

## Using CASE Guidelines to Prove Standard of Care

By John W. Hays

In 2003, the Council of American Structural Engineers (CASE) published CASE Document 962 D, *A Guideline Addressing Coordination and Completeness of Structural Construction Documents* (the "Guideline"). Since published, structural engineers have expressed concerns that plaintiff attorneys will use the Guideline as a standard of care document.

### What Is Standard of Care?

Courts in the United States generally describe the standard of care for professionals as the responsibility to exercise reasonable care in applying their professional skills, abilities and judgment. This means that courts generally require professionals to perform their duties consistent with the way other prudent design professionals would perform them under similar circumstances. Traditionally, courts have focused the standard of care inquiry on how professionals in the locality where the services were rendered perform their duties. *(Never assume that the locality rule will be applied, because some courts have applied a national standard of care. As the world shrinks in the age of the World Wide Web, courts may tend to apply national standards more frequently.)*

### How Is Standard of Care Proven?

The most common way to prove the applicable standard of care in a professional negligence case is through the testimony of an expert witness. Because most professions do not attempt to publish written standards of care, expert witnesses use a variety of sources to support their opinions. For example, experts may cite statutes, regulations, professional publications or other learned treatises to bolster their testimony. In many cases no written reference materials apply, so experts base their testimony entirely upon their professional education and experience.

### What Is the Guideline?

The National Guidelines Committee for CASE prepared and published the Guideline in response to the concerns expressed by owners, contractors and design professionals about the perceived decline in the quality of structural construction documents. CASE intended the Guideline to assist the structural engineering profession to improve the structural design process, and to help everyone involved in the project to understand the importance of preparing coordinated and complete construction documents. To that end, the Guideline discusses the responsibilities within the design team for coordinating and completing structural design documents and suggests ways that structural engineers can develop a quality management plan on each project.

In publishing the Guideline, CASE specifically disclaimed any intent to provide legal advice or to define standards of care for structural engineers. However, more than a few structural

engineers have expressed concern that attorneys will try to support claims against structural engineers by arguing that the Guideline defines their standard of care. Given the Guideline's express disclaimer, are those concerns justified?

### Will Courts Honor the Disclaimer?

Yes and no. (I'm a lawyer, what did you expect?). Normally, courts do not consider industry guidelines or similar publications to be conclusive evidence of the standard of care. After all, CASE does not represent or speak for all structural engineers in every part of the country, and the Guideline's general recommendations about coordinating and completing structural drawings cannot address or be applied to all of the myriad facts and circumstances that arise in construction projects. Consequently, the Guideline does not establish an immutable standard of care for the coordination and completion of structural engineering documents.

Even though courts will probably not consider the Guideline as conclusive evidence of the applicable standard of care, they will probably allow parties to introduce the Guideline as **evidence** of the standard of care. This means that expert witnesses will be allowed to cite to the Guideline to support their opinions about the standard of care. In a similar situation, courts have allowed parties to introduce evidence related to the AIA Architects' Handbook of Professional Practice to prove the applicable standard of care in claims against architects.

If the Guideline is used as evidence of the standard of care, the other side can argue that the Guideline does not apply and offer other evidence of the standard of care. Ultimately, the fact finder, a judge, jury or arbitration panel, will decide whose evidence is more persuasive.

### What Does This Mean for My Practice?

**Good News** – Following the Guideline will be evidence of compliance with the standard of care, which should help reduce the exposure to claims. A lot of time and thought went into preparing the Guideline, so incorporating its recommendations into your practice should improve your efforts to prepare quality project documents.

**Bad News** – If you ignore the Guideline, someone may use it against you as evidence of the standard of care. If that happens, you can only hope that the fact finder believes your expert's opinion about the standard of care rather than your opponent's expert. ■

*John W. Hays is a member of Jackson Kelly PLLC, and practices in the Lexington, Kentucky office. This article is based upon presentations that Mr. Hays made at the 2004 Structures Congress in Nashville, Tennessee and at the 2004 RMP Convocation at SEI/ASCE Headquarters in Reston, Virginia.*