GREGORY S. MARTIN & ASSOCIATES, P.A.

ATTORNEYS AT LAW

Law Update June 2013

Florida Legislature Provides Design Professionals a Limitation of Liability for Claims of Negligence

Florida Statutes §558.0035 – Effective July 1, 2013

The Florida Legislature enacted and Florida Governor Rick Scott recently signed into law amendments to Florida Statutes Chapter 558 which provide a safe harbor to design professionals, in their individual capacity, to claims of negligence. This safe harbor is limited to the employees or agents of a design professional business entity and covers only economic damages. The enactment of Fla. Stat. §558.0035 is the Florida Legislature's response to *Witt v. La Gorce County Club, Inc.* which allowed a negligence action against an individual for purely economic damages to stand. Essentially, this new statute provides that any design professional "who is employed by a business entity or is an agent of a business entity is not individually liable for damages resulting from negligence occurring within the course and scope of a professional services contract."

The exclusion from negligence liability is predicated on certain conditions being met. **First**, a business entity must provide the design services through a written contract. **Second**, the individual is not a named party to that contract. **Third**, the contract **must** include a prominent statement that the design professional may not be held individually liable for negligence. For example: "PURSUANT TO SECTION 558.0035, F.S., AN INDIVIDUAL EMPLOYEE OR AGENT OF DESIGNER MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE ARISING OUT OR RELATED TO THIS AGREEMENT AND THE SERVICES PROVIDED." Further, the disclaimer **must** be in 5 point larger font than the rest of the contract. **Fourth**, the business entity must maintain professional liability insurance "required under the contract." **Fifth**, any claimed damages are purely economic and do not extend to personal injuries or property not subject to the contract.

However, the practical and ethical effects of this legislation raise several questions. For example, what owner will actually agree to this limitation? And, even if an owner agrees, may a Designer of Record – the person actually sealing the design – ethically limit their exposure? The answer to these and perhaps several other questions make this is an issue that appears far from settled.

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What This Means For You.

If you are a design professional, your first reaction might be to embrace the statute. However, if the client refuses the exemption, you may have highlighted a cause of action not previously considered by the client.

SIDE BAR

***Beth-Ann Schulman** and **Jessica O'Reilly** recently concluded a 2 1/2 week jury trial successfully with a complete defense verdict.*

Serving the Construction Industry

With over 50 years of combined experience in all aspects of construction law, the attorneys of Gregory S. Martin & Associates are dedicated to representing those in the construction industry. Having represented national and international owners, contractors, design professionals and their carriers in Florida and throughout the country, our attorneys are committed to the highest professional standards and service. Mr. Martin and the members of his team have litigated multi-million dollar disputes involving, among others, construction and design defects, extra work, differing site conditions, schedule delays and acceleration, contract payment disputes, construction and mechanics' liens, payment/performance bonds and bid protests.

Because of the unique construction-related and technical backgrounds of each of the members of the firm and the fact that Gregory S. Martin & Associates focuses its practice on construction cases, the firm is able to provide unparalleled service to the construction industry at the greatest value to its clients. The firm's attorneys provide superior service, knowledge.

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