



Contractor Entangled in Litigation—Fatal Design Flaw Leads to Multimillion-Dollar Settlement

Better Built



What began as a lucrative and high-profile new hospital construction job turned into a tragic and costly nightmare for one Midwestern contractor.



What Happened?

A contractor took the lead role in the new construction of a \$100M, five-story hospital. Because it was a design-build project, all designers had contracts with and reported to the contractor. After three years of design and construction work, the contractor delivered a state-of-the-art facility, on time and on budget.



A Fatal Flaw

Shortly after the facility opened, the elevators began experiencing periodic electrical problems leading to elevator delays and stoppages. An investigation of the problem ensued.

In a tragic circumstance, a patient experiencing complications during surgery had to be quickly moved to an operating room on another floor, using a hospital elevator en route. During transit, the elevator stalled and the patient was left stranded inside for approximately one hour. Horribly, the patient died before elevator service could be restored.



A Multimillion-Dollar Settlement

The family of the deceased sued various parties, including the contractor. It was subsequently found that the electrical problems were the result of a design error on the part of the project's electrical engineer—who had inadequate PL insurance limits. Because the contractor was the lead on this design-build project and contracted directly with the engineer, he had vicarious liability for the design error. The contractor, who fortunately had professional liability coverage, eventually reached a multimillion-dollar settlement.



How Insurance Responded

Because the cause of the tragedy was a design error, not a matter of construction means and methods, the insurer who issued the contractor's GL and Umbrella policies denied coverage. This insurer pointed out that coverage for design errors or omissions was specifically excluded in a GL policy endorsement. Fortunately for the contractor, his professional liability insurer did respond with coverage up to the policy limits.



Lessons Learned

As this example shows, the potential to be held vicariously liable for the design errors and omissions of project consultants is very real. This is particularly true when serving as general contractor on projects utilizing design-build, IPD, P³ or other nontraditional project delivery methods where you contract with the design professionals directly.

Do you—or will you—provide project management, value engineering or cost reduction services? Do you participate in BIM, IPD or other 3D modeling techniques? Do you help prepare shop drawings or perform constructability reviews, scheduling or sequencing? Will you take a role in LEED certification? If you answer yes to any of these questions, you have potential professional liabilities, whether or not these services are included in your contract.



Berkley Construction Professional



Protection You Need

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Our **PERFORM** professional liability coverage provides renewable annual practice policies on a primary or excess basis. Project specific policies are also available for design-build, IPD, P³ and other project delivery methods.



Coverage Highlights

We're a leading provider of specialized construction professional insurance and pollution coverage for all construction-related

industry exposures, offering:

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- Cutting edge risk management education programs that help you avoid project upsets and claims
- Experienced claims personnel dedicated to construction professional and pollution liability cases
- Insurer rated A+ (Superior) by A.M. Best Company

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Practice management recommendations should be carefully reviewed and adapted for the particular project requirements, company standards and protocols established by the construction professional

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