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"Jobsite Submittal or Delivery Packages: Part 4 (The Conclusion)" by Kent J. Pagel

Our years of collective experience teach us that the truss manufacturer's liability largely begins "once the product leaves the plant." On this topic, TPI adds: "By far the majority of wood truss related accidents occur during truss installation, and not as a result of improper truss design or fabrication." And for every wood truss collapse, the truss manufacturer faces the possibility of either a claim requesting replacement of materials and/or loss to other work on the jobsite, or the more serious claim asserted on behalf of an injured laborer or bystander.

TRUSS COLLAPSE LITIGATION

The injury to a person resulting from a truss collapse most likely will entangle all project participants in litigation—the truss manufacturer, the injured worker's immediate employer, various trade subcontractors, the builder or general contractor, the owner and the project architect and/or engineer. Behind each of these parties (except the injured worker) usually exists an insurance company, thereby adding time, expense, complexity and uncertainty to the processing and resolution of the litigation.

The legal issues that become involved will relate in part to the contracts that exist between the construction project participants who have been sued and will also include claims of negligence and product liability. For example, the injured person will claim negligence on the one hand against the builder, other trades and the project design professional (as these parties argue among themselves over responsibility based on the contracts that they have signed). At the same time, the injured person will make claims against the truss manufacturer for both negligence and product liability.

To prove negligence on the part of the truss manufacturer, the injured person may try to show a failure to exercise ordinary care in design or manufacturing. On the other hand, asserting a claim under products liability law, the truss manufacturer may be alleged to have supplied a "defective" product, one that is "not reasonably safe."

PRODUCT LIABILITY

Product liability claims can be difficult to defend. A product may be considered defective not only physically, that is, in the design or manufacture, but also in the marketing sense because of a lack of instructions or warnings regarding the safe operation of such product. What is important to remember is that the product is deemed defective from a legal perspective because of the "inadequate instructions or warnings." Of course, for every "legal rule" there are usually a number of "exceptions." How else would you expect lawyers to earn back the costs of

their legal educations? One example is reflected in a well-recognized case involving injuries to a painter who rigged scaffolding that collapsed. In this case, the scaffolding manufacturer failed to provide instructions of any kind to the injured painter's employer. The jury found, however, that the scaffolding was not defective in a marketing sense despite the absence of any installation and operating instructions. The defense lawyer ably demonstrated that the injured painter had installed scaffolding on countless previous occasions—in other words, “he knew what he was doing.” The jury therefore charged this painter with a full appreciation of the risks involved. While this was probably a fair outcome, it is not one that is predictable nor should it be relied on.

In litigation, the courts will, what lawyers call, “closely scrutinize” warnings and instructions in determining their effectiveness. Juries do the same thing. Judges and juries both recognize that warnings and instructions are oftentimes ineffective because either the users of the products may not be adequately reached, will likely be inattentive, or may be insufficiently motivated to follow the instructions or heed the warnings.

GENUINELY WARN & INSTRUCT

This leads us to one of the primary purposes of our four-part series on “Job Site Submittal or Delivery Packages.” Risk and liability (and the things that go with them such as “time, expense, complexity and uncertainty,”) can be significantly reduced through effective jobsite warnings and instructions. The goal here is to genuinely warn and instruct.

Let's take the example of manufacturing and supplying trusses that exceed 60 feet. Keep in mind that HIB-91 and the HIB-91 Summary Sheet instruct the installer “to consult with a P.E. if truss spans exceed 60 feet.” Furthermore, WTCA's Jobsite Warning Poster requests the erector to consult the building designer on long spans. While all of the suggestions made in the previous three articles will apply, with respect to the delivery of long span trusses, the truss manufacturer should consider providing additional documentation.

How would your company respond to the following opinion from a well-credentialed structural engineer criticizing a truss manufacturer in a truss collapse case?

Criticism: “The responsibility for this collapse rests with several of the parties involved. The PRIMARY responsibility rests with Any Town U.S.A. Truss Company as the long span of the trusses makes them a special item and the manufacturer should have treated them as such. The truss design drawings, which cannot be easily read by the user, do not clearly depict the bracing to be used during construction. For the bracing, the truss manufacturer relied on the recommendations of industry guidelines, but this is not enough considering the difficulties in handling large span trusses such as the trusses involved in this accident. The truss manufacturer should have informed the installers of the special methods required in handling such trusses. Any Town U.S.A. Truss Company was negligent and irresponsible in not providing clearly marked special drawings and warnings. No warnings of the special precautions needed to handle such trusses were given.”

First of all, imagine how difficult it would be to overcome this criticism if the truss manufacturer had either failed to provide, or could not demonstrate that it provided, any jobsite documentation whatsoever such as the WTCA JOBSITE WARNING POSTER. Think about the "pounding" that would occur under this scenario as the plaintiff's lawyer repeatedly questioned and criticized that Any Town U.S.A. Truss Company failed to: (1) advise of the proper manner of handling, erecting and bracing the trusses; (2) advise of the necessity of having an engineer or architect specify the manner in which the trusses should be handled, erected and braced; (3) provide the erector and/or general contractor with industry guidelines regarding handling, installing and bracing; and (4) warn of the hazards associated with the trusses. While perhaps not fair criticism of the truss manufacturer, this is a likely scenario.

This previous criticism can be effectively refuted. Consider the following reply from an equally credentialed structural engineer who had favorable facts and evidence available to him because Any Town U.S.A. Truss Company had genuinely warned and instructed with respect to the dangers that exist with long span trusses and the need to utilize special precautions:

Response: "Any Town U.S.A. Truss Company as truss designer and truss manufacturer is responsible by code to design trusses per the National Design Standard for Metal Plate Connected Wood Truss Construction. This design standard is intended to cover the design of individual wood trusses only; and not the design for the complete structural system of the building. As such, the design of the temporary and permanent bracing required for proper installation is the responsibility of the building designer. Handling, storing, installing and bracing is NOT the responsibility of the truss manufacturer as these are the responsibilities of the truss installers.

The truss manufacturer's scope of work, and suitable warnings and instructions are clearly denoted: (1) in the truss manufacturer's contract with its customer, (2) on the truss design drawings, approved by the project architect and engineer, and delivered to the jobsite for review by the truss installers, (3) on the Warning Poster provided by the truss manufacturer to the truss installers, and (4) on the WARNING TAGS attached to the trusses that were delivered. Furthermore, Any Town U.S.A. Truss Company clearly warned and instructed its customer and the truss installers with respect to the special requirements needed for the long span trusses provided to this project. A conspicuous document accompanied each delivery of long-span trusses that stated: 'Attention Erector: Enclosed is important information for the safe and proper use of trusses spanning 60 feet. Do not remove from the jobsite. ANY TOWN U.S.A. strongly recommends that an engineer be consulted regarding the design of required temporary and permanent bracing.' This document was furthermore signed by Any Town U.S.A. Truss Company's customer, and the customer acknowledged that it would follow these recommendations."

Remember the goal is to genuinely warn and instruct.

For more information on products suitable for this purpose contact WTCA at 608/274-4849.

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