

Points of Law 7

ABC Warehouse V Glulam Beam Failure

7.1 Warranty vs. Statute of Limitations

Three-and-a-half years after the completion of construction, a glu-lam beam fails. The prime contract included a clause by which the contractor warranted the building against defects for one year. Is the contractor liable for the loss?

George Hyde says that his company only warrants the building for one year. That fact, however, does not excuse the contractor for a breach of contract that is discovered more than one year after the completion of the building.

The statute of limitations for breach of contract causing property damage varies from one state to another. In most states the limitations period for such a claim is three or four years from discovery. The “one-year warranty” provision does not shorten this statute of limitations. Therefore Hyde is still potentially on the hook. The “one-year warranty” provision of the contract is no defense.

From Allen’s point of view there are four potential sources of recovery for the cost of repairing the damage to beams. It is possible that the problem is the fault of the architect either for improperly designing the sheet metal cap or for negligence in inspecting the construction.

It also seems that the sheet metal subcontractor may not properly have installed the sheet metal cap. If that were the case, both the subcontractor and the prime contractor would be liable for breach of contract and for negligence.

7.2 Insurance

One other potential source of recovery would be Allen’s property insurance policy which, in all likelihood, covers the loss.

If Allen collects on his insurance, then the insurance company will be entitled to recoup from any party whose negligence may have caused the loss which would potentially include the architect, the prime contractor, and the subcontractor. If the architect has errors and omissions insurance, its insurance carrier would respond. If Hyde Construction and the sheet metal subcontractor carry liability insurance policies, as they probably do, those liability insurance carriers would respond.

If the cost of repair were to be \$50,000 rather than \$5,000, these potential sources of recovery would be thoroughly investigated. Investigation might well disclose that the sheet metal cap was damaged after the building was finished by Allen’s own maintenance personnel.

Given the relatively minor number of dollars involved, Allen will probably process a claim with his own insurance carrier and that will be the end of it.

7.3 Latent vs. Patent Defect

Phil Quinn mentions latent and patent defects. Patent defects are those that are noticeable to a person who conducts a reasonable inspection. Latent defects are those that are not so observable. The distinction is important because in most states the statute of limitations starts to run on patent defects upon the completion of the project, while the statute of limitations on latent defects runs only after the defect has been discovered by the property owner.