Construction Bills: Recent Changes to Construction Laws

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Amendments to California, Michigan, Washington, and Minnesota Anti-Indemnity Laws Represent Expansion and Refinement of Indemnity Restrictions

Spurred by lobbying from industry trade groups over the past several years, many states have enacted new laws or revised existing laws limiting the extent to which construction participants may contract to indemnify other participants. Although these anti-indemnity laws have been around in varying forms in some states for decades, recent changes reflect a renewed emphasis from subcontractor trade groups to counteract inequalities in bargaining power and to prevent overreaching indemnification obligations. Indicative of both the similarities and variations found among the nation's anti-indemnity laws, California, Michigan, Washington, and Minnesota have recently adopted legislation adding new restrictions and amending existing limitations of the scope of permissible contractual indemnity.

In the absence of statutory or common law prohibitions, parties are free to negotiate and contract for indemnification for the myriad categories of risk associated with construction projects. Indemnification obligations contracted between parties in the construction industry have run the gamut from broad form indemnification, where an indemnitor assumes a risk of certain categories of loss even when caused by the "sole negligence" of the indemnitee, to limited form indemnity agreements that apportion risk only to the extent of the indemnitee's negligence. Between these extremes lie a number of varied methods for apportioning risk of loss, including arrangements to indemnify a party against an entire loss when the indemnitor is partly at fault, regardless of whether that contributory fault is only slight in comparison to the indemnitee's contribution. It is generally in the project owner's interest to shift as much of its risk as possible to the general contractor and architect by requiring that each indemnify and defend the owner against claims or losses for the project. In turn, general contractors and architects shift this risk down to their subcontractors, suppliers, and subconsultants. The result is a chain of indemnification flowing down through contractual privity, where the party lower on the chain is an indemnitor for losses incurred by a party higher up, often beyond the fault of the indemnitor.

With inequalities in bargaining power among owners, architects, contractors, subcontractors, and other project participants, it is not surprising that trade groups have lobbied aggressively to convince state legislatures to void various indemnification arrangements as against public policy. Forty-four states and the District of Columbia have enacted some form of legislation governing indemnity clauses relating to construction contracts.[1] The scope and impact of these state statutes vary widely depending on the type of project (public, private, residential, or commercial) and the scope of indemnity that is restricted (sole negligence, partial negligence, and additional insured clauses). Despite the varied scope of statutes, a consensus generally exists with most states prohibiting indemnification for losses caused by the sole negligence of the indemnitee. A minority of states permit such broad form indemnification, but even in these six states—Alabama, Maine, Nevada, Vermont, Wisconsin, and Wyoming—such clauses are strictly construed.[2]

California Amendments Expand Anti-Indemnity Law to Private Projects and Add Subcontractor Protections

Effective for contracts entered into after January 1, 2013, California revised its anti-indemnity law, set out in California Civil Code section 2782, to expand prohibitions on indemnification for "sole negligence or willful misconduct" to all types of construction contracts. The prior statute barred only *public entities* from contracting for indemnification for their "sole negligence or willful misconduct" and for "defects in design" furnished by the indemnitee.[3] The statute was silent as to indemnification clauses in private contracts for nonresidential construction and for

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subcontracts on both private and public projects.

Under the recent amendments to California Civil Code section 2782, the prohibition against indemnification for an owner's sole negligence, willful misconduct, or design defects encompasses both public and private construction projects, voiding "any provisions, clauses, covenants and agreements" that indemnify the indemnitee against liability arising from the "sole negligence or willful misconduct" of the indemnitee or its agents. It also voids provisions where a party seeks indemnification for defects in design furnished by the indemnitee or its agents.

In addition to the prohibition against broad form indemnification, the amended statute further restricts indemnification for acts of both public and private owners. The statute's terms provide that any clauses or agreements "that purport to impose on any contractor, subcontractor, or suppler of goods or services, or relieve the owner from, liability" are unenforceable to the extent of the *active negligence* of the owner.[4] The statute does not include a definition of "active negligence"; however, California case law has found active negligence to exist where "there is participation in some manner by the person seeking indemnity in the conduct or omission which cause the injury beyond mere failure to perform a duty imposed on him by law."[5]

The statute was silent as to indemnification clauses in private contracts for nonresidential construction and for subcontracts on both private and public projects.

Accordingly, the statute prohibits all but a limited form of indemnification for losses caused in part by the owner's own negligent action, but it permits indemnification for all but the sole negligence of the owner where the owner is only passively negligent or merely fails to perform a duty imposed by law.

Subcontractor Protections

California's statutory changes included further protections for subcontractors by adding subsection 2782.05 to the California Civil Code. As with California Civil Code section 2782, this section similarly prohibits provisions in construction contracts requiring a subcontractor to "insure or indemnify, including the cost to defend, a general contractor, construction manager, or other subcontractor" where such claim arises or relates to the "active negligence or willful misconduct of that general contractor, construction manager, or other subcontractor." The prohibition, however, goes further to restrict such indemnification "to the extent the claims do not arise out of the scope of the work of the subcontractor pursuant to the construction contract." Accordingly, the law protects subcontractors from insuring or indemnifying a general contractor or other subcontractors for their (1) willful misconduct, (2) active negligence, (3) defects in design furnished by others, and (4) claims that arise outside their scope of work.

While greatly expanding protections for subcontractors from indemnifying other project participants and limiting indemnification for other subcontractors' work scope, the statute enumerates more than a dozen categories of exceptions. Noteworthy exceptions include residential construction, direct contracts with owners, independent breach-of-warranty actions, and contract requirements to purchase or maintain insurance covering acts of the promisor, including additional insured endorsements. Although residential construction is excluded from the new restrictions, preexisting laws prevent subcontractors from indemnifying a residential builder for construction defects that are caused by the builder's negligence or by designs furnished by others or that do not arise out of a subcontractor's scope of work.[6]

Clarifying its application to insurer's obligations, the statute expressly states that it does not affect the obligations of an insurance carrier under *Presley Homes, Inc. v. America States Ins. Co.*,[7] which held that a subcontractor's liability insurer must provide a complete defense to all claims (covered and uncovered) brought by third parties against an additional insured under the subcontractor's insurance policy. The statute also states that it does not affect the rights of an insurance carrier under *Buss v. Superior Court*,[8] which held that insurance carriers (i) may seek reimbursement of certain defense costs for claims that are not even potentially covered by the policy and (ii) bear the burden of proving such right to reimbursement and the amount of such defense costs.

In sum, the California amendments reflect a significant expansion of protections for contractors and subcontractors, signaling the legislature's recognition of public policy considerations supporting the limitation of the scope of indemnity to acts outside the indemnitee's control.

Michigan Amends Its Anti-Indemnity Statute Expanding Protection to Designers and Limiting Indemnification of Public Entities

Effective March 1, 2013, amendments to Michigan's anti-indemnity law[9] seek to standardize indemnification limitations among the construction project participants and across the various types of contracts involving construction activities. As a matter of public policy, the prior statute prohibited indemnification clauses only in contracts concerning "buildings or structures" for losses caused by the sole negligence of the indemnitee.

The amendments broadly expand the types of contracts that the indemnification restrictions apply to, from only "buildings and structures" to all "highway, road,

bridge, water line, sewer line, or other infrastructure or any other improvement to real property." With the catch-all language of "any other improvement to real property," the amendments ensure equal application among all types of "construction" projects, not just those commonly associated with building construction.[10]

Another significant expansion of the statute is the addition of "design" to the categories of construction, repair, and maintenance contracts covered by the statute. Under the prior language, it was arguable whether architects and other design contractors were covered by the rules. It is now clear that architects and other designers will receive equal protection as contractors from broad form indemnification clauses.

Addressing public entities specifically, the legislature adopted a new subparagraph prohibiting public entities from requiring Michigan-licensed architects, professional engineers, landscape architects, professional surveyors, and contractors to assume any liability or indemnify the public entity or any other party for any amount greater than their degree of fault (along with their subconsultants' or subcontractors' fault).[11] This prohibition extends not just to contracts directly with a public entity, but to contracts engaged through construction managers and other agents retained by the public entity to manage or administer the contract. The definition of public entity in the statute is expansive and includes most public entities, though it expressly excludes certain state universities and higher education facilities.

The Michigan anti-indemnity law, as amended, represents a conservative limitation when it comes to private projects by restricting only broad form indemnification. Reflecting the fact that most public projects are subject to competitive bidding, with little opportunity for contract negotiation, the law prevents overreach by public entities by restricting both the assignment of liability and indemnification beyond a party's own fault.

Washington Revises Anti-Indemnity Rules to Clarify Application to Design Professionals, Add Restrictions on Duties to Defend, and Expand the Scope of Applicable Damages

The statute embodied in Washington Revised Code section 4.24.115 represents a limited form indemnification preventing indemnification of "bodily injury or damage to property" when "caused by or resulting from the sole negligence of the indemnitee" or caused by the "concurrent negligence" of the indemnitee or the indemnitee's agents, to the extent of the indemnitor's negligence. By amendment signed into law March 29, 2012, this prohibition is extended beyond indemnification to include the often complementing obligation of "the duty and cost to defend." As costs of defense can often exceed liability, this small addition results in significant protections for a party that has not contributed to a loss but might have nonetheless been subjected to costs of another's defense.

Similar to Michigan's recent statutory amendments, Washington's statute was unclear as to its application to design professionals because it applied only to clauses or agreements "*relative to*" construction agreements. Confirming inclusion, the Washington legislature adopted language expressly incorporating "architectural, landscape architectural, engineering, or land surveying services" into the categories of contracts protected under the anti-indemnity statute. The legislature went further, to include prohibition for indemnification for "damages arising out of such services" in addition to "bodily injury to persons or damage to property" when caused by the indemnitee's negligence. The inclusion of damages arising out of "services" arguably expands beyond the added design professional contracts, to be inclusive of construction managers and others performing services relative to construction projects.

Florida courts may have their hands full interpreting the law's unclear and conflicting provisions.

Minnesota Closes Insurance Exception Loophole to Anti-Indemnity Statute

Dating back to legislation first enacted in 1983, Minnesota Statute section 337.02 voids indemnification under building and construction contracts to the extent that the indemnified loss is attributable to the "negligent or otherwise wrongful act or omission" of the indemnitee, its agents, or independent contractors. The statute also prohibits indemnification by an "owner, a responsible party, or a governmental entity" for "strict liability under environmental laws." Articulating a broad restriction on all but limited form indemnification clauses, the Minnesota statute represents a clear intention by the legislature to prohibit a party from indemnifying another for its own negligence, acts, or omissions.

Despite the seemingly unequivocal prohibition, the statute included one express exception that permitted indemnification when a party failed to maintain a contractually mandated insurance policy. Under this exception, a contractual indemnity provision in violation of the statute would be enforceable if (1) the indemnitor was contractually required to maintain a specific type and limit of insurance, (2) the indemnitor failed to maintain that insurance, and (3) a claim arose within the scope of the required insurance. Exploiting this exception, savvy parties incorporated requirements for contractors, or other parties, to maintain broad insurance coverage coupled

with a clause requiring the contractor to indemnify the other party for damages falling within the required coverage scope and limit. Knowing the contractor's commercial general liability policy and other commercially available policies would not cover the entire scope of the required insurance coverage, the contractor's indemnification obligation would be reinstated for any insurance coverage deficiency.

The Minnesota Supreme Court upheld these contractual arrangements with a decision published January 23, 2013, finding that "[i]n a situation in which a promisor has failed to obtain the insurance required under a contract, [the statute's insurance exception] allows the promisee to recover, even when the lack of insurance created an indemnification provision that [the anti-indemnity law] would otherwise render unenforceable."[12] Responding to the Supreme Court's decision and subsequent lobbying by subcontractor trade groups, the Minnesota legislature amended its statute effective August 1, 2013, filling the insurance exception loophole. As amended, the exception for insurance policies still allows a party to agree to provide specific insurance coverage for the benefit of others, but it now prohibits "a provision that requires a party to provide insurance coverage to one or more other parties, including third parties, for the negligence or intentional acts or omissions of any of those other parties, including third parties."

The law does not state that it is retroactive.

It remains to be seen whether the amendments will completely close the insurance loophole or if parties will develop new strategies to circumvent the anti-indemnity rules and revive clauses requiring indemnification or duties to defend against losses caused by an indemnitee's negligence. The Minnesota legislature's struggle to craft a workable exception, allowing commercially available insurance coverage without opening the door to abuses, is indicative of the struggle all legislatures face when crafting anti-indemnity laws that balance public policies with the freedom of parties to engage in negotiated contractual arrangements.

Commentary on Changes

Viewed as a whole, the statutory changes in California, Michigan, Washington, and Minnesota represent recognition in those states of public policy against broad form indemnification on all projects and, at minimum, prohibition of public entities from transferring risk of the owner's negligence to those lower on the contractual food chain. In each of these states, trade groups supported the recent legislative changes and, in some cases, their lobbying was instrumental in getting the changes passed. Indicative of the outlook of these trade organizations, the American Subcontractor Association summarized its view of anti-indemnity laws in its amicus brief[13] filed with the Minnesota Supreme Court when arguing against the insurance exception loophole, stating, "there is a strong public policy, emanating from both case and statutory law, in favor of making each participant in a construction project responsible for its own negligence or fault." Although variations in the scope and complexity of anti-indemnity laws can be expected to continue for some time, continued focus within the industry suggests a growing uniformity toward restricting indemnification for loss beyond an indemnitor's own fault.

Florida Adopts Contractual Limitation to Design Professionals' Individual Liability

Under common law, Florida recognizes direct negligence claims against individual design professionals for purely economic damages arising out of the individual's professional services, even if the claimant does not have a direct contract with the individual design professional. Thus, if a general contractor enters into a subcontract with an architecture firm to perform design work and the architect employed by that architecture firm acts negligently in completing the design, the project owner is entitled to maintain a direct action against the individual architect for professional malpractice even though the project owner's recovery against the architecture firm may be barred by a lack of privity and the economic loss doctrine.[14] Before July 2013, the common law suggested that design professionals could not limit such individual liability through contract, even where a contractual provision limited the liability of the design firm.[15]

A new law signed by Florida Governor Rick Scott on April 24, 2013, effective on July 1, 2013, changes the common law approach to individual design professional liability. Adopted through 2013 Fla. Sess. Law Serv. ch. 2013-28, Florida created Florida Statute section 558.0035 (2013), which puts the power to contractually limit an individual design professional's liability into the hands of the design professional's employer.

As adopted, Florida Statute section 558.0035 specifies that a "business entity" may limit the individual liability of its employee-design professionals or its agents' design professionals for negligence within the course and scope of a professional services contract if all of the following statutory requirements are met:

> (a) The contract is between the business entity and the claimant or with another entity for the provision of professional services to the claimant;
>
> (b) The contract does not name as a party to the contract the individual employee or agent who will perform the professional services;

(c) The contract includes a prominent statement, in uppercase font that is at least 5 point sizes larger than the rest of the text, that, pursuant to the law, an individual employee or agent may not be held liable for negligence;

(d) The business entity maintains any professional liability insurance required under the contract; and

(e) Any damages are solely economic in nature and the damages do not extend to personal injuries or property not subject to the contract.

"Business entity" is broadly defined within the law as "any corporation, limited liability company, partnership, limited partnership, proprietorship, firm, enterprise, franchise, association, self-employed individual, or trust, whether fictitiously named or not, doing business in this state."[16]

With the enactment of Florida Statute section 558.0035, the Florida legislature also amended several other statutes governing design professionals to be in line with the new law. In addition, the Florida legislature revised Florida Statute section 558.002(7) to add geologists to the list of design professionals, which had already included architects, interior designers, landscape architects, engineers, and surveyors.

The law does not state that it is retroactive. However, it would be a rare case that a preeffective date contract would meet the technical requirements of the statute, specifically the inclusion of the statutory notice in the requisite font size. Clearly, going forward, owners' claims and recovery against individual design professionals for purely economic damages due to negligent design—for example, construction delays—may be limited through their contract with the design firm.

The Legislative Intent Was to Curb the Common Law

The new law appears to be the Florida legislature's response to the Florida Supreme Court's 1999 ruling in *Moransais v. Heathman*[17] and its attempt to overrule the 2010 ruling by the District Court of Appeals, Third District, in *Witt v. LaGorce Country Club, Inc.*[18]

In its decision in *Moransais*, the Florida Supreme Court resolved a conflict among the Florida District Courts of Appeal by affirming that a claimant has a common law cause of action for economic losses arising out of professional malpractice directly against the employee of the professional services firm who completed the negligent work.[19] In *Moransais*, a homeowner brought claims for economic damages against the engineering firm and its two employee-engineers who performed a prepurchase house inspection under a contract between the homeowner and the engineering firm.[20] The trial court dismissed the negligence claims against the individual engineers relying on the economic loss doctrine, which the Second District affirmed.[21] Out of caution, the Second District certified the question to the Florida Supreme Court.[22] In its decision quashing the Second District's decision, the Florida Supreme Court reviewed Florida case law governing professionals. In particular, the court looked at its earlier decision permitting lawyers to practice through corporate entities, recognizing that, under the common law, a lawyer who renders professional services owes a duty of care to the client regardless of the client's contract with a business entity for such services.[23] The court also looked at then-effective Florida Statute section 471.023,[24] which similarly permitted engineers to form corporate entities or partnerships, but with the express limitation that such organization could not limit personal professional liability. In reaching its conclusion in *Moransais*, the Florida Supreme Court did not feel it was making new law, but instead that it was acknowledging a "well established common law cause[ ] of action . . . for neglect in providing professional services."[25]

Despite the seemingly unequivocal prohibition, the statute included one express exception that permitted indemnification when a party failed to maintain a contractually mandated insurance policy.

In the 2010 *Witt* decision, the Florida District Court of Appeal relied heavily on *Moransais*, holding that contractual limits of liability have no effect on a geologist's individual professional liability.[26] In *Witt*, a country club brought a negligence claim against an individual geologist, alleging his work resulted in the $4 million failure of a reverse osmosis system. The individual geologist had tried to limit his liability through a contract provision that limited his employer's and its subconsultant's liability to the total dollar amount of the approved portions of the contract or the total fee for services, whichever was greater.[27] In its decision, the court noted that professional liability claims against individual design professionals exist independent of a professional services agreement, and therefore cannot be limited by contractual limitations of liability.[28] Therefore, the court ruled that limitations of liability for the benefit of individual design professionals are, as a matter of law, invalid and unenforceable.[29]

Florida's new law tempers *Moransais*'s recognition of a claimant's direct cause of action against a design professional, despite lack of privity, provided the design professional meets the requirements of the new law. On the other hand, the new law wholly abrogates *Witt*'s holding that contractual limitations of liability for the benefit of individual design professionals are unenforceable as a matter of law.

Florida Courts May Get the Last Word on Individual Design Professional's Liability

As to design professionals, the law elevates contractual rights above the common law. Coupled with contractual limits of liability for design professional firms and the economic loss doctrine, the law permits design firms to limit recovery by owners for purely economic damages to contract. Design professionals are thereby afforded a greater ability to limit their liability than other professionals like doctors, lawyers, and accountants.

Florida courts may have their hands full interpreting the law's unclear and conflicting provisions. For example, the law defines "business entity" to include self-employed design professionals. This begs the questions of whether a self-employed individual is an "employee" of a business entity and, if so, how can a self-employed individual limit liability through contract without being named as a party to that contract?

More importantly, the law may face a constitutional challenge. Article 1, section 21 of the Florida Constitution states, "[t]he courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay." Interpreting this constitutional provision, the Florida Supreme Court has ruled that the legislature cannot abolish "a right of access to the courts for redress for a particular injury . . . where such right has become a part of the common law of the State . . . unless the Legislature can show an overpowering public necessity for the abolishment of such right, and no alternative method of meeting such public necessity can be shown."[30] Given the absolute nature of the law and its failure to grant any alternate protection to claimants, Florida courts may have the last word on whether the law can permit design professional firms to strip claimants of a long-held common law right to sue design professionals directly.

Endnotes

1. Alaska Stat. § 45.45.900 (2008); Arizona Rev. Stat. §§ 32-1159 (Private Contracts), 34-226, 41-2586 (Public Contracts) (2012); Ark. Code Ann. §§ 4-56-104 (Private Contracts), 22-9-214 (Public Contracts) (2010); Cal. Civ. Code §§ 2782–2784.5 (West 2005); Colo. Rev. Stat. §§ 13-21-111.5 (Private Contracts), 13-50.5-102 (Public Contracts) (1973); Conn. Gen. Stat. § 52-572k (2005); Del. Code Ann. tit. 6, § 2704 (2011); D.C. Mun. Reg. tit. 27, § 3102 (1955); Fla. Stat. §§ 725.06, 725.08 (2011); Ga. Code Ann. § 13-8-2 (2010); Haw. Rev. Stat. § 431:10-222 (2005); Idaho Code Ann. § 29-114 (2012); 740 Ill. Comp. Stat. 35/1 (1996); Ind. Code § 26-2-5 (2004); Iowa Code § 537.5 (2011); Kan. Stat. Ann. § 16-121 (2008); Ky. Rev. Stat. Ann. § 371.180(2) (West 2008); La. Rev. Stat. Ann. §§ 38:2216, 9:2780, 9:2780.1 (2010); Md. Code Ann., Cts. & Jud. Proc. § 5-401 (West 2008); Mass. Gen. Laws Ann. ch. 149, § 29C (West 1997); Mich. Comp. Laws Ann. § 691.991 (West 1987); Minn. Stat. Ann. §§ 337.01–.05 (West 2008); Miss. Code Ann. § 31-5-41 (1972); Mo. Rev. Stat. § 434.100 (2000); Mont. Code Ann. §§ 28-2-2111 (Private Contracts), 18-2-124 (Public Contracts) (2009); Neb. Rev. Stat. §§ 25-21, 187 ; N.H. Rev. Stat. Ann. § 338-A:1 (design professionals), 338-A:2 (construction contracts generally) 2010; N.J. Stat. Ann. § 2A:40A-1 (West 1999); N.M. Stat. Ann. §§ 56-7-1, 56-7-2 (West 2002); N.Y. Gen. Oblig. Law §§ 5-322.1, 5-324; N.C. Gen. Stat. Ann. § 22B-1; N.D. Cent. Code Ann. § 9-08-02.1 (West 2008); Ohio Rev. Code Ann. § 2305.31 (LexisNexis 1995); Okla. Stat. Ann. tit. 15, § 221 (West 2010); Or. Rev. Stat. § 30.140 (2012); 68 Pa. Stat. Ann. § 491 (West 1994); R.I. Gen. Laws § 6-34-1 (1985); S.C. Code Ann. § 32-2-10; S.D. Codified Laws § 56-3-18 (2011); Tenn. Code Ann. § 62-6-123 (1997); Tex. Civ. Prac. & Rem. Code Ann. §§ 130.002, 127.001–.007 (West 1986 & Supp.1997); Utah Code Ann. § 13-8-1 (LexisNexis 2003); Va. Code Ann. §§ 11-4.1, 11-4.4 (2005); Wash. Rev. Code § 4.24.115 (2005); W. Va. Code § 55-8-14 (1994).

2. *See* Alabama: Doster Constr. Co. Inc. v. Marathon Elec. Contractors Inc., 32 So. 3d 1277 (Ala. 2009); Maine: Emery Waterhouse Co. v. Lea, 467 A.2d 986 (Me. 1983); Nevada: George L. Brown Ins. v. Star Ins. Co., 237 P.3d 92 (Nev. 2010); Vermont: Tateosian v. State, 2007 Vt. 136, 183 Vt. 57, 945 A.2d 833 (2007); Wisconsin: Gerdmann by Habush v. U.S. Fire Ins. Co., 119 Wis. 2d 367, 350 N.W.2d 730 (Wis. Ct. App. 1984); Wyoming: Wyo. Johnson, Inc. v. Stag Indus., Inc., 662 P.2d 96 (Wyo. 1983).

3. Cal. Civ. Code § 2782 (West 2011).

4. *Id.* § 2782(b)(2)–(c)(2) (emphasis added).

5. Morgan v. Stubblefield, 6 Cal. 3d 606, 624 (1972).

6. Cal. Civ. Code § 2782(d) (West 2011).

7. 90 Cal. App. 4th 571 (2001).

8. 16 Cal. 4th 35, 39 (1997).

9. Mich. Comp. Laws Ann. § 691.991 (West 1987).

10. *Id.* § 691.991(1).

11. *Id.* § 691.991(2).

12. Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co., Inc., 825 N.W.2d 695 (Minn. 2013).

13. Brief of Amicus Curiae, The American Subcontractors Association of Minnesota and the American Subcontractors Association, Inc., Eng'g & Constr. Innovations, Inc. v. L.H. Bolduc Co., Inc., 825 N.W.2d 695 (Minn. 2013), *available at* https://www.asaonline.com/eweb/upload/Bolduc Amicus Brief Jan. 2012.pdf.

14. Moransais v. Heathman, 744 So. 2d 973 (Fla. 1999).

15. Witt v. LaGorce Country Club, Inc., 35 So. 3d 1033 (Fla. 3d Dist. Ct. App. 2010).

16. Fla. Stat. § 558.0035(2) (2013).

17. 744 So. 2d at 974.

18. 35 So. 3d 1033, 1037–39 (Fla. 3d Dist. Ct. App. 2010).

19. *Moransais*, 744 So. 2d at 974–75.

20. *Id.*

21. *Id.* at 975.

22. *Id.*

23. *In re* Fla. Bar, 133 So. 2d 554 (Fla. 1961).

24. Fla. Stat. § 471.023 (1993), which governs only engineers, was amended effective July 1, 2013, to recognize the protections granted engineers under Fla. Stat. § 558.0035 (2013).

25. *Moransais*, 744 So. 2d at 984.

26. Witt v. LaGorce Country Club, Inc., 35 So. 3d 1033, 1037–39 (Fla. 3d Dist. Ct. App. 2010).

27. *Id.* at 1036–37.

28. *Id.* at 1039.

29. *Id.*

30. Kluger v. White, 281 So. 2d 1, 4 (Fla. 1973).

