

# Laws, Regulations and Policies Relating to Connecticut Licensed Environmental Professionals (“LEP”)

## Professional Liability Claims Against LEPs

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# What Types of Claims Can be Brought Against an LEP?



# Claims Against LEPs

1. Negligence/Professional Malpractice
2. Negligent Misrepresentation
3. Common Law Indemnity
4. Conn. General Statutes § 22a-452
5. Fraud
6. CUTPA

# Negligence

- Malpractice = professional negligence
- Elements:
  1. Duty of care
  2. Breach of duty
  3. Causation
  4. Damages/actual injury

# Negligence/Duty of Care

“The existence of a duty is a question of law and only if such a duty is found to exist does the trier of fact then determine whether the defendant violated that duty in the particular situation at hand.”

# Negligence/Duty of Care



- Duty of Care is determined by:

Who is your client?

Contract/Statute

- Circumstances

# Negligence/Duty of Care

“Duty is a legal conclusion about relationships between individuals, made after the fact, and imperative to a negligence cause of action. The nature of the duty, and the specific persons to whom it is owed, are determined by the circumstances surrounding the conduct of the individual.”



# Negligence/Duty of Care

Q: Do I owe someone I don't know a duty of care?

A: Should a typical person in your shoes have foreseen that this type of harm was likely to occur?



# Negligence/Duty of Care

"The ultimate test of the existence of the duty to use care is found in the **foreseeability** that harm may result if it (care) is not exercised."

- » **Not** that probability of harm was "actually foreseen"
- » **Not** that the particular injury that actually resulted was foreseeable

# Negligence/Duty of Care

"The test is, would the ordinary person in the defendant's position, knowing what he knew or should have known, anticipate that harm of the general nature of that suffered was likely to result?"

# How Can I Limit the Universe of People to Whom I Owe a Duty of Care?



# How Can I Limit the Universe of People to Whom I Owe a Duty of Care?

"The Report and other instruments of service are prepared for, and made available for the sole use of Midland, and the contents thereof may not be used or relied upon by any other person without the express written consent and authorization of [Dames & Moore]."

# Duty, Part II

The test for duty entails: "...and (2) a determination, on the basis of a **public policy analysis** of whether the defendant's responsibility for its negligent conduct **should extend** to the particular consequences or particular plaintiff in the case."

# Duty/ Public Policy Prong

"One who relies upon information in connection with a commercial transaction may reasonably expect to hold the maker to a duty of care only in circumstances in which **the maker was manifestly aware** of the use to which the information was to be put and **intended to supply it for that purpose.**"



# Duty/ Public Policy Prong

By limiting liability in this way, "the law promotes **the important social policy of encouraging the flow of commercial information upon which the operation of the economy rests.**"

# Negligence/Standard of Care

Q: If I do owe someone a duty of care, what is the standard of care?

A: The degree of care exercised by a reasonably prudent, similarly situated professional in the same field. (Heightened standard of care.)





# Negligence/Standard of Care

**Negligence *per se*:** "a requirement imposed by statute may establish the applicable standard of care to be applied in a particular action."

The "doctrine of negligence per se serves to superimpose a legislatively prescribed standard of care on the general standard of care."

# Negligence

Other elements of proof:

- Breach of duty
- Causation of harm
- Damages



# Negligent Misrepresentation

"One who, in the course of his business, profession or employment ... supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their **justifiable** reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information."

# Negligent Misrepresentation

Environmental professionals are "in the business of selling information."



# Negligent Misrepresentation

Does not require:

- Privity of contract
- Third party beneficiary relationship
- Special relationship

# Common Law Indemnity

Keys:

- ◆ Somebody else was negligent.
- ◆ **They** caused the plaintiffs harm.

# Conn. Gen. Stat. § 22a-452 (CT's "Mini-CERCLA")

- It's a good time to be a "Good Samaritan."
- Liability is only for gross negligence, willful misconduct, or causing the spill.



# Fraud

Like negligent misrepresentation, but:

- ◆ Statement was knowingly false;
- ◆ Statement was made to induce the plaintiff to act upon it.



# CUTPA



## Key elements:

- A practice that offends public policy;
- Unscrupulous/immortal actions;
- Substantial injury caused to consumers/business people.