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## Spotlight on Spearin

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Ninety years ago, a dispute over a malfunctioning sewer resulted in judicial recognition of a legal principal which continues to protect contractors to this very day. In the 1918 case of *U.S. v Spearin*, the Supreme Court ruled that a contractor who relocated a sewer in compliance with dimensions, materials and specifications outlined in the contract was not responsible for damages that ensued when the sewer broke up after a sudden rainfall. This concept became known as the "Spearin Doctrine," which states that an owner impliedly warrants that its plans and specifications are adequate and sufficient for the purpose intended, and that a contractor who follows the plans and specifications prepared by the owner is not responsible for the consequences of defects in those plans and specifications.

The Spearin Doctrine is based upon the idea that it would be inequitable to allow an owner to avoid responsibility for the plans and specifications relied upon by contractors to bid and perform the work, and inequitable to delegate design risks to a contractor. The fundamental fairness underlying the Spearin Doctrine accounts for its widespread adoption by state courts across the country, and for the doctrine being applied by the courts to both public and private contracts.

In Maryland, adoption of the Spearin Doctrine dates back to a 1929 case involving the reconstruction of a building. The contract directed the contractor to install the sprinkler system using the building's existing pipes, which during construction were discovered to be rusted and weak. The Maryland Court of Appeals stated that the contractor justifiably relied on the architect's judgment that the material specified was fit for the purpose intended; that there was "an implication of law that the owner warranted the fitness of the pipes for the purpose designed;" and, that the unfitness of the pipes was a breach by the owner of the implied warranty, that entitled the contractor to recover damages.

While the benefit of the Spearin Doctrine is typically enjoyed by contractors who fully comply with the specifications, a contractor's deviation from the specifications does not automatically void the implied design warranty. This concept was first articulated in *Al Johnson Construction Company v. U.S.*, a Federal Circuit Court case arising from the collapse of a berm that the contractor failed to construct to the specified height, and that ultimately was overwhelmed by heavy rains. The Court stated that although the Spearin Doctrine's implied warranty runs to contractors who have complied with the

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specifications, an exception exists for "a deviation from the specifications shown to have been entirely irrelevant to the alleged defect." Therefore, the mere fact that the contractor did not construct the berm to the required height was not determinative; rather, the burden shifted to the contractor to "prove that its nonconformance had no logical relationship to the failure of the berm."

In other words, even in a situation where the contractor has failed to perform it accordance with all of the specifications and all of the contractual requirements, the contractor is nevertheless afforded the protection of the Spearin Doctrine if it can prove that the design was "doomed to failure," i.e., that the unsatisfactory result was unrelated to its non-performance, and would have resulted even had there been full compliance. This is precisely what happened in a 1989 Armed Services Board of Contract Appeals case involving floor cracks. The Board ruled that although the contractor failed to construct the concrete slab in strict compliance with the specifications, the government was liable for the cracks because the contractor met its burden of showing that government design defects — and not deficiencies in the contractor's work — was the cause of the performance failure.

Obviously, proving that the owner's design was "doomed to failure" is a significant burden which contractors might find difficult to satisfy. In order to avoid having to do so, the prudent contractor will perform its work in strict accordance with the plans and specifications furnished by the owner, and thereby ensure its ability to invoke the Spearin Doctrine in the event the work does not perform as expected and as intended.

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