

## **Chapter III**

### **DEFECTIVE PLANS/SPECIFICATIONS**

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#### **Introduction**

This chapter focuses on the problems that arise and the remedies that are available when contractors are provided with defective plans and specifications and the contractor is obligated by the contract to construct the project in accordance with those plans and specifications. Historically, the contractor who follows the plans and specifications is protected under case law principles from liability for damages resulting from these defects. Those case law principles establish that the design specifications provided to the contractor by the project owner carry an implied warranty that the plans and specifications are not defective, and if followed by the contractor, it will be able to complete its contract with the owner. Accordingly, the law allows contractors to recover damages incurred as a result of defective plans and specifications that cause increased costs to the contractor in completion of the project.

Contractors, more recently, also have been permitted to pursue the design professionals (the project architect and engineers) who prepared the defective plans and specifications. Such contractor claims are based on claims of professional negligence (malpractice) in the preparation of defective plans and specifications that cause increased costs to the contract in attempting to build the project with improperly prepared design documents. Under these legal principles it is not necessary that there be a direct contract between the contractor and the architect/engineer. Recent cases also limit the contractor's protection from personal injury tort claims against the contractor by third parties and limit contractor's protection when the specifications containing the defect that allegedly resulted in the injury are deemed to be "performance specifications" rather than "design specifications."

Additionally, project owners are adding special provisions in the contract documents in an attempt to shift liability for defective specifications to the contractor. In lawsuits with contractors involving claims of defective plans and specifications, Owners also are raising clever affirmative defenses in an attempt to shift the responsibility to the contractor. Those affirmative defenses include, among other things, arguments that the defects in the plans and specifications are obvious, or the alleged omissions in the plans and specifications are for items that are inherent and incidental to the work accurately described in the specifications and are customarily performed by the contractor.

#### **Protection of the Contractor under the Spearin Doctrine.**

The general rule is that a contractor who performs work in accordance with the contract design plans and specifications is not liable for the costs of making corrections to the work resulting from errors and omissions in those design documents. This general rule was recognized and articulated by the United States Supreme Court in **United States v Spearin**:

[I]f 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 the defects in the plans and specifications. *McKnight Flintic Stone Co, v. The Mayor* 160 N.Y. 72; *Filbert v. Philadelphia*. 181 Pa. St 530; *Bentley v. State*, 73 Wisconsin, 416. See *Sunstrum v. New York*, 213 N.Y. 68. This responsibility of the owner is not overcome by the usual clauses requiring builders to visit the site, to check the plans, and to inform themselves of requirements of the work, as is shown by *Christie v. United States*, 237 U.S. 234; *Hollerbach, United States*, 233 U.S. 165, and *United States v. Utah, & C. Stage Co.*, 199 U.S. 414. 424, where it was held that the contractor should be relieved, if he was misled by erroneous statements in the specifications.<sup>1</sup>

In the **Spearin** case, the general contractor, Spearin, entered into a contract to build a dry dock at the Brooklyn Navy Yard in accordance with plans and specifications that had been prepared by the

government. The site selected by the government for the dry dock was intersected by a six-foot brick sewer and it was necessary to divert and relocate a section of that sewer before the work of constructing the dry dock could begin. The government provided Spearin with plans and specifications which prescribed the dimensions, material and location of the portion of the sewer that Spearin was to divert. Spearin fully complied with all of the requirements of the plans and specifications and built the substituted section of the sewer which was accepted by the government as satisfactory. About a year later the six-foot sewer broke in several places, and the excavation of the dry dock was flooded as a result of a sudden and heavy downpour of rain that coincided with a high tide. A subsequent investigation revealed that a connecting seven-foot sewer contained a dam which diverted extra water into the six-foot sewer which created too much pressure for the sewer to hold causing the sewer to break. Both sewers were a part of the city sewer system, but the dam was not shown on either the city's plans or on the government's plans and specifications that were submitted to Spearin. Furthermore, the site selected for the dry dock by the government was located on low ground, which had from time to time overflowed. Evidence showed that the government was aware of this information but did not make it known to Spearin.

Shortly after the six-foot sewer broke, Spearin notified the government that it could not work on the dry dock until the sewer system was restored. The government claimed that the responsibility for remedying the existing conditions rested with the contractor. The two sides could not agree whose responsibility it was to remedy the failed sewer system, and the government decided to terminate its contract with Spearin. Up to that time, Spearin had expended over \$210,000 on the contract and they had received approximately \$130,000 for its work. Spearin sued the government, demanding the balance it alleged to be due for the work done on constructing the dry dock.

The Supreme Court ruled that the contract between Spearin and the government which included a requirement that Spearin relocate the sewer running through the premises in accordance with the plans and specifications furnished by the government, implied a warranty on the government's part that, if the plans and specifications were followed, the Contractor could complete its contract and the sewer would be adequate. This warranty could not be overcome by general clauses in the contract that purportedly required Spearin to examine the site, to check the plans and specifications, and to assume responsibility for the work until completion and acceptance.<sup>2</sup> The Supreme Court adopted the well recognized rule that a contractor is bound to build according to the plans and specifications prepared by the owner and will not be responsible for the consequences for defects in the plans and specifications.<sup>3</sup>

### **The Spearin Doctrine Is Recognized and Applied Under Michigan Law.**

Michigan courts have long recognized this general rule articulated in the Spearin case. Under the Spearin Doctrine as followed in Michigan, the project owner is deemed by law to give an implied warranty that the plans and specifications are accurate and suitable for their proposed use.<sup>4</sup> In Schliess v. City of Grand Rapids,<sup>5</sup> the plaintiff-contractor built a stone wall in accordance with plans and specifications furnished by the project architect. The contractor began work in the middle of November and continued through the middle of January until the architect ordered the work stopped due to the severe cold weather. In the beginning of April, the contractor was nearly finished with the construction of the stone wall when it discovered that the mortar in the wall had been destroyed by the severe cold weather. A dispute arose between the contractor and the project owner as to the responsibility for the condition of the wall. The contractor claimed that it had complied with the plans and specifications contained in the contract and had performed the work under the direction of the project architect. The owner claimed that the contractor had violated the terms of the contract by failing to use the proper mortar and by not protecting the walls according to the terms of the contract. The jury decided that the contractor had complied with the plans and specifications as contained in the contract documents and awarded the contractor the balance due on the contract. The Michigan Supreme Court upheld the jury's verdict stating that:

Plaintiff was not an insurer of the success of the work. He agreed to perform it in accordance with certain plans and specifications. If he made the mortar as provided by the contract, and protected as he agreed, and performed the work as he was directed or permitted to do by defendant's proper authorities, he is not responsible

for the condition of the wall caused by freezing. He did not guarantee that the wall should stand the weather. That risk was assumed by the defendant.<sup>6</sup>

In 1932, the Michigan Supreme Court relied in part on **United States v. Spearin**, *supra*, in deciding how to allocate responsibility for damages arising as a result of defective plans and specifications. In **Kinnear v. City of Lincoln Park**,<sup>7</sup> the plaintiff-contractor entered into a contract to construct 15,000 feet of lateral and trunk line sewer. The contractor built the sewer line, and shortly thereafter, parts of the sewer line collapsed. The contractor brought the lawsuit to recover the unpaid balance of the contract price, costs incurred as a result of a change in the method required to construct the sewer, which was ordered by the project engineer, and to recover for repairs made to the sewer. The contractor sought to recover approximately \$18,000. The project owner claimed that the contractor breached the contract by failing to perform the contract properly and was still responsible for \$6,000 of repairs that had to be made to the sewer line in addition to those made by the contractor. The trial court awarded the contractor a nominal amount of \$1,897, ruling that the contractor was responsible for the losses attributable to the defects in the sewer line.

The contractor appealed this decision. In its appeal, the contractor claimed that the collapse of the different portions of the sewer was not the result of its being improperly installed, as the owner claimed. The contractor contended that the sewer problems were caused by defects in the plans and specifications, which required the use of an improper type and design of the sewer that was unsuited for the use under the existing conditions, and in the method of construction required by the project engineer. The contractor claimed that the project owner specified the design and type of the sewer to be constructed in the contract documents. The Michigan Supreme Court agreed with the contractor and held that, since the project owner designated in the contract the type and design of the sewer, the project owner warranted the type and design as being adequate and suitable for the proposed use under the existing conditions. The Court also held that, if the collapse of the sewer resulted from the design, type and specifications of the sewer, then the loss is the responsibility of the project owner. The Supreme Court reversed the decision of the trial court and required a new trial to determine whether the collapse of the sewer was due to faulty design and improper plans and specifications for which the project owner would be responsible or to improper installation or poor workmanship for which the contractor would be responsible.

### **Recent Case Law Limits Protection for Contractors against Damages Resulting From Defective Specifications.**

**Hercules Inc., v. United States**,<sup>8</sup> held that a contractor is not protected from third-party tort claims by an owner's warranty of the sufficiency of specifications. In fact, the **Hercules** court stated that it would not extend claims based on the implied warranty of the sufficiency of plans and specifications beyond performance, thereby preventing the contractor from using the Spearin doctrine for protection against lawsuits for consequential damages that resulted from the defective specifications.<sup>9</sup> In **Hercules**, the plaintiff, Hercules, entered into a contract with the Federal Government to manufacture the herbicide Agent Orange for use in the Vietnam war. The plaintiff settled numerous third-party tort actions filed by Vietnam War veterans who became ill because of exposure to the Agent Orange. The plaintiff, in turn, filed a lawsuit against the Federal Government based on, among other things, the theory of breach of warranty of specifications to recover the costs included to defend and settle the third party lawsuits. The Hercules court held that the Spearin doctrine does not extend to third-party tort claims against contractor.<sup>10</sup>

Other cases limit the use of the Spearin doctrine only to instances where the defects in the specifications would **not** have been easily detected by a reasonable inspection of the site. In the case of **Sherman R Smoot Co. of Ohio v. Ohio Dep't. of Administrative Services**, the court held that, "recovery will be denied under the Spearin doctrine where (1) a reasonable inspection of the job site by the contractor would have revealed the actual site conditions."<sup>11</sup> In **Sherman**, the contractor, Sherman, relied on soil borings supplied by the government to determine the type of footings to use for the construction of a correctional facility. The contractor encountered different soil conditions than indicated by the soil borings, which caused the contractor to spend more time and money to build more costly footings. The

Sherman court said that the contractor was entitled to extra compensation under the Spearin doctrine because a reasonable inspection of the job site would not have revealed the actual site conditions.<sup>12</sup>

### **The Spearin Doctrine Applies To Defects In “Design Specifications” But Not “Performance Specifications.”**

In the case of Blake Construction Co. v. United States, citing other case law, the court stated that performance specifications "set forth an objective or standard to be achieved, and the successful bidder is expected to exercise his ingenuity in achieving that objective or standard of performance, selecting the means and assuming a corresponding responsibility for that selection. Design specifications, on the other hand, describe in precise detail the materials to be improved and the manner in which work is to be performed. The contractor has no discretion to deviate from the specifications, but is required to follow them as one would a road map."<sup>13</sup>

In Blake, the plaintiff, Blake, was general contractor on a project, and its electrical contractor was to install electrical duct work overhead, although the specifications described the drawings as "diagrammatic" and entitled the electrical contractor to relocate the conduit to avoid conflict with other trades. The electrical contractor opted to install the conduit underground. The electrical contractor began the installation of the conduit. The project owner objected and made the electrical contractor install overhead conduit. The electrical contractor then ran into conflicts with the mechanical contractor and had to move the location of some of the overhead conduit. Removal of the underground conduit, as well as adjustments in the location of the overhead conduit, cost the electrical contractor additional money. The Federal Court held that the plans were performance specifications and awarded the contractor equitable adjustment for additional costs incurred when the project owner ordered the installation of overhead ducts. The Court of Appeals reversed the decision and said the real issue is not whether the specifications were design specifications or performance specifications, but how much discretion the specifications gave the contractor. The Blake Court determined that the specifications clearly did not give the electrical contractor the discretion to install the conduit underground.<sup>14</sup>

In Turner Const. Co. v. United States,<sup>15</sup> the contract gave the contractor two options to accomplish the installation of an emergency electrical system with a two hour fire rating. The contractor was given a choice of a conduit system or a more expensive cable system. The contractor began installing a conduit system that did not provide a two hour fire rating. The project owner instructed the contractor to install the more expensive cable system, and the contractor sued for the additional cost to install the cable system. The court held that giving the contractor two options was not enough to classify the specifications as performance specifications. Therefore, the specifications were design specifications, and as such, if the contractor proved that defective plans and specifications caused the damages to the contractor, the project owner would be liable to the contractor for the extra costs incurred. However, the court found that the contractor failed to prove that the specifications were defective. The contractor did not show that it could not have provided an adequate two hour fire rating system using the conduit;<sup>16</sup> the theory being that the specifications were not defective, and if the contractor installed the conduit properly to provide the two hour fire rating, the government would not have had the need to direct the contractor to install the more expensive cable system.

### **Project Owners’ Attempts to Avoid the Spearin Doctrine through Contract Provisions.**

It is a general rule of contract law that everyone has the freedom of contract, (i.e. that parties are free to make contracts as they wish) and courts will enforce the contracts without judging their substance.<sup>17</sup> Many project owners are aware of the Spearin Doctrine and the protection it provides to contractors who perform the work according to the owner's design documents. The contractor must look through the contract documents thoroughly to determine whether the owner has included provisions in the contract that attempt to hold the contractor responsible for the plans and specifications. The contractor should object to any contract that attempts to hold the contractor liable for failing to detect, failing to notify the owner, or for proceeding with the work in accordance with defective plans and specifications. However, in the Michigan case of Performance Abatement Services v. Lansing Board of Water and Light, the court stated that, "Michigan law implies in every construction contract a duty to inform bidders of all

material information pertinent to the bid. The Michigan courts have deemed this implied warranty made even if express contract language is inserted in the contract seeking to avoid and disclaim warranties and to require the bidder make its own inspection.<sup>18</sup>

Other Michigan cases have relied on the Spearin Doctrine for the general rule that a requirement in the contract that contractors visit the site of the proposed construction and inform themselves of the actual conditions of a proposed undertaking will not relieve the owner from defects in the plans and specifications.<sup>19</sup> These cases all involved situations where general contractors were awarded construction contracts on public projects. In each of the situations, the contractors incurred additional costs in performing the requirements of the contract due to plans and specifications prepared by the state that misstated existing conditions. For example, in **Hersey Gravel Co. v. State Highway Department**,<sup>20</sup> the state advertised for bids for the construction of approximately five miles on U.S.-41 and M-28 in Baraga County. The plaintiff, Hersey Gravel Co., received notice of the bid and obtained plans and specifications from the Highway Department. The president and manager of Hersey spent two days examining the proposed right-of-way and the blue prints he received from the Highway Department, which contained information about existing soil conditions. Based on these examinations, Hersey tendered the lowest bid and was awarded the contract to construct the highway. Hersey began construction of the highway, but found that the actual soil conditions encountered were entirely different from those indicated on the plans, destructive to its equipment and far more difficult and costly to handle. Hersey excavated 32,175 cubic yards of earth and 11,390.8 cubic yards of rock, in excess of the quantities stated in the construction contract documents. Hersey sued the State Highway Department, claiming that the cost of completing the work of the contract was \$59,622.27 in excess of the cost anticipated.

The state claimed that if Hersey's president and manager had made a proper investigation, the exact nature of the soil could have been properly determined and its bid made accordingly. In support of its position, the state referred to language in the contract that provided:

Soil notations shown on the plans are for information only and should not be construed to relieve bidders of their responsibility to satisfy themselves by examining the site of the proposed work as to the actual soil conditions.<sup>21</sup>

In deciding the case, the Michigan Supreme Court cited **United States v. Spearin**,<sup>22</sup> and held that a direction to contractors to visit the site and inform themselves of the actual conditions of a proposed undertaking will not relieve the owner from defects in the contract plans and specifications.<sup>23</sup> The Michigan Supreme Court ruled that Hersey was entitled a recovery, and sent the case back to the trial court for a re-computation of the amount of damages.

However, the decision in **Hersey** was limited in the recent case of **Sunset Excavating, Inc. v. City of Novi**. In that case, the court found that disclaimers are valid under certain circumstances. Like **Hersey**, the **Sunset** contract contained a disclaimer regarding reliance on soil borings. The **Sunset** court found that the contractor was not entitled to extra compensation for unforeseen soil conditions, because the disclaimer was much more encompassing than the disclaimer in the **Hersey** contract. Also, in **Sunset**, the contractor did not show evidence that the project owner had superior knowledge of the soil conditions.<sup>24</sup>

It should be noted that all of these cases were claims by contractors against the state for insufficient plans and specifications. In any of these cases, the courts held that the state must furnish all available information in a form and manner that would apprise prospective bidders of the nature of difficulties to be encountered. Under the current state of Michigan law, private project owners may be able to shield themselves from liability for failing to furnish all available information regarding existing conditions on the proposed construction site by including in the contract documents language that requires the contractor to examine the plans and specifications for the work and providing in the contract that the project owner makes no representations regarding the accuracy of the plans and specifications.

Many project owners are adding contract provisions that absolve the owners from all liability for defective plan and specifications. These contract provisions typically provide that the owner makes no representations and/or warranties with respect to the plans and specifications and that the contractor

should review the plans and specifications carefully to determine constructability. Therefore, the contractor should be aware of these attempts by the project owners to disclaim any warranties with respect to plans and specifications.

In situations where the owner does not disclaim implied warranties with respect to the plans and specifications and the contractor is able to recover damages caused by errors in those design documents, the owner is typically able to sue the design professional for reimbursement for the amount of the owner's liability to the contractor. The contractor also can assert a claim for damages directly against the design professional that prepared the defective design documents, even if the owner has included warranty disclaimers in the contract.

Many project owners are beginning to use a middle ground approach by imposing a duty on the contractor to notify the construction site owner of any errors, inconsistencies or omissions it discovers through the course of performing the contract. If the contractor fails to give timely notice, the contractor can be held responsible for damages resulting from defective plans and specifications.<sup>25</sup> This contract provision is not only less onerous to the contractor, it also makes practical sense. A contractor who discovers any error, inconsistency or omission during the course of performing the contract as a practical matter should advise the owner of the problem. Notice of a potential problem not only benefits the owner, but it may also benefit the contractor. A contractor who continues to perform the contract pursuant to the plans and specifications while knowing that those plans and specifications contain errors, inconsistencies or omissions very likely will end up in a dispute with the owner. While the contractor may be able to prevail using the Spearin Doctrine, the contractor, nevertheless, will be required to incur the significant costs associated with litigating a claim to recover damages under the contract.

A provision, requiring the contractor to give notice to the owner when the contractor discovers errors, inconsistencies or omissions in the plans and specifications need not be viewed by the contractor as objectionable to the point that the contractor should refuse to enter into the contract. If the contractor agrees to the inclusion of such a provision in the contract, the contractor should be fully aware of any and all time requirements within which the contractor must provide notice to the owner of any error, inconsistency, or omission in the plans and specifications.

Some owners go as far as requiring a contractor to verify dimensions shown in the plans and specifications by taking field measurements. These provisions have been enforced as long as the verification requirement is reasonable and not unduly burdensome for the contractor. It should be noted, however, that courts generally frown upon disclaimers of responsibility for accuracy of the government's contract documents.<sup>26</sup>

### **Project Owners' Use of Affirmative Defenses in Litigation to Shift Risk to Contractors.**

Owners are also raising affirmative defenses which attempt to shift the risk of defective plans and specifications to the contractor. The affirmative defenses include the following: 1. The defect was Patent or obvious; and 2. The omissions and errors were with respect to items that are inherent and incidental to the work accurately described in the specifications and are customarily performed by the contractor.<sup>27</sup> In a nutshell, if the contractor should have easily recognized defects in the specifications and/or if the contractor knows that certain things left out of the specifications are always part of the work to be done on a construction project, the contractor cannot use the Spearin doctrine to support a claim for damages.

### **Negligence/Malpractice Action against the Design Professional.**

Michigan courts have held that a contractor may maintain an action against a project engineer or architect for damages arising out of defective plans and specifications prepared by the project engineer or architect even where there is no contract between the design professional and the contractor.<sup>28</sup> In **Bacco Construction**, the plaintiff-general contractor was hired to construct a waste water lagoon and irrigation system in Houghton County. The construction contract contained specifications prepared by the project engineer that required the lagoons to be constructed with a seal using either clay, powered bentonite, or a combination of clay and bentonite. The general contractor applied the bentonite material prescribed by the project engineer in accordance with the provisions of the contract. Tests were then performed that

showed that the lagoons failed to meet the standards contained in the specifications. An extensive leak developed in the project, and the engineer rejected the work done by the general contractor for not meeting the contract requirements.

The Michigan Court of Appeals had to decide for the first time in Michigan whether a contractor could maintain an action against a project engineer or architect in the absence of a contractual relationship. The court followed the reasoning of an Arizona Supreme Court decision in **Donnelly Construction Co. v. Oberg/Hunt/Gilleland**,<sup>29</sup> and held that design professionals are liable for foreseeable injuries to foreseeable victims which result from the negligent performance of the design professional's duties.<sup>30</sup> In most cases, design professionals should realize that general contractors will rely on their plans and specifications, and if the plans and specifications contain errors or omissions, the contractor will face problems as a result. In the **Bacco Construction** case, the court held that it was certainly foreseeable that the engineer's failure to make proper calculations and specifications for the construction job may have created a risk of harm to the general contractor who was responsible for applying those specifications to the job. The court reversed the trial court's decision to dismiss the general contractor's claim and sent the case back to the trial court.<sup>31</sup>

However, as stated earlier, **Hercules** held that they would not extend the warranty of specification claim beyond claims by the contractor arising out of performance of the contract, thereby preventing the contractor from using the Spearin doctrine for protection against third-party lawsuits for consequential damages that resulted from the defective design documents.<sup>32</sup>

## **CONCLUSION**

Historically, since the United States Supreme Court in **Spearin** announced that contractors are not responsible for defective plans and specifications, so long as they build to what is shown in those design documents, contractors have received protection in the Michigan courts from damages caused by defective design documents. Recent case law, however, has limited the contractors' use of the Spearin doctrine to claims for damages arising out of its performance of the contract and not for recovery of third-party tort claims.

More recently, project owners have attempted, by specific contract provisions, to render the contractors responsible for defective designs. These provisions, however, are subject to the limitations of reasonableness under the circumstances in which they are to be applied. A fair approach to the problem requires contractors to notify the owner as soon as possible, if they discover an error, omission or problem with the plans and specifications. These provisions do not try or attempt to make the contractor the guarantor of the design professional's performance obligations to prepare the design documents properly. They merely seek to utilize the experience of the contractor and prompt notification to avoid compounding any problem caused by errors and omissions in the design documents. These provisions will likely be enforced when the error or omission is obvious, or the omission involves an item of work that is customarily performed by the contractor as part of the work described in the contract documents. It is likely that the owner may use the obvious error and essential omission principles as affirmative defenses to claims of breach of implied warranty of the sufficiency of plans and specifications, even if specific disclaimers are not made part of the contract.

## **Endnotes**

1. 248 U.S. 132, 136; 39 S.Ct. 59; 63 L.Ed. 166 (1918)
2. Id. at 37
3. Id. at 36
4. Kinnear v. City of Lincoln Park, 260 Mich. at 258
5. 131 Mich. 52 (1902)

6. Id. at 60
7. 260 Mich. 250 (1932)
8. 516 US. 417, 425; 116 S. Ct. 981; 134 L. Ed. 2d 47 (1996)
9. Id. at 425
10. Id. at 425
11. 736 N.E. 2d 69, 77 (2000)
12. Id. at 77
13. 987 F. 2d 743, 745 (Fed. Cir. 1993)
14. Id. at 746
15. 54 Fed. Cl. 388, 390 (2002)
16. Id. at 398
17. Farnsworth. Contracts, § 5.1, at 345 (2d Ed. 1990)
18. 168 F. Supp. 2d 720, 738 (W. Mich. 2001)
19. See, Valentini v. City of Adrian, 347 Mich. 530 (1956); W.H. Knaup Co. v. State Highway Department, 311 Mich. 186 (1945); Hersey Gravel Co. v. State Highway Department, 305 Mich. 333 (1943); Reamer Co. v. Swartz Creek, 76 Mich. App. 227 (1977); and Kensington Co. v. State Highway Department, 74 Mich. App. 417 (1977)
20. 305 Mich. 333 (1943)
21. Id. at 340
22. 248 U.S. 132, 136
23. Hersey Gravel at 341
24. 1997 Mich. App. LEXIS 3820
25. See ATA Document 201, ¶ 3.21 (1987)
26. Affirmative Defenses to the Spearin doctrine: Government Attempts to Avoid the Implied Warranty of Specifications, Construction Briefings, May 2003 at 7. (citing Robert & Sons Const, No. VABCA-3552, 93-3 BCA ¶ 26113; Bromley Contracting Co., ASBCA No. 14884, 15483, 16045, 72-1 BCA ¶ 9252)
27. Affirmative Defenses to the Spearin doctrine: Government Attempts to Avoid the Implied Warranty of Specifications, Construction Briefings, May 2003 at 4
28. Bacco Construction Co. v. American Colloid Co., 148 Mich. App. 397, 416 (1986); National Sand. Inc. v. Nagel Construction. Inc., 182 Mich. App. 327 (1990)
29. 139 Ariz. 184; 677 P.2d 1292 (1984)
30. Id. at 188
31. Bacco Construction Co. v. American Colloid Co., 148 Mich. App. at 414
32. Hercules at 425