Liberty Specialty Markets

PROFESSIONAL INDEMNITY // CONSTRUCTION CONSULTANTS // CLAIMS EXAMPLE // AUSTRALIA

Claims Examples: PI Insurance for Construction Consultants

The following real life cases show how construction professionals can become embroiled in serious disputes and litigation which can be extremely costly in terms of time, money and loss of reputation. That is why consulting engineers, building surveyors, environmental consultants, architects, project managers and other construction consultants require a high quality, comprehensive professional indemnity policy backed by experienced underwriters and claims managers.

Industrial Design Engineering Consultant

An engineering consultant ("the consultant") designed a structure to house industrial equipment. Design specifications included reference to dynamic forces that would be imposed upon the structure during transportation to site. During transportation, part of the structure collapsed and the equipment was damaged.

Whilst the consultant's design called for all connections to be both bolted and welded, subsequent investigations revealed that only the structure's braced connections had been bolted. Experts gave evidence that the omission of welding greatly reduced the structural integrity of the connections, which contributed to the collapse. Notations on the consultant's drawings were found to be ambiguous which led to the fabricator not inserting all intended boltings. The claimant sued a number of parties including the consultant, seeking salvage and reconstruction costs in excess of $20 million. The claim was settled for $8.5 million to which the consultant made a multi-million dollar contribution.

Infrastructure Consulting Engineer

A consulting engineer was engaged to design internal roads and a hardstand area for a client to load and unload cargo onto trains. During use the underpinnings to the hardstand began to collapse and further subsidence ensued. It was alleged the consulting engineer's design was defective in that it failed to adequately address what types of vehicles would be using the hardstand area and how they would access the area to load and unload cargo.

The materials for the structure were changed during design from concrete to compacted gravel, which saved costs – in the short term. Also the equipment actually used for loading and unloading was heavier than advised to the design engineer. Rectification costs were quantified at $750,000 but given the allegations of contributory negligence, the claim was settled with the client for $200,000.

Building Surveyor

A building surveyor was engaged to issue a building permit and the required certificates, including the final Certificate of Occupancy for a residential construction. Some years after completion of the house, the owners noticed significant movement and cracking. The owners sued the contracted builder and the home warranty insurer. The contracted builder joined the builder to whom it had sub-contracted the works. The sub-contracted builder then joined engineers, the manufacturer of the footing system, the installer of the footings and the building surveyor.

The allegations against the building surveyor were that he was negligent in issuing the permit and certificates because he should have recognised the deficiencies in the various engineering plans, designs and computations. He asserted that it was not the role of a building surveyor to check such documentation, rather, his duty was to certify that the steps required under the Building Act had been carried out by the appropriate registered building professionals.

The other parties alleged that because the deficiencies were obvious on the face of the design documents and certificates, the building surveyor was liable.

After four years of litigation (and significant legal costs) the claim settled for over $1million with the building surveyor contributing a proportion of that sum. Unfortunately, it is common for building surveyors to be dragged into such disputes.

Environmental Engineering Consultants

A landlord of a property catering to a mix of commercial and recreational activities engaged a firm of environmental consultants to undertake a survey of the building. The consultants detected that the building was subject to a level of contamination likely to be dangerous. The consultants advised the landlord that the building should be evacuated and until further assessment and decontamination (if necessary) had been performed, nobody should be allowed in without taking appropriate precautions. Unofficially, WorkCover concurred with that advice. The landlord terminated all the leases.

One tenant sued the landlord for business interruption seeking $3 million. The environmental consultants were joined as a defendant because the landlord asserted that any liability it might have arose purely from acting on the consultants' advice.

Expert accounting evidence indicated that any loss the claimants may have suffered was minimal. The matter failed to settle at mediation as both parties' settlement offers were substantially far apart. The consultants succeeded at trial, however not before incurring legal costs in excess of $250,000 with little prospect of recovering such costs from the claimant.

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