The Spearin Doctrine: 100-Plus Years Old and Still Going Strong

All parties to construction contracts must be aware of its limits and contours to understand properly their exposure to liability.

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"Errors and omissions" is a phrase that keeps design professionals awake at night. Plans and specifications may contain mistakes or inaccuracies that are identified by a contractor after construction on a project begins. If those inaccuracies cause delays, the question arises: Who is responsible for the associated costs? While the design professional may ultimately face liability from the owner, the initial tussle over responsibility is typically between the contractor and the owner.

In response to this "tussle," courts across the country have developed a doctrine known in some jurisdictions as the "implied warranty of design adequacy." This implied warranty is commonly known as the Spearin Doctrine, named after an infamous construction case dating back to 1918.

Under the Spearin Doctrine, "if a contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications." United States v. Spearin, 248 U.S. 132, 136 (1918). However, this general rule is subject to exceptions that contractors must familiarize themselves with to avoid unnecessary exposure to liability.

Background

The Spearin Doctrine originated in the U.S. Supreme Court at the turn of the 20th century. In 1905, George Spearin contracted with the federal government to build a dry dock at the Brooklyn Navy Yard for $757,800 (more than $19 million in present value). The government provided the plans and specifications. To complete the project, Spearin had to divert a nearby sewer.

Approximately one year after that diversion, heavy rainfall coinciding with a high tide broke the sewer and flooded the dock. Upon inspection, Spearin learned there was a dam within the sewer. The diversion of the sewer increased pressure on the dam substantially, causing it to break. All parties were unaware of the dam, which was not mentioned in the specifications provided by the United States.

Spearin refused to continue work unless the government paid for repairs. The government refused to compensate

him further and elected to use other contractors to complete the project. Spearin sued the federal government, arguing that the faulty design specifications it created caused damage and delay to the project.

The government argued that because Spearin's contract obligated him to inspect independently the actual conditions of the site, the government was not liable for providing incomplete specifications. In what has become a landmark legal decision in the construction industry, the U.S. Supreme Court rejected this argument.

The court held that "[t]he obligation to examine the site did not impose upon [Spearin] the duty of making a diligent inquiry into the history of the locality with a view to determining, at his peril, whether the sewer ... would prove adequate." Spearin, 248 U.S. at 137. In other words, a general requirement in a contract that a contractor inspect the site does not obligate the contractor to unearth unknown conditions that should be in the design specifications.

Since Spearin, nearly all 50 states adopted some form of the doctrine. See 3 Brunner & O'Connor, Construction Law § 9:81. The precise contours and limitations of the doctrine vary from state to state. While most states simply refer to the Spearin Doctrine, some jurisdictions use the phrase "implied warranty of design adequacy." See, e.g., MidAmerica, Inc. v. Bierlein Cos., No. 4:19-cv-04096, 2020 WL 5995981 (W.D. Ark. Oct. 9, 2020); Costello Constr. Co. v. Charlottesville, 97 F. Supp. 3d 819 (W.D. Va. 2015).

Despite the doctrine's wide acceptance, there are a number of landmines contractors must avoid to take advantage of it. For example:

- The Spearin doctrine will not apply if a plaintiff failed to adhere to other parts of the contract. See Al Johnson Constr. Co. v. United States, 854 F.2d 467, 469-70 (Fed. Cir. 1988); S. Comfort Builders, Inc. v. United States, 67