asbestos "all-clear," they examined the DFR behind it. What did they read? "Noticed a bulge in the retaining wall."

Should John have mentioned the bulge to the general constructor's field supervisor before he left the site? Yes and no, because – legally – John Doe didn't perform the inspection. Did you notice I labeled John a field representative and not a technician or some similar term? Why? Because, when they are in the field, field representatives by law represent the professionals to whom they report. As such, everything John did and said on site was attributed to Douglas D. Downs, P.E. Yes: John wrote "Noticed a bulge in the retaining wall." but Doug was responsible for every word and every act (or lack thereof).

Let me ask you this: Suppose you are a typical juror in a case involving a million-dollar-plus retaining-wall failure that feasibly could have caused serious, possibly fatal injuries in addition to monetary damages. Now suppose you learn that one of the defendants is a licensed professional engineer who saw a telltale bulge – actually wrote something about it – then said nothing to anyone, allowing the bulge to go undetected until it was too late. Would you be a bit dumbfounded? Would you say to yourself something like, "What's wrong with that guy? He's a professional who's sworn to protect public

health, safety, and welfare. He should have told something to someone. This entire problem likely could have been avoided if only Doug Downs had spoken up." Would you believe that silence about such a circumstance amounted to negligence, even though it wasn't Doug's job to evaluate the retaining wall? Yes, you would.

So, what lessons do your staff members need to learn? First, that field representatives represent. Second, if you see something, say something. Contact your supervisor immediately. Do not kid yourself into believing "I'll do it later." Call, text, or e-mail to communicate the thought, "I saw something that could be important." Third, especially if you commit an off-normal-condition observation to writing, tell someone it's there. Fourth, the danger associated with committing things to writing applies to *everything* you write, directly or via a representative. Note that this dictum also applies to the notebooks and journals many field representatives keep at home as souvenirs of some or even all projects. While they may regard such notebooks or journals as their personal property, they need to realize they can be subpoenaed (and that opposing counsel, tutored by geoprofessionals, know what to look for and where "what" may be). Because the observations they write in notebooks and journals are not reviewed by others in the firm, it might not be that difficult for opposing counsel to mischaracterize what's written, for the benefit of their own clients. Learn if your field representatives have such notebooks or journals at home. Especially if they have not been reviewed by professionals in your firm, destroying them might not be a bad idea.

How much will it cost your firm to teach such lessons? Proactively, based on someone else's experience, just a few dollars and minutes. If you have to teach the lesson as something you learned through your own experience, well... that's why those legal defense/settlement budgets are so large.

AUTHOR

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