



NATIONAL CONSTRUCTION DEFECT CONFERENCE



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Product Liability Claims in Construction – Litigation, Coverage, Tips, and Strategies



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PRODUCT LIABILITY CLAIMS IN CONSTRUCTION: LITIGATION, COVERAGE, TIPS & STRATEGIES

November 2024

PRODUCT LIABILITY CLAIMS IN CONSTRUCTION



PRESENTERS:

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Before We Start....

The material presented and discussion points in this presentation are not to be construed as or assumed to be the opinions or positions of the companies with which the panel members are affiliated. No legal or claims handling advice is intended to be relied upon by the audience.

SCOPE OF THE PRESENTATION



This panel will address litigating and managing product liability exposure in construction cases.

The claim that a construction product is defective is often made in construction lawsuits. Whether it is a defect action or a construction accident action, the applicable laws apply to owners, builders, subcontractors, suppliers and vendors.

3D PRINTING – A NEW PRODUCT?



UNDERSTANDING 3D PRINTING



[Can 3D-printed homes could help solve America's housing crisis | Watch \(msn.com\)](#)

Other New Construction Products?



Hempcrete

Cross Laminated Timber

Pre-fabricated Modular Units



SCOPE OF THE PRESENTATION



Although sometimes intertwined with claims of faulty workmanship, product manufacturers, suppliers, and distributors have unique exposure created by the strict liability, breach of warranty, and negligent design and manufacturing claims relating to the nature of their product itself.

This panel will also focus on coverage issues arising in these claims and the unique defenses that may be asserted.

The panel will discuss the classic battle between an installer and a product manufacturer/supplier.



PRODUCT CLAIMS IN CONSTRUCTION LITIGATION

Primary Types of Claims/Causes of Action

- Product Liability: Negligence & Strict Liability
 - Manufacturing Defect
 - Design Defect
- Negligence
- Breach of Warranties



PRODUCT CLAIMS IN CONSTRUCTION LITIGATION

Potential Parties Who Are Sued

- Manufacturer
- Distributor/Supplier
- Installer (subcontractor)
- Builder/Developer/Owner



PRODUCT CLAIMS IN CONSTRUCTION LITIGATION

Prior to Suits

- Statute of Repose/Statute of Limitations Issues

Types of Suits

- Class Action
- MDLs
- Multi-Party Construction Defect Action



PRODUCT CLAIMS IN CONSTRUCTION LITIGATION

Damages Sought

- Replacement of Defective Product
- Repair/Replacement of Damage to Other Property
- Reduction in “Useful Life” of Building or Component
- Stigma Damages



PRODUCT CLAIMS IN CONSTRUCTION LITIGATION

Product vs. Workmanship

- Defectively Manufactured Product
- Failure to follow installation guidelines/code requirements
- Improper sequencing
- Design issues
- Maintenance issues
- Warranty
 - Notice?



Defense Strategies Including Differences in Jurisdictions

- Economic Loss Rule
- Sophisticated User
- Failure to Notify
- Lack of Privity
- Product Specified in Plans
- Passive Supplier
- Alteration of Product
- Innocent Seller
- Component Part Doctrine
- Consumer Expectation vs. Risk Benefit Analysis



COVERAGE ISSUES IN PRODUCT LIABILITY CASES IN CONSTRUCTION

Overview of Issues Regarding Insurance of Products

- Satisfaction of Insuring Agreement
 - Is there an “occurrence”
 - Is there “property damage”
 - Damage to Other Property
 - Reduction in “Useful Life”
- Rip & Tear to Replace Defective Product
- Vendor Additional Insured Endorsement (CG 20 15)



COVERAGE ISSUES IN PRODUCT LIABILITY CASES IN CONSTRUCTION

Faulty Work Exclusions

- Exclusion “k” – “Property Damage” to “Your Product”
 - Was Product Supplied by Owner or General Contractor
 - “Your Product” – any goods or products “handled” by you
 - Includes warranties and representation
- Exclusion “m” – “Impaired Property” Exclusion
 - What is “impaired property”?
- Exclusion “n” – Recall of Products Exclusion

PARTY SPECIFIC STRATEGIES



- ❑ Manufacturer vs. Installer
- ❑ Manufacturer vs. Plaintiff
- ❑ Coverage Strategies for Type of Insured



THANK YOU