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***CONSTRUCTION CONTRACT WARRANTIES v.
STATUTES OF LIMITATION -- WHEN IS A WARRANTY A
CONTRACTUAL LIMITATIONS PERIOD AND WHEN IT IS NOT
AND WHAT IS THE EFFECT ON THE SURETY?***

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by John V. Church, Esquire

This paper surveys the law regarding the impact of construction warranties on statutes of limitations. The construction contract warranty is a common part of any construction contract. AIA Document A-201 contains a model contractual warranty clause.¹ The purpose of the contractual warranty is to permit the contractor to return to the project within a certain period of time of substantial completion of the work to correct certain problems noted by the owner. The duration of the warranty period can vary from very short periods to periods as long as a decade.

State statutes of limitations for breach of contract typically run much longer than the one year contractual warranty period. Problems arise when defects in construction work first appear after the contractual warranty period has expired. When plaintiffs have brought suits to recover damages, courts have refused to read the warranty as a limitations period. They have instead interpreted a warranty as an additional promise made by the contractor to return to the site and remedy defects that are discovered within the agreed period, or as a contractor's right to cure defects. Courts have held the longer statutory limitations period to apply.

Too often contractors do not focus on their contractual warranty obligations when entering into a contract. When the project is complete and the money has been finally paid, the contractor assumes that his responsibilities are complete subject only to a contractual warranty period. As a result, the contractor at the conclusion of the warranty period believes he has completed the project and has no further obligation to the owner. Unfortunately for the contractor and its surety, life is not so simple. The courts have, in most cases, been unwilling to view a contractual warranty as a statute of limitation.²

The effect of the limited application of the contractual warranty is great. Numerous states have very long statutes of limitations for claims involving the construction of buildings. If, for example, the one year construction warranty is not a statute of limitations, the contractor and its surety could face

¹ The American Institute of Architects, A201 Commentary in The Architect's Handbook of Professional Practice, 69 (1988). The commentary of AIA regarding A-201, Art. 12.2.2 notes that:

This one-year period reflects only to the time within which the contractor is obligated to perform corrections to the work. Correspondingly, it is also the time within which the owner has the right to require that performance. It does not establish a statute of limitations or similar time limit or the contractor's obligation to pay money damages -- it applies only to the correction of such work.

Id.

² See e.g., President of Georgetown College v. Madden, 660 F.2d 91, 95 (4th Cir. 1981).

a claim a decade later by a dissatisfied owner alleging faulty construction. When the contractual warranty does not protect the contractor or the surety, the parties must examine traditional state law statute of limitations provisions to determine whether the owner's claims are timely.³

When a surety is confronted with analyzing the impact of a contractual warranty provision, it must obtain all of the contract documents. Often, the performance bond will include by incorporation the contract general specifications and other construction documents. It is necessary to carefully review all of the documents, including the bond, in order to determine the exact nature of any contractual warranty.

The initial confusion in this area relates to impact of a contractual warranty. The majority of courts analyzing this issue have concluded that the warranty or guarantee period embodies an additional promise by the contractor. That promise provides that should defective work be discovered within the contractual warranty period, the contractor will repair the same at no cost to the owner.⁴

The analysis is that the contractual warranty limitation period permits the contractor to rectify the alleged deficiencies in the project. Interpreting the warranty and the final payment provisions together, most courts permit the owner to assert claims after the contractual limitation has expired so long as those claims relate to faulty or defective work not known at the time of final payment. As a result, the surety and the contractor are exposed to extended potential liability until the specific state statute of limitations has run. Unfortunately, the cases which occur regarding allegedly defective work often involve serious and costly repairs. For the surety, the problem is compounded because the strength of the principal and its indemnitors may have changed significantly with the passage of time. Furthermore, a factual investigation regarding the allegedly defective work may be very difficult five or ten years after the work was performed.

³ Robert F. Carney. When Does It End? Contractual Limitation Periods, Statutes of Limitations, and Statutes of Repose as Applied to Contract Surety Bonds in Surety Underwriting Issues Facing the Claims Industry 1, 3, A.B.A. T.I.P.S. August 4, 1996 (1996).

⁴ Madden, 660 F.2d at 95.

Contractual Warranty As An Exclusive Remedy

The contractual warranty operates as exclusive remedy when a court concludes that it was the clear intention of the parties to limit the remedies available. If the parties intend to make the contractual warranty a limitation of claims, the contract must clearly state the parties' intentions. If the language in the contract does not indicate a clear intention to limit remedies, the courts will not enforce the warranty provision as a limitation on claims.

In Independent Consolidated School District No. 24, Blue Earth County v. Carlstrom⁵, the Supreme Court of Minnesota considered a construction contract provision limiting the contractor's liability for faulty workmanship or materials to defects appearing within one year after substantial completion of the contract. In Carlstrom, the contractor built a school building. The contract provided a one year warranty. Approximately 5½ years after the building was complete, the floors of the school began to settle. Litigation was filed by owner against the contractor and the issue was whether the one warranty barred claims. The court, in reviewing the matter, concluded that the parties had the authority to limit their rights. The school board contended that the one year warranty was not an exclusive remedy but rather one option to remedy the matter.

It is recognized that parties to a building or construction contract may stipulate as to the remedies which shall be available in the event of breach, and the remedies thus agreed upon may be held exclusive where the intent is made clear. The question of whether or not the remedy is exclusive turns upon the intention of the parties as revealed by the language of the contract as a whole; the specific provisions relating to the remedy; and all the facts of a particular case. The remedy provided in a contract is exclusive of other possible remedies only where the language in the contract clearly indicates an intent to make it exclusive.⁶

Under Minnesota law, the statute of limitations for such a claim would be six years. Since the school board's complaints arose 5½ years after the fact, the litigation was timely.

The court noted that a remedy provided in a contract is exclusive to other possible remedies only when the language of the contract clearly indicates an intent to make it exclusive. The court then reviewed the specific terms in the contract between the parties. The court held that claims for damages could be made by the owner after final payment, but those claims were limited to those appearing within one year of substantial completion as stipulated in the contract.

⁵ 151 N.W.2d 784 (Minn. 1967).

⁶ Id. at 787.

Article 25 recites that ‘final payment’ constitutes a waiver by the owner of ‘all claims’ other than those arising from ‘faulty work appearing after final payment.’ This provision preserves the right of the owner to complain of faulty construction which becomes apparent after final payment has been made, but this right is subject to the provision of Article 31, which provides that the owner may claim damages in addition to correction of the defects when such claim is made ‘not later than the time of final payment, except as expressly stipulated otherwise in the case of faulty work or materials.’ In other words, claims for damages may be made by the owner after final payment, but those claims are limited to those appearing within one year of substantial completion, as stipulated in Article 20.⁷

The court clearly distinguished between the contractual remedy of one year and a separate cause of action based upon breach of contract which would provide for application of a six year state statute of limitations period.⁸

The school board contended that these contractual provisions were against public policy. The court held that there was no violation of public policy. The contractual provisions were negotiated at arms length and the agreement created no undue advantage to either party.⁹

In Cree Coaches, Inc. v. Panel Suppliers, Inc.,¹⁰ the Supreme Court of Michigan considered a lawsuit brought by an owner against the contractor after the collapse of a building from the weight of snow. Cree had contracted with Panel Suppliers, Inc. to build a building which was completed in 1960. Final payment occurred in December, 1960. In January, 1967, the building collapsed due to the weight of snow. The plaintiff sued the defendant for negligence in workmanship and design, breach of the contract of express and implied warranties, and strict liability. Under the applicable Michigan law, negligence actions had a three year statute of limitations and breach of contract had a six year statute of limitations.

The contract included the following clauses:

Article 9 - Contractor shall re-execute any work that fails to conform to the requirements of the contract and that appears during the progress of the work, and shall remedy

7 Id.

8 Id.

9 Id.

10 186 N.W.2d 335 (Mich. 1971).

any defects due to faulty materials or workmanship which appear within a period of one year from date of completion of the contract.

Article 12 - In making and acceptance of the final payment shall constitute a waiver of all claims by the Owner, other than those arising from unsettled liens or from faulty work in appearing thereafter, as provided for in Article 9, and of all claims by the contractor to accept any previous made and still unsettled.¹¹

The trial court granted summary judgment on the basis of the clauses 9 and 12 of the contract as a disclaimer of liability. On appeal, the plaintiff argued public policy required the deletion of clauses 9 and 12 from the contract. The court held that based on the facts before it, the court did not regard this as a contract of adhesion from which public policy would grant relief.

The court held that the clear and unambiguous import of the language in clauses 9 and 12 was that the parties specifically intended to limit the liability of the defendant for faulty work appearing within one year from the date of the completion of the contract. Therefore, the court affirmed the judgment against the owner and held that the one warranty period was enforceable.

Contractual Warranty Clause Does Not Act as a Statute of Limitations Bar

Generally, contractor's contracts contain no language that unequivocally states that a contractual remedy period is an exclusive warranty for all claims under the contract or is a contractual limitation on when suit can be brought. The courts have been unwilling to construe the language in such a way as to bar actions against the contractor without express language limiting the remedy. As a result, the contractor and surety are not protected by the contractual warranty. Of course, it is important to note that any such claims sought must be brought within the applicable state statute of limitations.

In McDevitt and Street Co. v. K-C Air Conditioning Service, Inc.,¹² the Court of Appeals of Georgia considered a lawsuit filed by the general contractor against its subcontractor and the subcontractor's surety seeking damages regarding alleged defects and the installation of a waste water riser system in a multi-story hotel. The project in question was an Embassy Suites hotel which was open for business in December of 1985. In February of 1988, the general contractor received complaints of ten random leaks that were occurring in the plumbing risers in the hotel. Upon examination, segments of the pipe were found to have been improperly bonded throughout the system. As a result, a system wide failure occurred and remedial action was required to fix the plumbing system.

¹¹ Id. at 336.

¹² 418 S.E.2d 87 (Ga. Ct. App. 1992).

The contract was an American Institute of Architects contract A-201, 1976 Edition as amended by certain supplementary conditions. Under its contract, the contractor warranted to the owner that:

[A]ll Work will be of good quality, free from faults and defects and in conformance with the Contract Documents. All Work not conforming to these requirements . . . may be considered defective This warranty is not limited by the provisions of paragraph 13.2.¹³

Paragraph 13.2.2 related to “correction of work” and required that:

[I]f within “one year after acceptance by the Owner . . . or within such longer period of time as may be prescribed by law . . . any of the Work is found to be defective or not in accordance with the contract documents, the contractor shall correct it promptly after receipt of written notice to do so” unless Owner has “given a written acceptance of such condition. This obligation shall survive termination of the contract.”¹⁴

The surety’s bond provided that the bond would “remain in full force and effect until such time as [the subcontractor had] well and truly perform all the undertakings . . . and conditions and agreements of [the] subcontract within the time period provided therein . . . and during the life of any guarantee required under [the] subcontract.”¹⁵

The court held that the express warranty of the subcontract was not an exclusive remedy. The contractor conceded that an express warranty provision was not an exclusive remedy.

The court held that the express warranty provision of the subcontract was not an exclusive remedy. In its analysis, the court concluded that the subcontract provision regarding the one year of guarantee was an added guarantee inserted in the contract to extend rather than limit liability for faulty workmanship. As a result, it did not act as an exclusive remedy and did not impair the general contractor’s rights to assert a breach of contract claim within the applicable statute of limitations.

The performance bond surety had been successful at the trial court level by convincing the court to enter a directed verdict as to its liability under the performance bond. The Court of Appeals reversed that decision. The court disagreed with the trial court’s analysis that construed the bond to unconditionally relieve the surety from liability at the conclusion of the one year warranty period. The court held that the contractor was obligated under the subcontract to make good any defective work

¹³ Id. at 90 (quoting AIA Contract A201, 1976 Edition as amended by Supplementary Conditions).

¹⁴ Id.

¹⁵ Id.

discovered within one year from the date of the acceptance or within such longer period as may be provided within the contract documents. The court held that the AIA contract did not limit the time period for liability to one year. As a result, the Georgia statute of limitations period of six years would apply to all claims for damages. The court noted that the surety's obligations remained in full force and effect until the subcontractor's obligations under the subcontract were terminated. Therefore, the surety was not discharged from its obligations after expiration one year warranty but had continuing obligations under its contract with the owner.

In this case, the Georgia Court of Appeals refuses to conclude that the contractual warranty was an exclusive remedy. By concluding that the one year warranty period was an added guarantee, the court permitted claims of alleged faulty workmanship years after the expiration of the one year warranty.

In reviewing the interplay between a contractual warranty provision and an existing statute of limitations, a number of other courts have concurred with the analysis the contractual warranty provision is not an exclusive remedy. In All Seasons Water Users Association, Inc. v. Northern Improvement Co.,¹⁶ the Supreme Court of North Dakota considered claims involving 425 miles of plastic pipe that had been buried as a part of a rural water pipeline. In considering the responsibility of the contractor, Northern, and its surety, the court disagreed with Northern's interpretation of the contractual warranty. Northern and its surety contended that Northern's responsibility for repairs was limited by the contract to a one year period. The court distinguished between the duty to perform a warranty with the contracted duty to construct a pipeline in accordance with the contractual specifications.

The court stated "[a] warranty or guarantee is basically an agreement to repair or replace the faulty work regardless of the reason for the defect, so long as it is not due to abuse or neglect by the owner."¹⁷ The court then noted that the contractor had a further duty which all contracts envision -- a duty to perform. The court stated that "[a] failure to [perform] subjects the contractor to liability for damage due to the failure, so long as the action is not barred by the applicable statute of limitation or there is no clear and unequivocal language in the contract which limits such liability."¹⁸

In reviewing the contract at issue, the court found no language that limited the owner's recovery in any way. The court held that the contract, if it had intended to limit actions to one year had to contain "clear, unequivocal language to that effect."¹⁹ No such language was found in this contract. Therefore, the contractor and its surety were held liable and awarded damages against the contractor and its surety.

¹⁶ 399 N.W.2d 278 (N.D. 1987).

¹⁷ Id. at 285.

¹⁸ Id.

¹⁹ Id.

In the Board of Regents v. Wilson²⁰, the Appellate Court of Illinois considered an interlocutory appeal of a certified question regarding whether construction contracts barred claims by the plaintiff after the expiration of the contractual warranty period. Certain exterior walls were constructed with pre-cast concrete panels weighing approximately three tons each. Final payment for the contracts occurred on or before July 9, 1996. On December 8, 1972, one of the panels tore loose from its anchoring and crashed to the ground. An investigation concluded that a number of panels had been improperly fastened. The owner's complaint alleged that the contractor failed to properly anchor the walls. The court stated that these omissions could be classified as failure to comply with the plans and specifications, faulty workmanship, and use of faulty materials. The court noted that the parties could, by express agreement, provide for an exclusive remedy that limited their rights, duties and obligations. In analyzing the language of the AIA contracts used, the court held that there was no exclusive remedy with respect to these contracts. The court held that for one year the contractor had a duty to rectify defects due to faulty workmanship and materials. The court concluded that the provisions in no way limited the owner from claiming damages as a result of faulty work or material after that one year warranty period. The court noted that "Final Payment" provisions of the contractor acknowledged the limits of the contractual warranty. That provision provided:

The making and acceptance of the final payment shall constitute a waiver of all claims by the Owner other than those appearing from . . . faulty work appearing after final payment or from failure to comply with drawings and specifications²¹

The court concluded that claims for faulty work or failure to follow plans and specifications under this provision would be limited only by the applicable statute of limitations. It is interesting to note that the court's decision includes a detailed criticism of the Carlstrom case.²² The court concurred with a commentator's discussion of Carlstrom that warranty clauses generally are not intended to limit the remedy for defective workmanship and materials for those defects which appear within the warranty period.²³

In Carrols Equities Corp. v. Villnave,²⁴ the New York Supreme Court, Appellate Division, had an opportunity to consider claims against the building contractor and its surety for damages for differential settlement of the owner's new restaurant. The contractor and surety both attempted to avoid liability in the breach of contract action by asserting that the owner's action was barred by a one year guarantee provision of the contract. The court held the one year guarantee provision applied

²⁰ 326 N.E.2d 216 (Ill. App. Ct. 1975).

²¹ Id. at 218.

²² Id. at 221.

²³ Id.

²⁴ 395 N.Y.S.2d 800, 803 (N.Y. App. Div. 1977).

solely to the contractor's duty to correct defects through supplemental performance and, absent specific indication in the contract, it could not be construed as an exclusive remedy.

In Baker-Crow Construction Co. v. Hanes Electric, Inc.,²⁵ the Court of Appeals of Oklahoma considered a dispute over alleged defective electrical work in an apartment complex. The general contractor brought suit against the electrical subcontractor within the five year statute of limitations period for breach of contract actions. The court considered whether the twelve month warranty period in the contract should be construed as the contractor's sole remedy for the subcontractor's breach. In reversing the decision of the trial court, the Court of Appeals adopted the reasoning of the Board of Regents v. Wilson.²⁶ In addition, the Oklahoma court criticized the holding in Carlstrom, which it described as a minority view.²⁷ The court concluded the twelve month warranty period was not an exclusive remedy. As a result, plaintiff was permitted to pursue his common law remedies under the other provisions of the contract.²⁸

In Newton Housing Authority v. Cumberland Construction Co.,²⁹ the Appeals Court of Massachusetts considered whether general one year warranty in a contract supplemented the owner's common law rights to recover damages for defective work. In an action against the contractor and its surety by an owner, the court noted that the general contract contained no express provisions stating that the guarantee clause supplemented the owner's common law right to bring an action for breach of contract. Since the contract did not provide clear evidence of shortening the statute of limitations, the court concluded that the language of the contract did not provide for any exclusive remedy. For instance, this particular contract stated "[n]either the foregoing nor any provision in the Contract Documents, nor any special guaranty time limit shall be held to limit the Contractor's liability for defects to less than the legal limit of liability in accordance with the law of the place of the building."³⁰ Based on its interpretation of the contract, the court refused to limit the owner's claims to the one year warranty period.³¹

In Burton-Dixie Corp. v. Timothy McCarthy Construction Co.,³² the U.S. Court of Appeals for the Fifth Circuit considered whether under South Carolina law a contractor was relieved from liability

²⁵ 566 P.2d 153 (Okla. Ct. App. 1977).

²⁶ Id. at 155.

²⁷ Id. at 156.

²⁸ Id.

²⁹ 358 N.E.2d 474 (Mass. App. Ct. 1977).

³⁰ Id. at 478.

³¹ Id. at 478.

³² 436 F.2d 405 (5th Cir. 1971).

for defects which appeared after a one year guarantee period. The court held that the one year period was an added guarantee rather than a limit to contractor's liability for faulty construction. As such, the warranty was not an exclusive remedy.³³ The court would not bar an action brought outside of the one year warranty period.

In Sorensen v. Ewin,³⁴ the Court of Appeals for Arizona considered the liability of the general contractor and its surety for breach of contract. The surety in the case attempted to advance a limitations defense on the action based on the one year warranty period. Without analysis, the court rejected the surety's argument that the contractor had no duty to remedy any defects or pay for any damaged to other work resulting after the expiration of the one year warranty period.

In 1964, the Court of Appeals of Texas in Houston Fire and Casualty Ins. Co. v. Riesel Independent School District,³⁵ considered an action by a school district against the contractor and its performance bond surety for alleged breach of contract in the construction of a building. The court rejected the surety's argument that the one year guarantee period limited its liability under the performance bond. The court held the construction contract and the bond did not limit the owner's right to recover from the surety on the theory that the contractor had breached its agreement to perform in good and workmanlike manner and execute work completely and satisfactory in compliance with the plans. While the court acknowledged that the one year additional guarantee was an added guarantee, the court held that it was not an exclusive remedy.

Surety's Responsibility for Correcting Latent Defects

As discussed above, a number of the cases assumed the surety's responsibility for latent defects and faulty workmanship.³⁶ While this responsibility is generally assumed by the court to be within the scope of the surety's obligation, not many courts have directly addressed the issue. In fact, there is contrary authority to general proposition that a surety's liability is always the same as its principal.

In Kiva Construction Engineering v. International Fidelity Insurance Co.,³⁷ the United States District Court for the Western District of Louisiana considered an interesting case regarding the

³³ Id. at 410-11.

³⁴ 448 P.2d 110 (Ariz. Ct. App. 1968).

³⁵ 375 S.W.2d 323 (Tex. Civ. App. 1964).

³⁶ See, McDevitt & Street Co. v. K-C Air Conditioning Serv., 418 S.E.2d 87 (Ga. Ct. App. 1992); All Seasons Water Users Ass'n. v. Northern Improvement Co., 399 N.W. 2d 278 (N.D. 1987); Carrols Equities Corp. v. Villnave, 395 N.Y.S. 2d 800 (N.Y. App. Div. 1977); Newton Housing Auth. v. Cumberland Constr. Co., 358 N.E. 2d 474 (Mass. App. Ct. 1977); Sorensen v. Robert N. Ewing, General Contractor, 448 P.2d 110 (Ariz. Ct. App. 1968); Houston Fire & Casualty Ins. Co. v. Riesel Indep. Sch. Dist., 375 S.W. 2d 323 (Tex. Civ. App. 1964).

³⁷ 749. F. Supp. 753 (W.D. La. 1990).

surety's responsibility for a long-term warranty. The contractor performed riverbank stabilization and restoration work for a natural gas company contract. The contract required a performance bond. The performance bond guaranteed that the contractor would perform faithfully and promptly the contract with the owner. The performance bond also contained a suit limitation clause which provided that "[a]ny suit under this bond must be instituted before the expiration of two years from the date on which file payment under the contract falls due."³⁸ The performance bond incorporated by reference the construction contract. The contract between the owner and the contractor did not contain a provision limiting the time in which the suit could be brought to two years.

Interestingly, the dispute that arose had nothing to do with faulty construction, but rather whether the contractor had agreed to a ten-year warranty. Since the owner was unwilling to agree with the surety's interpretation that the warranty was limited to two years, the surety elected to call on the letter of credit posted by the contractor the day before the letter of credit expired. Needless to say, the contractor was distressed and filed an action alleging civil conspiracy and breach of contract against the owner and the surety. The owner contended the performance bond incorporated the entire contract with the contractor. Therefore, the ten-year warranty provision in the contract would supersede the two-year suit limitation in the bond. The court concluded that under the terms of the performance bond, the surety's obligations were limited solely to the instance where the contractor failed to meet its construction obligation. Therefore, the court held that the ten-year contractual warranty was not incorporated in the surety bond.

Under Louisiana law, suretyship maybe qualified, conditioned or limited in any lawful manner. The court held that the two-year right of action limitation in the bond was enforceable under Louisiana law. Furthermore, they held that the suit limitation provision was clear, unambiguous, and valid. As a result, the court held that the surety's obligations for the warranty period existed only as long as the bond was valid and forceful. Therefore, the surety was responsible for only two years of the ten-year warranty. Since there had been no suit filed within the two years after final payment, the surety was discharged from any further liability. This case is extremely helpful in those states where a court is willing to enforce a right of action limitation in a bond.³⁹

In Marshall Contractors, Inc. v. Peerless Ins. Co.,⁴⁰ United States District Court for Rhode Island had an opportunity to consider claims against surety's bond. The court held that the bond language did not cover claims of consequential damages. The bond provided that for any default to be remedied by the surety or, alternatively, by the general contractor after reasonable notice to the surety. In either case, the balance of the subcontract price is credited against the cost of completing the work and the surety's liability is limited to the amount of the bond. The court held the purpose of the performance bond was as a guarantee that the work would be completed. The court noted that a performance bond is not an insurance policy. The performance bond is not intended to compensate for indirect losses to indemnify against liability to others. Since the court stressed that

³⁸ Ibid.

³⁹ Carney, supra note 3, at 7-8.

⁴⁰ 827 F. Supp. 91 (D.R.I. 1993).

the purpose of the performance bond was to guarantee the completion of the project, a surety facing a claim for latent defects could argue that the bond did not cover such latent defects.

In American Home Insurance Co. v. Larken General Hospital,⁴¹ the Supreme Court of Florida considered whether a surety on a performance bond can be held liable for consequential delay damages caused by the contractor's default. The court held that a surety could not be held liable for delay damages that accrue due to the contractor's default, unless the bonds specifically provide coverage for delay damages.

The court considered a split in Florida lower court rulings regarding whether delay damages, absent specific language in a performance bond, would be covered. In its analysis the Supreme Court held that the terms of the performance bond control the liability of the surety. The court stated:

The language in the performance bond, construed together with the purpose of the bond, clearly explains that the performance bond merely guaranteed the completion and the construction of contract and nothing more. Upon default, the terms of the performance requires [the surety] to step in and either complete construction or pay Larken the reasonable cost of completion. Because the terms of the performance bond control the liability of the surety, [the surety's] liability will not be extended beyond the terms of the performance bond.⁴²

Therefore, the surety was not held liable for delay damages. Facing a claim for latent defects, a surety could argue that the bond is limited solely to the completion of the building. Therefore, a surety should not be liable for latent defects that appear after the completion of the building.

Conclusion

Too often, a contractor wrongly believes that a contractual warranty clause acts to limit claims against him. Unless the language of the construction contract is clear, a court will not interpret the warranty clause as a time limitation on claims. A surety must carefully consider the language of its bond and the contractor's contract. Together, they may impose extended liability on the surety years after the project has been completed.

⁴¹ 593 So.2d 195 (Fla. 1992).

⁴² Id. at 198.