

## CLAIMS EXAMPLES Design & Construct



### Not responsible for issues with your sub-contractors?

**Builder subcontracts out the surveying (and all other design) and the subcontracted surveyor makes a mistake. Builder is the head contractor and is sued by the client and has to bear the cost of the rectification (\$400k) and defence costs (\$50k). The sub-contractor denies making a mistake and refuses to pay for the rectification. The Builder has to pay for the legal proceedings against the subcontractor, all up costs \$550,000.**

The insured was a builder contracted to design and build an 8-story apartment block. The insured sub-contracted out all the professional services such as architectural design, engineering and, importantly, surveying.

The surveyor the Insured sub-contracted too didn't make an allowance for the external cladding when the surveyor was setting out the external walls. The result of this was that the building was 100mm over the boundary line, going up 8 storeys.

The Insured had to re-establish scaffold in parts and use abseilers in other parts to take off the cladding and re-install a new cladding system, which brought the building back inside the boundary.

**Rectification costs were \$400,000. Legal expenses of investigating and defending were \$50,000.**

The client knew nothing of the surveyor and had no relationship with the surveyor. The client had a contract with the builder and was looking to the builder/insured to rectify the problem. Legally the insured was responsible for the work done by its sub-contractor and was obliged to rectify the problem at their own cost.

Even though the cause of the problem was not the insured's fault, the rectification costs and legal costs of pursuing the surveyor was initially carried by the Insured until recover could be made from the surveyor.

**Many builders believe that if they are not responsible for the error then they will not have to pay for the rectification as the party at fault will pay.** However, fault is not usually clear and often those at fault will try and pass back some of the blame to the head contractor. This can cause substantial legal costs which Design & Construct Insurance protects against.

In such situations the head contractor (or their insurer) may have to carry the cost of the rectification work, the costs of defending the matter with the claimant and then pay for legal costs to recover those amounts from the sub-contractor. In the circumstances above that could be \$550,000. Could your business sustain such a financial impact? In the absence of D&C insurance your business would have to or go into administration.



To imagine a situation that is relevant to your business replace the surveyor with any subcontractor that provides a professional service. For example an architect, engineer, pool builder, certifier or roofing contractor.

To understand the full potential financial impact then imagine that the sub-contractor doesn't have insurance and goes into administration. In these circumstances as the head contractor, you are left paying for the rectification works and legal expenses even though you did nothing wrong.



**#2**

## **Construct only so no exposure?**

**Many builders who don't actually carry out any design, incorrectly believe that they will not have a claim made against them due to faulty design but that is not always the case. In this example we see how a builder who has no responsibility for design but who provided outdated drawings to design consultants could have a liability.**

**Rectification costs in this example are \$50,000 and legals are \$15,000.**

The insured was a builder contracted to construct renovations to a house and install a concrete in ground pool. The designs were carried out by two 3rd party designers for the house owner. The insured was not responsible for design but did send copies of documents to various 3rd parties.

The builder engaged a subcontractor pool company to construct the in-ground concrete pool. As per the plans (drafted prior to construction by one of the 3rd party designers for the house owner) the pool was shown as flush with the internal house slab. The pool was dug out on site and concreted in place.

Once the pool was completed it was noticed that it looked high relative to where the future house slab was to go. It was discovered that the pool edge was approximately 300mm above the internal slab height of the house.

The site set out provided by the surveyor for the location of the pool was checked and was correct. It became clear that the insured builder provided outdated versions of plans between the 3rd party design consultants.

The only method of rectification was for a concrete cutting contractor to cut the pool up into pieces that could be removed by a 3-5 tonne machine and dumped off site. Then a similar machine to excavate the pool deeper and re batter to form the hole back. This was followed by the pool contractor restarting works from that point to install formwork and steel and repour the pool slab. If the works were not undertaken within a certain time period, they would have become more expensive as access to the pool would become more difficult due to the house construction affecting it.

The rectification costs were approx. \$50,000 and some legal costs of approx. \$15,000.

**This is one example of a builder not being in any way responsible for design, signing a build only contract, yet still having a liability for design issues.**

## Disclaimer:

These claims examples are provided for general information purposes and claim payments would depend on policy terms, conditions and exclusions. The examples are not to be taken as representations of valid claims as all claims would depend on the policy wording, endorsements or circumstances of the claim or disclosures made during the underwriting process. The wording or circumstances of the claim could result in the claim not being covered. Whilst some of the circumstances surrounding these claims are based on actual claims lodged there have been changes made to the circumstances, amounts and causation elements to protect the companies involved or to highlight the liabilities of builders.

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