

CASE #12 - An Agreement Between Client and Structural Engineer for Forensic Engineering (Expert) Services

ABSTRACT

This is a sample agreement when the engineer is engaged as a forensic expert. It is designed primarily for when the Structural Engineer is engaged as an expert in the resolution of construction disputes but can be adapted to other circumstances where the Structural Engineer is a qualified expert.

As of 2015, the document was legally reviewed and the following changes were made:

1. In 1.2.1(2) added “actual”.
2. In 1.2.4 changed “permission of” to “instructions by” and added “or its agent”.
3. In 3.3.1 added “whichever is greater”.
4. In 4.2.1:
 - a. Combined and rewrote Client/SER mutual indemnification.
 - b. Added sentence indicating that neither party has obligation to defend or pay for defense until one party has been found at fault and then only to the proportion found at fault.
5. Added paragraph 4.2.2 for indemnification from third party claims. This was added since the original indemnification only dealt with claims from one of the contracting parties.
6. In 4.3.1 Risk Allocation:
 - a. Added “or any third party”. This was done to get the client to limit the SE’s liability for a third party claim. This is an aggressive approach and has not been tested by case law.
 - b. Expanded language regarding attorney and expert fee costs.
 - c. Removed “or other amount agreed upon” to remove open-endedness.
7. In 5.1 deleted first sentence in parenthesis.
8. Other minor grammatical modifications.