

Civil Justice Reform – Law Firms**Understanding And Shaping Civil Justice Reform
And Construction Industry Standard Contracts**

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The process of construction and renovation leads to immense potential liability. Concern over the extent of this liability is highlighted in the proposed "New York State Civil Justice Reform Act" which is currently pending before the New York State Legislature (Bill Number S02277). The concern is also carried over to the actions of industry groups, such as the American Institute of Architects (AIA), when they consider revisions to standard industry construction and design agreements and to legislative enactment of limitations on indemnity provisions and contract terms.

Critical to the process of changing allocation of risk is that "the devil is in the details." The details and practical impact of

The bill would impose a negligence standard rather than the strict liability standard imposed by the Court of Appeals. It would also provide guidance to contractors and owners who must also comply with a confusing array of federal, state and local building codes and regulations by making compliance with Federal OSHA regulations *prima facie* evidence of compliance with Labor Law section 240. The bill's advocates urge that passing the bill would also promote work site safety by making workers responsible for their own culpable acts, while alleviating serious liability insurance issues confronting the construction industry.

Revisions To The Standard
AIA Contract Documents Providing
For Agreement To Mutual Waiver
Of Consequential Damages

The Construction Industry relies so

the Design Professional to re-do the work; or (5) to a fixed dollar amount.

New York State General Obligation
Law Limitation On Breadth
Of Indemnity Clauses

Some states' laws contain limitations on indemnity clauses, and an indemnity clause that is too broad may, in some instances, be void. For example, New York State General Obligation Law section 5-324 provides that indemnity clauses that exceed its limits are to be deemed void as against public policy.

Proposed Legislation Allowing
Contractors To Sue Owners
For Damages Due To Delay
Of The Project

During 1999 legislation was introduced in New York State which would have voided a contract clause in the Owner-Contractor Agreement barring a Contractor

not get any additional value, why should we be forced – by a court – to pay more." With the strong advocacy of New York City Mayor Ed Koch and a beefed up New York City Law Department – during the early and mid-1980s – the Courts, including the Court of Appeals, agreed, and hundreds of millions of public sector construction claims were dismissed.

It is not surprising that Governor Pataki vetoed the bill, which would have ruled the "No Damage For Delay Clause" void as against public policy, after it passed both houses of the legislature in 1999.

Conclusion

To accomplish effective Civil Justice Reform "the devil is in the details." Inhouse corporate counsel are critical in developing an accurate overview of industry concerns and then in communicating their concerns to the legislature.