

Professional Liability and Duty for Engineers

PEM Annual Seminar

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Today's Focus

- Liability
 - Claims trend
- Recent Supreme Court Decisions
 - Likely impact on exposure to claims
- Ways to reduce exposure
 - Exposure is inevitable but can be reduced

Pop Quiz

- What does it take to be sued in Kentucky?
 1. A filing fee
 2. An SoB

Claims Trend

- Experience with Claims Against Engineers
 - Litigator
 - Mediator
 - Arbitrator

A Rose by...

- Construction Administration Services

- Observation

- Inspection

Owners

- Expectations

- The expert

- More for Less

- Last minute scope reductions

Contractors

- No contract, no problem
 - Negligent Misrepresentation
 - Indemnity
- Protect me from . . .

Recent Supreme Court Cases

- Good News

- Recent cases reduce exposure

- Bad News

- Recent cases increase exposure

Good News First

- Economic Loss Rule

- No tort liability for purely economic losses

Tort Liability

- Negligence

- No choice because no contract

- Negligent Misrepresentation

- Should be harder to claim

Economic Loss

- Repair/Replacement Costs
- Delay Damages

Bad News

- Comprehensive General Liability Coverage
 - ❑ Comprehensive is a misnomer in Kentucky.

CGL Coverage

- Contractor's Bad Work
- Subcontractor's Bad Work

You Be The Judge

- Contractor works on basement and foundation.
- Contractor's work was defective.
- The upper floors of the house were damaged.

You Be The Judge

- Can the home owner sue the contractor and recover damages for:
 - Repair costs for the basement and foundation?
 - Repair costs for the upper floors of the house?

Partial Victory

- The trial court presented with this question denied coverage for the foundation work but found coverage for the damage of the upper floors.

Not So Fast

- The Court of Appeals reversed the trial court and found no coverage for either.
- The Supreme Court affirmed.

Why This Matters

- You have CGL coverage too.
- What happens when CGL coverage is not comprehensive?
 - Owners lose a potential source of recovery.
 - Contractors lose a potential source of funds to resolve claims.

Ways To Reduce Exposure

- Supreme Court changes the law
 - ❑ Minority position but unlikely in the near future
- General Assembly changes the law
 - ❑ Best and most likely option if someone asks

It Has Been Done

- Colorado statute:

(3) In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, is an accident unless the property damage is intended and expected by the insured. Nothing in this subsection (3):

- (a) Requires coverage for damage to an insured's own work unless otherwise provided in the insurance policy; or
- (b) Creates insurance coverage that is not included in the insurance policy.

Policy Reasons

- Kentuckians should receive the same CGL coverage provided to people in other states.
- Insurance companies have not gone broke providing the coverage in the majority of states that interpret CGL coverage more broadly than Kentucky.

Questions

- Ask now or...
- Email me at jwhays@jacksonkelly.com.

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