



The Voice

And The Defense Wins

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DRI members [Gary Snodgrass](#) and [William Thomas](#), principals at **Pitzer Snodgrass, P.C.**, in St. Louis, Missouri, recently won a case filed by a power industry developer against their client, a geotechnical engineer, in St. Louis County, Missouri. Although they asked the jury for over \$1.2 million, as a result of being forced to abandon a project site where they had begun the construction of a limestone grinding facility for a local power provider due to settlement of the foundations, the jury returned a verdict assessing 100 percent of the fault to the plaintiff.

The case, styled *Charah, Inc. v. Tech Services to Go, Inc., d/b/a Tsi Engineering, Inc.*, sought the recovery of costs the developer had “sunk” into a site it had chosen for the development of the facility, which later had to be abandoned after settlement of footings and foundations for the facility occurred during construction. A St. Louis County jury rejected the Kentucky company’s bid to recoup its costs at the scuttled Ameren limestone grinding plant from a St. Louis engineering firm that warned of possible settlement in its original geotechnical engineering report, which ultimately occurred.

Charah Inc. of Louisville was hired by Ameren Electric to build the facility near an existing quarry in Ste. Genevieve County on the bluffs of the Mississippi River where Ameren purchased limestone for use in its power plant scrubbers. Charah in turn hired TSI Engineering as a geotechnical engineering consultant, as well as other engineering firms Cornette Engineering Services as its structural engineer and Capstone Engineering LLC as project manager.

Cornette and Capstone, both of Kentucky, were also named as defendants in Charah’s 2011 suit over the failed project but settled out of court prior to the November 2015 trial. In its complaint, Charah describes a July 2009 rainstorm that caused “multiple footings of the foundation” to subside, or sink, less than three months after construction commenced. The \$10 million project was quickly relocated to another site at Brickey’s Quarry in Bloomsdale.

Charah sought to recover slightly more than \$1.6 million in project costs and lost income, including \$1 million paid to Ameren, but reduced its demand at trial to just over \$1.2 million.

The plaintiff alleged that TSI failed to analyze the thickness and composition of fill materials in the foundation properly while also neglecting to “perform adequate tests and evaluations to identify the hazards associated with the design.” However, TSI issued a July 2008 report that noted a “risk of excessive total and differential settlement when foundation loads are applied, with resulting damage or poor performance of structure supported on the old fill.”

The developer contended the engineer had an obligation to say “do not build here” to its developer client, an expansion of the duty of an engineer beyond what the standard of care or custom and practice requires. The defense contended the developer knew and assumed any risk of settlement of the structures, and it is not the engineer’s job to tell the developer, its client, what is or is not in its financial interests, but rather simply advises the client of the risks and allows them to make a business decision whether to proceed or not.

The jury reached its verdict in twenty minutes after a five-day trial before Circuit Judge Joseph Walsh III.

Both Mr. Snodgrass and Mr. Thomas are active members of the DRI Construction Law and Product Liability Committees.

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