



International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

Collateral Warranties

FIDIC Briefing Note

June 2019



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Background

The international engineering federation FIDIC (the International Federation of Consulting Engineers) believes that its member associations and their members should strive to achieve the highest degree of quality and standards.

FIDIC has always had policy statements that it expects its members to follow to ensure high standards of service in the infrastructure industry. These standards are reflected in FIDICs contracts, policy work, events and committees.

Collateral Warranties

In recent years consulting engineers have been asked to enter into collateral warranties with the financiers of construction projects which the financiers can then transfer to subsequent purchasers.

The practice appears to have developed when the courts began to reduce the “neighbourhood” on which the duty of care is based, having for a long time continued to extend its scope and extent.

If the warranty seeks to go beyond the concept of negligence, then it is certain to breach the provision of normal contracts for professional indemnity insurance.

If the warranty is limited to negligence, then the danger exists that possible ambiguities between it and the warrantor’s contract for professional indemnity insurance may cause that contract to be called into question.

Furthermore, the warrantor probably would not know the identity of those to whom the warranty will eventually be transferred. Thus, he is being asked to make a contract with someone unknown to him and to replace the law of tort with the law of contract for that relationship.

Rationale

There is adequate remedy in the law for the owners of construction projects, and it is against the interest of both consulting engineers and society that the liability of engineers be widened under the pretext of the collateral warranty instrument whereby engineers are drawn into relationships under contract which should more appropriately be governed by the law of torts. Such relationships may even threaten the availability of professional indemnity insurance for these engineers.

FIDIC recommends:

- Member associations engage on such issues, and where appropriate oppose the concept of collateral warranties between consulting engineers and third parties.



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Endnotes