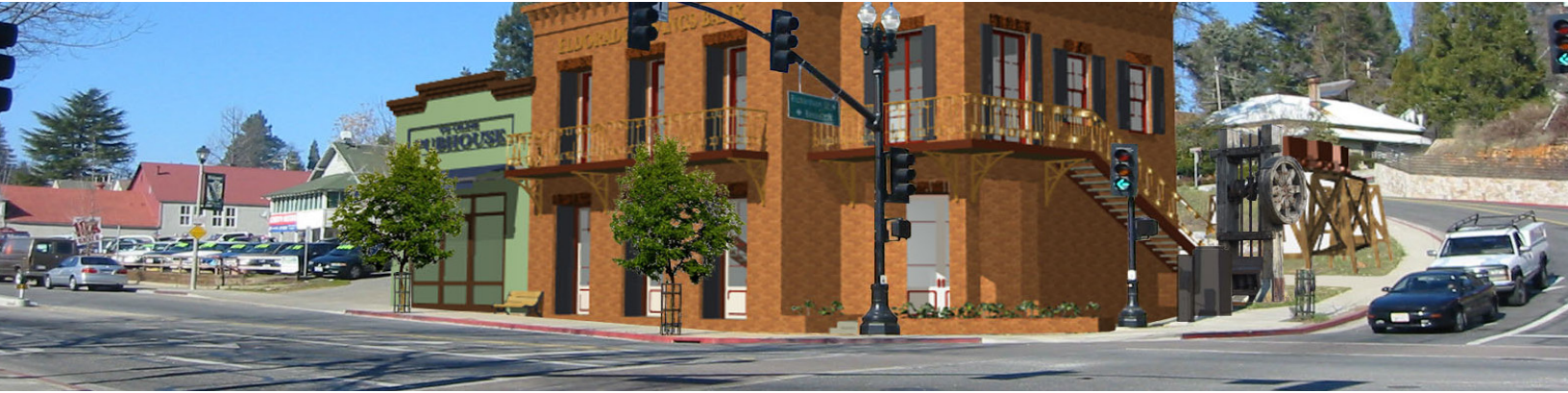


# Talk is Cheap



## the facts

Letterman, Inc. was hired by Mr. Howard to conduct a phase 1 environmental site assessment on a property Mr. Howard wanted to purchase. The two parties did not sign a contract but had a verbal agreement outlining the scope of the project.

### Risk Factor #1

Mr. Howard should have been clear in what services were provided and outlined within a scope of services in the contract. Letterman should have only put forth the facts that could have been verified.

During the course of study, Letterman claimed the previous owner asserted that the property was part of the town's municipal water systems. Letterman was certain that the property would be connected to the municipality because the building was located on the corner of two busy streets.

Years later, it was learned that the property was not connected to the municipal water system. This realization lead Mr. Howard to file suit against Letterman to seek costs for repair and reimbursement for lost profits. Mr. Howard asserted that had Letterman indicated the property's system was not connected to the municipal sanitary system, he would not have purchased the property. Letterman stated that it discussed the site with the seller, and was told the system was connected to the municipal sanitary sewer system. During the phase 1 environmental site assessment, Letterman did not take the next step to interview the prior owner about the property and stated in their report that the site was connected to the sanitary sewer system – which it was not.

However, when Letterman did visit the site, they were not required to investigate the aspects of the property that could not be seen. Letterman did consult all the usual governmental sources of information in order to piece together the history of the property. Letterman stated that it performed services per the standard of care. A Phase 1 environmental site assessment evaluates whether the property contains hazardous substances which may create liability for the purchaser. Whether or not the property's infrastructure includes connection to the sanitary system is not the type of information reasonably relied upon in a phase 1 study.

### Risk Factor #2

Not having a limitation of liability clause in the contract could be a major risk. A limitation of liability clause may have limited the amount for which Letterman was liable. Since a professional may not know what purpose a buyer may have for a property, its losses may be outsized compared to a fee (ie. a commercial use of a property means loss of earnings, advertising, etc).

## the result

Mr. Howard sought \$125,000 in damages. This case eventually settled for \$90,000.



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