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Why Risk It?

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[Learn to Recognize the Warranty Wording..And Avoid It!](#)

Posted by [cavignac](#) at 10/16/2014 1:00 PM CDT

You can sign the worst contract in the world, and if nothing goes wrong on the project, it won't matter. You may never look at the document again. If, however, there is a problem on a project, the contract will be scrutinized to determine each party's obligations and responsibilities. Other than indemnification requirements, warranties and certifications are as dangerous as any other provision in an upstream agreement.

Warranties, guarantees and certifications are basically attestations of fact. You are promising that something will be done right, and if it isn't, even if your performance met the standard of care, you can be held contractually liable. To further compound the problem, contractually imposed "Breach of Warranty" claims in the absence of negligence are excluded under your Professional Liability policy.

It is important to remember that the law does not require you to be perfect. You are only required to perform to what is known as "The Standard of Care." Simply put, you are only required to perform your services "consistent with the professional skill and care ordinarily provided by firms practicing in the same locality under similar circumstances."

Engineers need to review their contracts carefully and make certain they are not taking on uninsured obligations. If you see provisions referring to "merchantability," "workmanlike service" or "fitness for a particular or intended purpose," be aware that these are probably warranties. While these might be acceptable for a general contractor, a design-builder, or a home-builder, they are inappropriate for a design professional contract. Engineers need to strike out all such express and implied warranty language. You might even consider an omnibus type clause that deals with warranties, guarantees and certification in general. This provision should expressly disclaim all express or implied warranties and guarantees with respect to your professional services.

Professional liability coverage is not that complex. Basically, if you are negligent, your professional liability policy will likely provide coverage. If, however, you agree to be responsible for more than your negligence, those contractually assumed liabilities will be excluded.

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