

INSIGHTS

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Beware the Stamp?

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An engineer's stamp, or seal, is a symbol of professional pride and accomplishment. It signifies that the engineer has attained a level of education, competence, and experience so that he or she may be relied upon by private and public clients to prepare a set of plans and specifications that conform to the standard of care in the engineer's area of practice. But does the mere act of stamping a set of plans create any additional liability concerns for the engineer?

Not long ago, an opposing attorney argued to me that my client, a structural engineer, was legally liable for a design-related claim – regardless of the standard of care – simply because “he stamped the plans.” He suggested that the mere act of stamping a set of plans carries with it some form of express warranty tantamount to strict liability. While I'd never heard such a claim before, this led me to question whether my client's compliance with the standard of care would be sufficient, as it usually is, or if I had a broader concern simply because my client had stamped the drawings in question.

I was relieved, but not surprised, that in my state I found no case law supporting the attorney's position – nor did I find any authority actually addressing the subject. A design professional's potential liability typically is measured against the applicable standard of care, and if my opponent had an alternative liability theory it surely would be his burden to back it up with some legal authority. In my jurisdiction, there was nothing of the sort. In fact, the only reported case that touched on the use of a design professional's stamp was a disciplinary proceeding against an architect for sealing plans that had not been prepared either by himself or by his subordinates.

But, my curiosity having been piqued, I looked at other jurisdictions. Though my survey was limited to higher level court cases, I was pleased to find that even if my adversary reaches outside the boundaries of our state, he is not likely to find support for his liability theory unless it is based on the engineer's contract terms or the commonly asserted breach of the duty of professional care.

For example, in a non-published Sixth Circuit opinion, *Conopoco, Inc. v. Allen & Hoshall, Inc.*, 129 Fed. Appx. 131 (6th Cir. 2005), the architect had affixed his seal to plans that ultimately included a floor design by another design professional. The architect specifically had disavowed knowledge of the special nature of this particular floor design. The plaintiff claimed “that because the plans were issued under seal, any defects in them are professional negligence even if [the architect] was not contractually responsible.” 128 Fed. Appx. at 145. The court flatly disagreed. “[T]here is no basis for the claim that issuing



plans under seal creates liability for professional negligence. [The plaintiff] cites no authority for the proposition that tort liability can result from ... any placement of a seal whatsoever ... There is nothing in the language of the statute or case law to support the idea that misapplication of a seal can create an additional professional duty apart from contract.” *Id.* The *Conopoco* court left no room for misunderstanding: Stamping a set of drawings does not create an independent basis for liability separate and apart from the usual contract and tort claims.

Other jurisdictions were consistent. See *McConnell v. Servinsky Engineering, PLLC*, 22 F. Supp. 3d 610, 616 (2014). “The plaintiff argues that [the engineer] assumed legal duties beyond the contract by affixing his professional engineering seal to the foundation plans. However, there is no support under [applicable] law for the argument that an engineering seal creates an independent tort duty ...”

If confronted with this contention in your professional design practice, your attorney will have to scour the law in your jurisdiction to satisfy himself that there are no peculiar statutes, regulations, or cases that say otherwise. When I surveyed the question of independent stamp-related liability, it appeared that engineers and other design professionals most often encounter trouble in this area when stamping plans prepared by others who were not under their immediate supervision or control. This action is typically a violation of state-enacted licensure regulations, and a pitfall that has become increasingly problematic in an age of computer-aided design technology and pre-engineered building components.

Needless to say, all registered professionals need to be intimate with the dos and don'ts of plan stamping in their particular jurisdictions. But, assuming you comply with those, and you otherwise have exercised professional competence in accordance with the standard of care in your field and geographic area, the good news is that you shouldn't be concerned about an independent basis for strict liability arising from the mere use of your hard-earned professional stamp. ■