

## Certificates of Merit: Is Your Texas Certificate Sufficient?

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In *Eric L. Davis Eng'g, Inc. v. Hegemeyer*, No. 14-22-00657-CV, 2023 Tex. App. LEXIS 8899, the Court of Appeals of Texas (Court of Appeals) considered whether the plaintiffs' certificate of merit, in support of their professional malpractice claim against the defendant engineers, adequately set forth the experience and qualifications of the expert who submitted the certificate. The defendants filed a motion to dismiss, alleging that the certificate of merit was inadequate because it failed to establish that the expert practiced in the same specific areas as the defendants in relation to the work at issue. The lower court denied the defendants' motion. The Court of Appeals affirmed the lower court's decision, finding that there was sufficient information for the lower court to have reasonably found that the plaintiffs' expert practiced in the same area as the defendants.

In *Hegemeyer*, the plaintiffs sued Eric L. Davis Engineering, Inc. (Davis) and Kenneth L. Douglass (Douglass), alleging improper design of their home's foundation. The plaintiffs retained Davis to design and engineer the home and Douglass prepared the plans for the home. The plans called for the installation of post-tension cables in the home's foundation. The plaintiffs alleged that the foundation design was improper and brought professional malpractice claims against Davis and Douglass.

The plaintiffs submitted a certificate of merit from an engineer, as required by Texas Civil Practice and Remedies Code § 150.002 (Chapter 150) for professional malpractice claims. Defendants Davis and Douglass filed a motion to dismiss, claiming that the certificate of merit was deficient. Specifically, the defendants argued that the engineer who submitted the certificate on behalf of the plaintiffs failed to adequately state that his area of practice and his expertise was in the same area as the subject work in question.

In Texas, for any action arising from professional services by a licensed architect or engineer, Chapter 150 requires a certificate of merit by a licensed architect or engineer who is competent to testify, holds the same professional license of registration as the defendant and "practices in the area of practice of the defendant..." Chapter 150 also requires that the licensed individual be "actively engaged in the practice of architecture, engineering, or surveying." The defendants' motion to dismiss argued that although the engineer at issue routinely performed design and failure analyses of structures, their individual components and had experience with single family structures. The certificate of merit was insufficient because it failed to demonstrate that the engineer actively practiced in the defendants' area of practice in relation to the work they performed on the plaintiffs' home—residential post-tension foundations.

The Court of Appeals found that the plaintiffs' certificate of merit was adequate because it stated with sufficient detail that the engineer practiced in the same area as the defendants. The court also considered the pleadings and the defendants' contract for the subject work. The court noted that these documents established that the defendants provided structural engineering services concerning the design of a residential foundation. Since the affidavit stated that the engineer designs the individual components of single-family residences, which includes foundations, the court found that the certificate of merit was compliant with Chapter 150 and affirmed the lower court's decision.

The *Hegemeyer* case reminds us that, in Texas, a plaintiff's certificate of merit needs to state that the engineer practices in the same general area as the defendant's contested work. This case also establishes that extensive detail into the engineer's practice may not be required as long as the court can reasonably determine that the engineer's practice area is generally the same as the practice area of the work at issue. *Hegemeyer* also establishes that the court may consider information beyond the certificate of merit itself to determine whether the certificate is adequate. Subrogation professionals considering claims against architects or engineers in Texas should be

mindful of Chapter 150 and comply with its practice-area requirements.

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