

You're Damned if You Do and You're Damned if You Don't



the facts

Portex Developers planned to rebuild and develop the area of an old dam. They wanted to use the area as lake front property for a residential development. Drucker Consulting, a biologist that does consulting work for engineers, was hired by the engineer of the project Winesine Engineers, to conduct a field investigation of the old dam property.

Before the project could commence, Portex Developers had to obtain approval to rebuild the property. Portex Developers and Drucker Consulting made a verbal contract for the services, which included the approval process. Portex Developers claimed that Drucker Consulting promised they could obtain easy and quick approval to rebuild the dam and build the subdivision. However, approval was never received and the project was not completed as planned. Portex Developers filed suit for loss of profits.

Because of the incomplete project, Winesine's client, Portex Developers, stopped paying Winesine fees, so Winesine initiated a fee claim. Portex Developers countersued. At the time, Winesine had no insurance, as its carrier declined coverage. Winesine sought reimbursement from Drucker Consulting for damages paid to Portex Developers as a result of Drucker Consulting's services.

During mediation, facts were presented that confirmed that while the scope of work was preformed appropriately, there was misinformation presented to Portex Developers, as well as vagueness in the report of information presented by Drucker Consulting.

the result

This was a very complicated case, with no real damages. However, it was costly to defend. The case settled for \$50,000 from Drucker Consulting and \$50,000 from Winesine.

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Risk Factor #2

It is best to get all contracts for services in writing for all parties involved. Without a laid out contract, it is very easy to be brought in on a third party claim.

Risk Factor #1

Even though the insured was not at fault, they still needed defense protection in the event they were brought into a law suit.



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