



Federal Claims Court Rules That Architect's Imperfect Plans Did Not Breach Duty or Contract

On April 29, 2005, The United States Court of Federal Claims issued an important opinion defining the standard of care owed by a design professional in fulfilling the terms of a U.S. government contract. In *C.H. Guernsey & Co. v. United States*, 65 Fed. Cl. 582 (2005), the court determined that the architect did not breach its professional duty of care or the implied warranty under its contract simply because its design was costly or difficult to implement.

At issue in *Guernsey* were the design plans and specifications supplied by the architect, C.H. Guernsey & Co. ("the Architect"), to the United States Army Corps of Engineers ("the Corps") for the construction of a pre-engineered metal building at Fort Knox, Kentucky. The contract between the Architect and the Corps provided that the Architect would be liable to the government for damages caused by the Architect's negligent performance of any services under the contract.

The Architect followed closely the requirements provided by the Corps, including stringent specifications for the amount of movement in the structure ("lateral deflection criteria") under certain wind and seismic conditions. A subcontractor selected to construct the building neglected to review the stringent criteria in the plan supplied by the Architect and instead based its bid on values that were less expensive and easier to implement. The Corps later insisted on the more stringent values, and the subcontractor made its own modifications to the plans, which raised the cost of the project over the amount the subcontractor originally bid.

The Corps ultimately sought to hold the Architect responsible for the cost increase, alleging that the Architect was negligent in submitting its design specifications and therefore had breached the contract. A Corps Contract Officer assessed the Architect \$716,000 for the alleged breach. The Architect filed a petition in the Federal Claims Court seeking declaratory relief, and the Corps counterclaimed, seeking damages for "negligent performance" of services under the contract.

The government argued that the Architect was negligent in failing to design a building that could be constructed cheaply and easily using standard methods of the pre-engineered metal building industry, and failing to ascertain that the Architect's design, with stringent specifications, could be constructed. The Architect argued that its plans were "buildable," and that the government had failed to establish that the Architect had breached any duty of care.

The court concluded that the Architect was not negligent in using stringent criteria in its plans, because the "lateral deflection" values were a particular concern of the Corps and the Architect was appropriately responding to that concern. The court also noted that the cost of using the Architect's original design would not have exceeded the Corps' overall estimated contract price and that the Architect's design had not caused unreasonable delay because the Architect proposed a suitable solution only twelve days after the potential design problem was discovered.

The court also held that the Architect did not breach an implied warranty to provide design services free from defect. The issue here was whether the “lateral deflection” criteria were “design” or “performance” specifications. Architects are liable for any defect in design specifications because contractors must adhere to them without deviation or modification. In contrast, performance specifications set out objectives, leaving methods for obtaining them up to the contractor and, thus, do not incorporate an implied warranty.

The court determined that the “lateral deflection” values were a performance specification because the subcontractor had discretion to decide how to accomplish the values. The court, therefore, found those criteria in the Architect’s plan did not impose an implied warranty to be free from defects.

Concluding that the Architect had not breached the standard of care for a design professional, the court held that “there is a wide difference of opinion in the industry about the appropriate deflection criteria to use in constructing a metal building.” Thus, even though the Architect’s plans incorporating stringent deflection values made the building more difficult to construct, they did not constitute a breach of the architect’s standard of care because that standard does not require that a design be “easy to implement.”

The court’s ruling demonstrates that a contractual obligation requiring non-negligent design services does not demand perfection. Where a contractor has discretion in implementing the plans supplied to it, the architect cannot be liable for a defect under a theory of implied warranty. Finally, significant differences in opinion about the efficacy of a design suggest that the architect has not breached the professional standard of care.

Risk Management Prevention Tip

If you are contracted to design a structure requiring complicated construction methods to fulfill the project guidelines, it is vital your plans remain “buildable” and appropriate to the job’s scope. By keeping construction costs and execution feasibility in mind, you can help prevent claims for a breach of standard of care or implied warranty. In this case, the Architect did produce exacting and costly specifications, but ultimately prevailed due to his diligence in meeting the stringent specifications demanded for the “lateral deflection criteria.”

By Donovan Hatem LLP, World Trade Center East, Two Seaport Lane, Boston, MA 02210.
© Donovan Hatem LLP 2007. All rights reserved. For more information, please contact Douglas M. Marrano at 617-406-4584 or at dmarrano@donovanhatem.com.

ASCE is dedicated to providing its members with high-quality professional liability coverage at affordable rates. Through their partnership with the ASCE Professional Liability Plan Administrator, Pearl Insurance, they can provide insured members with valuable risk management tools and services to help effectively assess and reduce their potential risks and liabilities. For more information about the ASCE Professional Liability Plan, call a Customer Service Representative today at 1.888.619.1908 or email ascepro@pearlinsurance.com.

The information contained in this article should not be relied upon as legal advice for specific facts and circumstances and is not intended to be a substitute for consultation with counsel.