

CONSTRUCTION LIABILITY, COMPULSORY CONSTRUCTION INSURANCE
AND DECENNIAL LIABILITY IN FRANCE

1. The beginnings of insurance of decennial liability, i. e. its imposition by state decree derives from the Napoleonic Code. Originally, the law stipulated that architects and contractors were liable for ten years for any damage sustained by structures built or supervised by them, albeit under the condition that the work was offered at a flat, all-inclusive price. Normal liability legislation applied if a detailed estimate had been submitted. The law is still applied in very old cases in dispute dating back to before 1967.

2. The Law of 3rd January 1967 modified the Napoleonic Code insofar as it abolished the distinction between flat, allinclusive and detailed bids; in their stead, the new Law now distinguishes between "gros ouvrages" (substantial works) and "menus ouvrages" (small works).

According to Article 2270, the period of liability of architects and contractors was ten years for "substantial works" and two years for "small works".

Additionally, persons tied to the principal under a work contract, or tied to either the architects or the contractors were also held liable.

It was, in fact, a presumption of liability. Also imperfect ground conditions did not constitute a legitimate reason or excuse for exemption from liability.

3. The so-called Spinetta Act of 4th January, 1978 which came into force on 1st January 1979 completely modified the former regulations by
 - a) Abolishing the presumption of liability of the architect and contractors and lays down rules of strict liability which can only be refuted by proving an external cause (Acts of God, acts of third parties).

- b) Extending this liability to a good number of persons which are now regrouped under the general term "contractors". The latter are, in effect, all those persons who, in one way or another, have participated in or contributed to the actual construction.
- c) Abolishing the distinction between substantial works and small works. Reasons for liability are loss or damage which impair the solidity of the structure or which affect such structures in one of its structural elements or components, rendering it unsuitable for its purpose.
- d) Imposing upon the manufacturer a joint liability together with the contractor in respect of structural components intended to fulfil a service and precise, predetermined requirements. In this instance it is a matter of direct and not of indirect liability.

The importer of structures, a part of a structure or of a structural component manufactured abroad will consequently rank as manufacturer.

- e) Setting up categories of obligations which, according to their applications, are:
 - 1. A warranty for the faultless completion for one year from the time of the taking over of the structure; this, however, is not a matter of liability. Any loss or damage to the structure or a structural component arising since the takeover have to be made good.
 - 2. A two-year warranty (i.e. one year in fact) counting from the date of takeover, for the proper performance of structural components which are completely inseparable from the structure.
 - 3. A ten-year liability (from the time of the takeover)
 - for loss of or damage to the structure which effect its solidity

- for loss or damage effecting any structural component or basic element, rendering it unsuitable for its intended use
- for loss or damage affecting the solidity of any structural component forming an inseparable part for its practical use

on account of the foundations, structures, walls or roofs.

f) Finally, it introduced a new compulsory insurance in respect of:

1. The legal liability of contractors
2. Loss of or damage to the works to be effected by the principals. The purpose of this latter policy is to prefinance the necessary repairs without awaiting the outcome of a legal action against a contractor establishing his share of liability.

Further, this Act contains special regulations on sound insulation of buildings.

4. What are the effects of the Spinetta Act abroad ? They are based on the mutual economic relations; i.e. on the export of French products to foreign countries and on the export of foreign products and services to France.

First, a remark on the export of French products to foreign countries: French manufacturers have a ten-year liability insurance covering more or less, to a large extent the cost of repairs arising out of defects in construction materials supplied. Also abroad, French products are frequently highly touted by pointing out the ten-year insurance cover. Since, as a rule, such cover is not available outside France, non-French manufacturers are at a certain disadvantage when competing for business.

A second problem is posed in this connection, viz. the effects of the Spinetta Act on the export of foreign products to France or on services rendered in France

by the foreign building industry. If a French firm imports foreign building materials which come under Spinetta Act, the French importer is subject to liability in accordance with Article 1792 of the Civil Code. He has to effect a corresponding liability insurance. Quite understandably, he will try to shift this liability contractually onto the foreign exporter. Should we under these circumstances grant cover to such a manufacturer for all claims arising out of defects in doors and windows? We have considered the various solutions for solving this problem and have come to the conclusion that this cover should not be granted as such a step would mean the renunciation of an exclusion which has proved its worth for decades. Sooner or later we would also have to reckon with demands for granting this cover on other export markets. Our clients would hardly understand our attitude if we offered them superb cover for their exports to France but not for their sales within their own country or in other countries apart from France.

5. If a manufacturer of building materials in your own country approaches you with the demand to extend cover in accordance with the Spinetta Act he should be referred to the Zurich's Head Office for France in Paris (via ID Home Office), after having been appropriately informed of the special circumstances. Our French organization has all the necessary documentation which, together with general conditions, tariffs, special questionnaires and underwriting instructions, comprises over 150 pages.
6. If architects, engineers or building enterprises of your own country subject to the Spinetta Act operate in France, they will have to look for an insurer there in the same manner. By no means should we grant this extension of cover to clients under our local policies, simply by adding special conditions put together in a haphazard way. Moreover, it is doubtful to say the least, as to whether the French authorities would accept or tolerate such a procedure.

We are fully aware that our clients outside France will not be particularly overjoyed at our decision; we are, however, convinced that we have chosen the lesser of two evils.

7. A final word about clients who request decennial liability cover for contract work or supplies outside France

- Where legislation of the buyer's country stipulates decennial liability (and, more recently, to the surprise and dismay of many contractors this includes Egypt), ID is happy to arrange via "Z" Paris for the French Decennial Pool to quote terms.
- Where there is no such stipulation in the legislation of the buyer's country but nonetheless decennial liability is occasionally or increasingly stipulated in the contract documents, we, as a highly responsible member of the international insurance community, wish to discourage this tendency. In order to do so, we have to follow a consistent line in refusing to grant such cover.