

HOW PROJECT MANAGERS GET SUED

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- **Introduction**
- **Causes of Action (required to bring a claim):**
 - Negligence
 - Contract
 - Acting as Client's Agent
- **Fair Valuation**
- **Wrap Up**
- **Questions and Answers**

- Use of foreign case law as examples
- Use of examples relating to Architect, Construction Manager
- “Project Manager” not clearly defined
- Availability of Slides

- CONSTITUENTS OF A CLAIM
- REQUISITE SKILL AND CARE
- TERMS OF THE APPOINTMENT
- TERMS OF THE CONSTRUCTION CONTRACT
- TYPE OF LOSS SUFFERED

- **CONSTITUENTS OF A CLAIM**

A duty of care:

- legally recognised obligation to conform to a standard of behaviour to protect others against unreasonable risks

A failure to conform to the required standard

Actual loss or damage

Close causal connection between the conduct and the loss

Reasonable foreseeability

REQUISITE SKILL AND CARE

- Good professional practice

EXAMPLE: Handrails on a flat roof

- Accepted as proper by a reasonable body of project managers, unless inherent defect

- Give a warning if there are risks

EXAMPLE (English): inflation in a budget –
not good enough to ask QS

- **TERMS OF THE APPOINTMENT**
liability in both negligence and contract
No obligation to go beyond what contracted to do
EXAMPLE: Visual inspection and quick report
- **TERMS OF THE CONSTRUCTION CONTRACT**
EXAMPLE (English): no valid claim from the contractor
Arbitration clause and disclaimer
- **TYPE OF LOSS SUFFERED**
England: defects are not recoverable
Collateral Warranties

- **CONSTITUENTS OF A CLAIM**
- **FAILURE TO IDENTIFY EXCLUDED SERVICES**
- **FAILURE TO CLEARLY SET OUT SERVICES**
- **COLLATERAL WARRANTIES**
- **NOVATION AGREEMENTS**
- **MITIGATION – PROVIDE INFORMATION TO THE CLIENT**

- **THE CONSTITUENTS OF A CLAIM**

Engagement in return for payment / consideration

Project manager has broken the contract

Loss flows naturally from the breach or within contemplation

- **FAILURE TO IDENTIFY EXCLUDED SERVICES**

EXAMPLE (English): insurance advice

Project Evaluation and Development (Alexander Rougvie)

Chartered Institute of Building – Code of Practice for Project Management for Construction and Development

- **FAILURE TO CLEARLY SET OUT SERVICES**

EXAMPLE (English): monitoring other consultants

- **COLLATERAL WARRANTIES**

England: defects are not recoverable

No standard terms

Changing definition of negligence

“diligently and regularly” rather than reasonably

Possible extension of liability due to assignment

New Purchaser

- **NOVATION AGREEMENTS**

Design and Construct Contracts (not usually the project manager)

Change of employer after carrying out design

- **MITIGATION**

Provide information to the client

EXAMPLE (English): Great Eastern Hotel

The project manager is responsible for the design team

Adversarial approach

Deliberate tampering with programming software

- Liability for setting out

- Liability for variations

- **CONSTITUENTS OF A CLAIM**
Acting on behalf of the client in relation to contracts
- **FAILURE TO DISCLOSE EXISTENCE OF CLIENT**
Personally liable for cost of the job
- **LOSS OF AUTHORITY**
EXAMPLE (England): Solicitor, insane client

- **REQUIREMENT FOR FAIR VALUATION**

EXAMPLE (English): before - no obligation – Brunel

England: now - act fairly and impartially

Australia: client not to interfere, duty as a certifier

England: procuring breach of contract: preventing client from paying

- Foreign cases may be persuasive
- Not binding on the Irish courts or Irish arbitrators

