

CASE LAW REFERENCES : WAIVER OF SUBROGATION

ENFORCEABILITY

- Intergovernmental Risk Mgmt. ex rel. Village of Barlett v. O'Donnell, Wicklund, Pigozzi & Peterson Architects, 692 N.E.2d 739 (1998)
- Best Friends Pet Care, Inc. v. Design Learned, Inc., 823 A.2d 329 (2003)

DEDUCTIBLE – MAY NOT BE RECOVERED

- Gap, Inc., et. al. v. Red Apple Companies, Inc., et. al., 282 A.D.2d 119 (2001)

DEDUCTIBLE – RECOVERED

- Carlson Rests. Worldwide, Inc. v. Designline Constr. Servs. No. A-0506-07T3, 2009 WL 2833259 (N.J. Super. Ct. App. Div. Sept. 4, 2009)
- The Stop and Shop Supermarket Co. v. ABCO Refrigeration Supply Corp. 842 A.2d 1194 (Super. Ct. 2003)

PARTIES COVERED BY PROVISION

- Indiana Erectors Inc v Trustees of Indiana University, 686 N.E.2d 878 (Ind. Ct. App. 1997)
- Gulf Ins. Co. v. Quality Bldg. Contractor, Inc., 58 A.D.3d 595 (N. Y. App. Div. 2009)
- LeMaster Steel Erectors, Inc. v. Reliance Ins. Co., 546 N.E.2d 313 (Ind. Ct. App. 4th Dist. 1989)
- Touchet Valley Grain Growers, Inc. v. Opp & Seibold General Const., Inc., 119 Wash. 2d 334, 831 P.2d 724 (1992)
- Best Friends Pet Care, Inc. v. Design Learned, Inc., 823 A.2d 329 (Conn. App. Ct. 2003)
- Industrial Risk Insurers v. Garlock Equipment Co., 576 So.2d 652 (Ala. 1991)

WORK – MINORITY APPROACH

- Butler v. Mitchell-Hugeback, Inc., 895 S.W.2d 15 (Mo. 1995)
- Town of Silverton v. Phoenix Heat Source System, Inc., 948 P.2d 9 (Colo. Ct. App. 1997)

WORK – MAJORITY APPROACH

- ASIC II, Ltd. v. Stonhard, Inc., 63 F.Supp.2d 85 (D. Me. 1999)
- Independent School Dist. 833 v. Bor-Son Const, Inc., 631 N.W.2d 437 (Minn. Ct. App. 2001)
- Allianz Ins. Co. of Canada v. Structure Tone (UK), Inc., 2005 WL 2006701 (S.D. N.Y. 2005)
- St. Paul Fire and Marine Ins. Co. v. Elkay Mfg. Co., 2003 WL 139775 (Del. Super. Ct. 2003)
- Penn Avenue Place Associates, L.P. v. Century Steel Erectors, Inc., 2002 PA Super 133, 798 A.2d 256 (2002)

POST-CONSTRUCTION LOSS – NOT APPLICABLE

- Royal Surplus Lines Ins. Co. v. Weis Builders, Inc., 2006 WL 897078 (W.D. Ky. 2006)
- Automobile Ins. Co. of Hartford, Connecticut v. United H.R.B. General Contractors, Inc., 876 S.W.2d 791 (Mo. Ct. App. E.D. 1994)
- Great Am. Ins. Co. v. Superior Contr. Corp., No. 2:14-cv-00055-PPS-JEM, 2014 U.S. Dist. LEXIS 156628 (N.D. Ind. Nov. 4, 2014)

GROSS NEGLIGENCE – WAIVER ENFORCED

- St. Paul Fire & Marine Ins. Co. v. Universal Builders Supply, 317 F.Supp.2d 336 (S.D.N.Y. 2004)

GROSS NEGLIGENCE – WAIVER NOT ENFORCED

- Federal Ins. Co. v. Honeywell, Inc., 243 A.D.2d 605 (2d Dep't 1997)
- Travelers Indem. Co. of Conn. v. Losco Group, Inc., 136 F.Supp.2d 253 (S.D. N.Y. 2001)

OTHER FORMS OF CONSTRUCTION CONTRACTS FOR WAIVER OF SUBROGATION

- EJCDC E-500 2014, Standard Form Agreement Between Owner and Engineer for Professional Services, § 6.11(E)

- AGC Doc. No. 200, Standard Agreement and General Conditions Between Owner and Contractor, § 10.4.3
- DBIA Doc. No. 535, Standard Form of General Conditions of Contract Agreement Between Owner and Design-Builder, § 5.3.5

INSURANCE OBLIGATIONS IN OTHER CONTRACTS

- ConsensusDOCS 240
- DBIA Doc. No. 535
- EJCDC E-500