

# The Spearin Doctrine Is 100 Years Old

By Thomas L. Rosenberg

Contractors are governed by the terms of their contracts, statutes, regulations, and case law.

The contract can consist of the terms and conditions of the actual contract, general conditions, supplemental conditions, sometimes proposals, reports, plans, specifications, etc. Oftentimes, the base contract contains a reference to the other documents that make up the contract.

Contractors are also governed by statutes. In many of our states, there are laws that apply to construction projects, especially public projects but also private projects. These can include payment terms, prompt payment laws, wage requirements, safety

requirements, bidding procedures, and other matters.

Regulations are applicable to our projects. These include regulations promoted by agencies such as OSHA. In many jurisdictions, minority business, disadvantaged business, female business, and other inclusion programs are governed by regulations. The adoption of regulations differs from state to state as to how regulations become requirements to follow.

Finally, there is case law. Judges interpret the contract, statutes, and regulations, and provide guidance to us on how to comport our conduct on construction projects. Cases can address compensation due and owing

on a project, delays on a project, interference, soil conditions, and other matters. The list goes on and on.

## THE SPEARIN DOCTRINE

The most important case to impact the construction industry was decided 100 years ago. The case is *United States vs. Spearin*, 248 U.S. 132 (1918).

The facts of the Spearin case are important. Spearin was a general contractor that entered into an agreement to build a dry dock at the Brooklyn Navy Yard for \$757,800 in accordance with plans and specifications issued by the owner, in 1905. Among other things, the contract had a process in place for the

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movement of an existing sewer main line and was specific on where it was to be relocated. Spearin completed this work but in August 1906, while still working on the project, heavy rain and tides caused the relocated sewer main line to overflow. Analysis into why the overflow occurred determined that there should have been an internal dam shown on the plans but because it was not, this caused the overflow to occur. The owner demanded that Spearin assume all the costs of clean up and reconstruction. Spearin said in response that the owner needed to acknowledge the defect in its plans and be responsible for the costs of all remedial work. Both parties asserted claims against each other and the case eventually made its way to the U.S. Supreme Court.

The Supreme Court made two very important determinations. First, it said that where someone agrees to do something for a fixed amount of money, difficulty in accomplishing the task does not excuse performance. Second, the Supreme Court went a step further and created what has been called the Spearin Doctrine.

The Spearin Doctrine says, "If the contractor is bound to build according to plans and specifications prepared by the owner, the contractor will not be responsible for the consequences of defects in the plans and specifications."

In other words, the contractor is entitled to rely on the sufficiency and adequacy of the plans and specifications and is not responsible for defects in them. Keep in mind that the Spearin Doctrine applies in the traditional sense and project delivery systems such as design build, integrated project delivery, and other matters may impact the applicability of the Spearin Doctrine on certain projects.

#### APPLYING THE DOCTRINE

However, Spearin is instructive. It makes it clear that a contractor provided with plans and specifications is entitled to rely on the adequacy and sufficiency of them. Most states have adopted the Spearin Doctrine. Two states, Hawaii and Iowa, have neither endorsed nor rejected the Spearin Doctrine. Some states have adopted it in an implied manner by citing it in other decisions without expressly stating the Spearin

Doctrine applies. A few states have incorporated the Spearin Doctrine into case law or statute. No state has rejected Spearin but Ohio may have come closest.

In 2007, Ohio decided the case of *Dugan & Meyers Construction Company v. Ohio Dept. of Administrative Services*, 864 N.E. 2d 68 (2007). In that case, the Ohio Supreme Court limited the applicability of the Spearin Doctrine to jobsite conditions such as differing soils but did not extend the Spearin Doctrine to delay damages resulting from inadequate plans and specifications.

Construction contractors encounter issues on a daily basis that impact their ability to make progress on a project. Plans and specifications are at the heart of what contractors must rely upon in order to complete a project. Contractors need to be able to rely upon the adequacy and sufficiency of those plans. The Spearin Doctrine provides the support to do so. Spearin was decided by the U.S. Supreme Court in 1918. It is a 100-year-old decision that is the most important decision ever issued, for construction contractors. ■

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