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> Remediation and damages from defective design or construction can be very significant on major projects

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Claim example: the Burnley Tunnel City Link Project, Melbourne

The following is an example of a major construction project that had structural problems either during or discovered after the construction phases. The importance of proper insurance coverage is evident from the facts below.

Background

At the time of construction (1996), the Melbourne City Link Project was the largest urban infrastructure project in Australia. It involved the design and construction of 22 kilometres of road, tunnel and bridge works and the connection of three of the four main freeways in Melbourne which then ended at the city fringe.

The project was a public private partnership (PPP) project that began under the Liberal government of premier Jeff Kennett, but completed during the following Labor government. The successful tenderer of this $2.2 billion "Design and Construct" project was the consortium of Transfield Holdings Pty Limited (Transfield) and Obayashi Corporation (Obayashi).

Transurban is the owner and operator of the Melbourne City Link toll way. The project was conducted under a Build, Own, Operate and Transfer (BOOT) arrangement. Transurban is to transfer the City Link back to the State in a fully maintained condition at the end of the concession period (14 January 2034).

Part of the City Link project involved the construction of two underground tunnels of which the Burnley Tunnel is one. The Burnley Tunnel is a $500 million, three lane tunnel that passes at a depth of 60m beneath the Yarra River in Melbourne. Its purpose was to cut travelling time dramatically between the western and the eastern sides of Melbourne.

Insurance claims

The construction of the Burnley Tunnel was plagued by problems during the various phases of construction.

In mid 1999, prior to the tunnel being opened to the public, problems developed with the invert lining within parts of the tunnel. Water was leaking through cracks in the wall at a rate of 300 litres a minute and parts of the bitumen pavement had lifted. In November 1999, Transurban announced in a media release that, as result of testing of the Burnley Tunnel pavement, six or possibly seven 12 metre long slabs in a 280 metre long section of the tunnel had been identified as being in need of either repair or replacement.

The repair works delayed the opening of the Burnley Tunnel by approximately 12 months. This delay caused a loss to Transurban of approximately $200,000 a day in loss toll revenue. Transurban brought an action against the Transfield and Obayashi Joint Venture (TOJV) for damages who in turn claimed against Hyder Consulting (Victoria) Pty Ltd who were design engineers engaged by TOJV.



CGU, QBE and a number of other insurers were on risk in respect of the various layers of professional indemnity liability policies designed specifically for this project. They denied liability under the various policies. A large and complex litigation ensued between the parties involved for a number of years alleging defective engineering advice, designs and services, claims for damages and remediation.

In the end, the court ordered mediation between the parties who later settled the damages and remediation works claim for approximately $153 million.

Further construction problems

The Burnley Tunnel was completed and opened to the public in late December, 2000. On 19 February 2001, a structural failure in an arch section of the tunnel resulted in the closure of the tunnel for 9 days. Subsequently, one lane was closed over half the length of the tunnel to allow repair of the failed section. The full three lane operation of the tunnel was not restored until 21 June 2001.

Transurban claimed the cost of rectifying the defect and resultant damages flowing from the closure and part closure of the tunnel from TOJV. It claimed a loss of approximately $1.9 million in lost toll revenue and a cost of $600,000 in consulting costs.

Subsequent to this failure, TOJV undertook extensive investigations of the entire tanked section of the tunnel. As a result of this investigation, they recommended the installation of a physical restraint at the arch floor joint throughout the tanked section of the tunnel to ensure that no further movements of the joint would occur in the future. TOJV met the cost of this remediation work.

In 2007, Transurban lodged another claim against TOJV for failing to design and build the tunnel to last 100 years as required by the contract. If a risk emerges over the next 90 years or so, Transurban wanted it known that this risk may relate back to the original building of the tunnel and whoever built it may be responsible. This move by Transurban is understandable given that part of the concession agreement with the State government is that, upon handover back to the State, the tunnel is to have an operational life of another 66 years from 2034.

Financial risks transfer

Remediation and damages costs flowing from defective design or construction can be extremely high – particularly in major projects. From a corporate risk management perspective, it is crucial, where possible, to have appropriate insurance coverage in place to ensure an effective transfer of financial risks to an insurer.

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