



Contractor Hit with Massive Design Liability



A consultant's major code violation leaves the contractor to face huge liability for design insufficiencies



What Happened?

A contractor contracted with a new client to construct a high-rise office building in Southern California. The contractor hired all of the design firms for this design-build project and was therefore at-risk for the designers' performance. The client had one stipulation: he insisted on having the contractor hire the structural engineer (SE) who had previously worked on three of the client's successful Florida projects. The contractor had no objection. After all, a good history between a client and a designer could only be a good thing, right?

The project started smoothly and design and construction proceeded on schedule. In fact, the project neared substantial completion with ample time to reach the client's specified occupancy date. The SE had a few setbacks, not having worked in California before, but came up with unique solutions to problems encountered.



An Unpleasant Surprise

When the plans were reviewed and the project was inspected for the certificate of occupancy, the contractor received this shocking news: the high-rise did not meet earthquake code in California due to insufficient structural design. Extensive and expensive retrofitting of structural elements would be required. Meeting the occupancy date the contractor had agreed to was now out of the question.

Ultimately, the client filed a significant claim against the SE and the contractor, attempting to recover the added costs of the retrofitting and the economic loss from the delay in occupancy.



How Insurance Responded

Because the losses were caused by a design error, the contractor's general liability policy did not respond. The SE did have professional liability (PL) insurance, but the available limits were grossly insufficient to cover the alleged losses. Fortunately, the contractor had purchased PL insurance to cover its vicarious liability, and the policy did respond to cover the remainder of the losses arising from the negligent performance of the SE. This protective PL coverage acted much like an umbrella policy in that it sat in excess of the SE's underlying professional liability limits and paid out only when the designer's PL policy was exhausted.



Lessons Learned

Knowledge of local building codes is key to a successful project. Even though the client and the SE had a successful history, that history was from projects in another state on the other side of the country. The SE had never worked in California before and was unprepared to meet prevailing earthquake code.

When dealing with stringent codes, it's always best to get plans preliminarily reviewed before substantial completion of construction. If the SE's design had been examined at the design stage, correction of the inadequate design would have been much easier, much faster and much cheaper.

Finally, the contractor was well served by recognizing its vicarious liability for the actions of the design firms it directly contracted with through this design-build project. Purchasing Professional Liability coverage as part of its comprehensive construction insurance provided essential financial protection.



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Protection You Need

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founded by a team of insurance professionals with a passion for the construction industry and deep roots in construction professional liability underwriting, risk management and claims.



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