Voluntarily accepted liabilities arising in the development and construction industry are governed by the framework of terms and conditions of the contract to build – or, as the case may be, the terms of engagement for design and supervision. Such liabilities on the part of the party supplying its services may be categorised to that for warranty of quality and suitability.

Insofar as contractors and subcontractors are concerned, materials and workmanship warranties are normally expected as a consequence of the obligation of ‘completion of the works in accordance to the contract’. Increasing specialisation leads to increased nomination of subcontractors and warranties of design will only ‘normally’, in SIA 88 context, follow as part of the subcontractors’, (and thereby the contractor’s) obligations undertaken directly towards the Client.

Third parties will not normally enjoy the benefits of such undertakings.

Similarly, the contractors cannot normally find redress against the consultants and their recourse must be sought against the Client in the latter’s limited vicarious liability.

The law of tort in negligence permits third parties to seek recourse against those employed in the production of the buildings or structures. This recourse has, however, been narrowed by recent precedents that have left third parties unable to claim economic losses unless damage or injury has been suffered.

The use of collateral warranties bridges the gap in available recourse by establishing contractual nexus from the parties involved in the production of the buildings and structures to third parties where the former would have owed no duty other than one of limited scope in tort.

(xiii)
With such a convenient mechanism for establishment of contractual obligations, aggrieved parties can seek recourse expeditiously. However, over-zealous use of collaterals placing extremely onerous terms upon consultants, contractors and subcontractors may occur, eventually increasing the cost of the project or, where the warrantor is of low capital base, be self-defeating.

It is from this perspective that 'decennial' and 'BUILD' type insurance contracts can be considered. They can provide quick and expeditious compensation for any necessary rectification works. The insurers, under subrogated rights, can then seek redress from the defaulting parties, although if the default is tortious, the insurers may find themselves locked out by the recent judicial decisions.

Thus, a combination of insurances and collateral warranties can provide better reliability in construction design and execution.

A survey conducted in conjunction with this dissertation revealed that about two-thirds of respondents practising in the property development and construction industry in Singapore, had not come across the use of collateral warranties. However, the same proportion of them indicated that the use of such warranties would be timely. Further there was unanimous opinion that the quality and reliability of design and construction work would improve with the use of collateral warranties.

Collateral warranties are thus perceived to be effective risk avoidance and/or reduction tools. In order that their introduction and use can be successful, the appropriate education and exposure of concerned parties is seen as essential.

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1. Building Users Insurance Against Latent Defects