



International Federation of Consulting Engineers
The Global Voice of Consulting Engineers

Limitation of Liability

FIDIC Briefing Note

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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.

Limitation of Liability

Issues

During the past thirty years there has been a growing tendency to extend the liability of engineers for professional negligence. This has developed in several ways.

There has been an increased tendency to extend the “neighbourhood” which is at the core of the law of tort (which applied to a breach of a duty of care, as opposed to a breach of a contractual duty). In search of remedies for damage suffered, courts have been extending the neighbourhood, by finding (for example) that an engineer owes a similar duty to subsequent owners of a property to that owed to the original client for whom the engineer acted.

Furthermore, tort liability rules have been used to indemnify plaintiffs not only for their personal physical damages but also for consequential economic damages which tort law was not intended to cover originally.

For the same reason, courts have been extending the time within which claims can be made by finding that statutes of limitations should run from the time when a fault is discovered rather than from the time when the fault occurred. This has effectively made time open-ended, and potentially flowing not only beyond an engineer’s working lifetime but further, to heirs.

For the same reasons, courts have established the rule known as the joint liability of several concurrent tortfeasors rule. Under this rule, any single defendant who is held jointly and severally liable, may be requested by the plaintiff to pay 100% of the damages to the plaintiff. The defendant who paid the plaintiff has recourse against the other jointly and severally liable defendants for their portion of the damages, but bears the risk of their insolvency (the so-called ‘deep pocket’ syndrome). This rule has caused issues not only by disproportionately penalising those who act responsibly in the performance of their services, but also by tempting plaintiffs and their advisers into mounting complex actions which join all potentially available defendants, whether there is a clear case against them or not.

For the same reasons, legislators are being tempted to adopt strict liability rules for services, thus creating liability without negligence, for the mere reason that the service causes damage.

These burdens could be returned by limiting the liability of an engineer to a specific sum, limiting the time within which a claim could be made against an engineer to a specific period after the completion of the service from which the damage flowed, and limiting the amount of the damages to that apportioned to the engineer by the court.

Rationale

The increased incidence of liability, and the inability of engineers to predict its future course, is hampering the practice of engineering by forcing engineers into defensive practices and reducing their willingness to innovate. At the same time, this uncertainty is limiting the ability of insurance providers to construct logical insurance models that can take care of damages properly attributable to the limited amount of negligence which does occur. The consequent uncertainty is threatening the practice of engineering.

The existence of a strong, competent and innovative engineering profession is important to each of the world's communities.

FIDIC recommends:

- To maintain or obtain legislation which recognises the validity of contractual limitation of professional liability of engineers and preferably limits such liability. This limitation should apply both to the sum which may be claimed and to the time within which a claim may be made or during which liability exists.
- Member associations help to establish the concepts of strict liability, i.e. liability without negligence, and of joint and several liability should not apply to professional services.
- Member associations engage to promote the rationale behind these limitations which include:
 - a sensible relationship between the assessment of the risk involved, the financial burden of the liability and the remuneration and overall financial capacity of engineers to indemnify
 - insurability of engineering services
 - the security of the user of the professional services that damages to which he may be entitled can actually be recovered



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Endnotes