

"The Bargains We Make", *Innovation*, September/October 2012

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This article discusses inconsistent contractual clauses (especially in the context of construction warranties and guarantees) and the implications for contract drafting, advising clients and resolving disputes.

As owners more frequently incorporate engineers as part of their project initiation team (and increasingly rely on engineers to take a project from concept through to fruition), engineers involved in the preparation of design and contract documents must be aware that the decisions they make regarding the drafting of these documents could have significant legal liability issues for the owner, the contractor and the engineer.

In addition, the drafting of the ultimate construction contract (frequently provided by the owner's engineer) can affect the quality of bids received, the number of bids received, and the competitive nature of the procurement process. Engineers must carefully consider the contractual framework for construction or supply contracts they propose as part of their consulting services so that the needs of their client are reflected in the contracts. Based on recent case law, failure to do so may lead to a claim against the engineer.

This article also includes discussions of:

- The Facts
- The Supply Contract
- The Trial
- The Appeal
- Lessons Learned

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