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MIND OF A LAWYER. HEART OF A CONTRACTOR.

This article is written by Scott G. Wolfe Jr., founding member of Wolfe Law Group and publisher of the Construction Law Monitor. Scott practices law in Washington, Oregon and Louisiana. The article can be found online at this link: <http://www.constructionlawmonitor.com/?p=2518>

New Law Affects Louisiana Construction Contracts in 2011

A new law spawned by the 2010 Louisiana legislative session will effect construction contracts in the state, but has received relatively little attention. I speak of Senate Bill 625 (Act 492), which created La. R.S. 9:2780.1 ([read the Act and new law here](#)), and provides that certain contract provisions within a construction contract are invalid as a matter of law.

Typically parties are able to contract for just about anything. The terms of their agreement are the terms of their agreement, and courts are required to enforce them. That's the general rule. One exception is when a state legislature deems a certain contractual provisions invalid as a matter of public policy. In that instance, parties aren't allowed to agree to the banned terms.

The new statute highlights two *very common* contract provisions that are not allowed in construction contracts. First, a certain type of indemnity provision. Second, a choice of law provision.

The new law applies to all contracts entered into after January 1, 2011.

Indemnity for Negligence

§2780.1(B) provides as follows:

Any provision...which purports to indemnify, defend or hold harmless, or has the effect of indemnifying, defending or holding harmless, the indemnitee from or against any liability for loss or damage resulting from the negligence or intentional acts or omissions of the indemnitee, an agent or employee of the indemnitee, or a third party over which the indemnitor

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has no control is contrary to the public policy of this state and is null, void and unenforceable.

This is a big deal for folks in the construction industry. Contractors and suppliers very frequently enter into complex and lengthy indemnification agreements, and this law will render some of these agreements null and void.

After this law takes effect, any provision indemnifying a party from its own negligence will be null. Contractors and suppliers in Louisiana, therefore, are not allowed to shift the risk of their own negligence or intentional acts to another party.

Previously, such an indemnification clause was allowed, but the indemnification needed to be clear and exact. Now, even the clearest and best-written clauses will be invalid.

Choice of Law Provisions

§2780.1(D) provides as follows:

Notwithstanding any contractual provision to the contrary, the laws of the state of Louisiana shall apply to and govern any construction contract to be performed in this state...Any provision...in such contracts which conflicts with the provisions of this Section shall be null, void and unenforceable.

It is common practice for general contractors (especially those coming in from out-of-state) to choose another forum's laws as applicable to the contract. Starting January 1, 2011, however, these clauses will be unenforceable.

If a construction project is in Louisiana, the laws of Louisiana shall apply to it.

Savings Clauses

A "Savings Clause" is simply a clause within a contract providing that if another clause is declared invalid or unenforceable for any reasons, the rest of the contract is "saved," such that only the invalid provision is stricken from the agreement, as opposed to the entire agreement being deemed irrelevant.

Since construction contracts are usually complex and comprehensive, a savings clause is important because it insures that the agreement between the parties will withstand judicial scrutiny, even if one provision is declared invalid. The new Louisiana laws on indemnification and choice of law provisions highlights the importance of these savings clauses.

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If you enter into a contract after the new year, and the contract has one of these newly invalid clauses within it, the whole contract could be deemed null & void if a savings clause isn't in there. So, make sure you avoid these provisions, and if you can't, make sure the savings clause is in the contract.

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