

Using the Spearin Doctrine as a Tool to Avoid Liability

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Among the tools a contractor should have in their toolbox is the Spearin Doctrine, derived from the 1918 Supreme Court case, *United States v. Spearin*. This particular tool, when properly used, protects contractors from liability for damages resulting from faulty plans and specifications provided by project owners or engineers. When the project owner gives the contractor plans and specifications to use, the project owner impliedly warrants that the plans are accurate and suitable for their intended use. Accordingly, the contractor is expected to build according to those plans. The basis for the Spearin Doctrine is that when contractors are bound to build according to the plans and specifications provided by the owner, the contractor should not be responsible for damages that, through no fault of his own, occur when said plans and specifications are defective.

Like any tool, there are instances where attempting to use the Spearin Doctrine would be inappropriate and may not work. For instance, some courts have held guarantees given by the contractor prevent the use of the Spearin Doctrine with regards to deficiencies that are specifically related to the subject matter of the guarantee. Likewise, when disclaimers, waivers, or exculpatory clauses in a contract are specific enough, and the liability shifts from the owner to the contractor, the contractor accepts the enumerated risks. In the event of a more general disclaimer or an implied warranty accompanying plans and specifications, contractors still have a duty to investigate and make inquiries about any obvious ambiguities, inconsistencies, or mistakes that they recognize or should recognize in the plans or specifications. In other words,

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contractors must *reasonably* rely on the plans and specifications and not have prior knowledge of any defects in order to rely on the Spearin Doctrine. If a contractor fails to notice a defect or mistake that an ordinary contractor would have noticed, or fails to conduct a pre-bid site inspection, the Spearin Doctrine may be forfeited. Furthermore, if a contractor argues that damages result from a particular specification, they will likely need to show that the design, rather than his own work or performance, caused the damages.

Unlike some tools, the Spearin Doctrine can be used both offensively or defensively; it can be used to bring a claim when defective plans and specifications cause a contractor's work to be more expensive, time-consuming, or difficult, or it can be used to rebut the consequences of such defects. In many cases where the Spearin Doctrine has been applied, the contractor is the defendant and uses the doctrine to argue that the contractor is not liable for damages for issues that are not discovered until construction is complete or nearly complete. Understanding the Spearin Doctrine and its applications is more important now than ever. As more buildings are constructed that increasingly utilize technology, such as "smart buildings" with complex automated processes or designs that implement sustainable building technology, the Spearin Doctrine is likely to play a part in determining which party is responsible when a system fails to perform or performs less efficiently than expected.