

Recent Developments and War Stories

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§ 150.002. Certificate of Merit

(a) In any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional, the plaintiff shall be required to file with the complaint an affidavit of a third-party licensed architect, registered professional land surveyor, or licensed professional engineer competent to testify, holding the same professional license as, and practicing in the same area of practice as the defendant, which affidavit shall set forth specifically at least one negligent act, error, or omission claimed to exist and the factual basis for each such claim. The third-party professional omission, by any defective or unreasonably dangerous product, by other conduct or activity that violates an applicable legal standard, or by any combination of these:

- (1) each claimant;
- (2) each defendant;
- (3) each settling person; and
- (4) each responsible third party who has been designated under Section 33.004.

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§ 150.002. Certificate of Merit continued

(d) The plaintiff's failure to file the affidavit in accordance with Subsection (a) or (b) shall result in dismissal of the complaint against the defendant. This dismissal may be with prejudice.

(g) This statute does not apply to any suit or action for the payment of fees arising out of the provision of professional services.



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§ 33.004. Designation of Responsible Third Party

(a) A defendant may seek to designate a person as a responsible third party by filing a motion for leave to designate that person as a responsible third party. The motion must be filed on or before the 60th day before the trial date unless the court finds good cause to allow the motion to be filed at a later date.

(e) If a person is designated under this section as a responsible third party, a claimant is not barred by limitations from seeking to join that person, even though such joinder would otherwise be barred by limitations, if the claimant seeks to join that person not later than 60 days after that person is designated as a responsible third party.



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§ 33.004. Designation of Responsible Third Party continued

(i) The filing or granting of a motion for leave to designate a person as a responsible third party or a finding of fault against the person:

- (1) does not by itself impose liability on the person; and
- (2) may not be used in any other proceeding, on the basis of res judicata, collateral estoppel, or any other legal theory, to impose liability on the person.

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Do you find contractor, subcontractor, owner, architect, engineer negligent?

	Yes	NO
Contractor	X	
Subcontractor	X	
Owner	X	
*Architect	X	
*Engineer	X	
* (Responsible Third Parties)		

What percentage of Fault do you assess against each negligent party.

Contractor	25
Subcontractor	25
Owner	10
Architect	20
Engineer	20
	100%

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What sum of dollars will compensate the Plaintiff ?
Answer: \$1,000,000.00

Contractor	25% X 1,000,000.00 = \$250,000.00
Subcontractor	25% X 1,000,000.00 = \$250,000.00
Owner	10% X 1,000,000.00 = \$100,000.00
Architect	20% X 1,000,000.00 = \$200,000.00
Engineer	20% X 1,000,000.00 = \$200,000.00

Owner gets

250,000.00
250,000.00
-0-
<u>-0-</u>
\$500,000.00

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§ 16.008. Architects, Engineers, Interior Designers, and Landscape Architects Furnishing Design, Planning, or Inspection of Construction of Improvements

(a) A person must bring suit for damages for a claim listed in Subsection (b) against a registered or licensed architect, engineer, interior designer, or landscape architect in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than 10 years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment.



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§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If Such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this section 8.2, the method of binding dispute resolution shall be the following: *(Check the appropriate box. If the owner and the Architect do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)*

- Arbitration pursuant to Section 8.3 of this agreement
- Litigation in a court of competent jurisdiction
- Other (Specify)



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