

VICTOR

LESSONS LEARNED: HOW CASE LAW INFORMS PRUDENT PRACTICE

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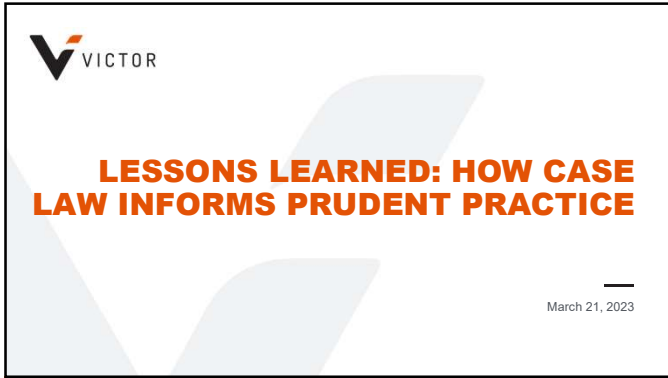
The speaker is: Nahom Gebre & Jonathan Shoemaker

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LESSONS LEARNED: HOW CASE LAW INFORMS PRUDENT PRACTICE

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DiVita v. Tetra Tech, Inc.,
2022 U.S. Dist. LEXIS 19191
(E.D. Pa. Feb. 2, 2022)







*TRIAL COURT RECOGNIZES NEGLIGENT
MISREPRESENTATION CLAIM AGAINST
ENVIRONMENTAL CONSULTANT BY PARTIES TO
REAL ESTATE TRANSACTION WHO ALLEGED
RELYING ON CONSULTANT'S REPORT, DESPITE
ABSENCE OF CONTRACTUAL PRIVACY.*



DESIGN PROFESSIONALS SHOULD EVALUATE THE RISK OF THIRD-PARTY RELIANCE CLAIMS AND CONSIDER DISCLAIMER LANGUAGE AND OTHER CONTRACT PROVISIONS TO LIMIT EXPOSURE.







SITE SAFETY



Kelley v. City of Danbury,
2022 Conn. Super. LEXIS 1417
(Conn. Super. June 30, 2022)







INSPECTION ENGINEER EXEMPT FROM LIABILITY FOR SUBCONTRACTOR EMPLOYEE'S JOBSITE INJURIES.



DESIGN PROFESSIONALS SHOULD PAY CLOSE ATTENTION TO CONTRACT LANGUAGE ALLOCATING "SITE SAFETY" RESPONSIBILITIES AND INCORPORATING OTHER DOCUMENTS INTO THEIR CONTRACT.

Winkler v. Halmar Int'l, LLC,
206 A.D. 3d 458 (N.Y. App. 2022)





*ENGINEER'S ESTATE NOT BARRED FROM
RECOVERY UNDER LABOR LAWS FOR
ENGINEER'S DEATH ALLEGEDLY
RESULTING FROM UNSAFE CONDITION.*





LAWSUITS INVOLVING INJURIES OR FATALITIES OF WORKERS ARE UNLIKELY CANDIDATES FOR EARLY DISMISSAL. HOW DO YOUR STANDARD CONTRACT TERMS ALLOCATE SITE SAFETY RESPONSIBILITIES?



LIMITATION OF LIABILITY



Rumpke of Ky., Inc. v. Terracon Consultants, Inc.,
2022 U.S. Dist. LEXIS 182256
(E.D. Ky. Oct. 5, 2022)

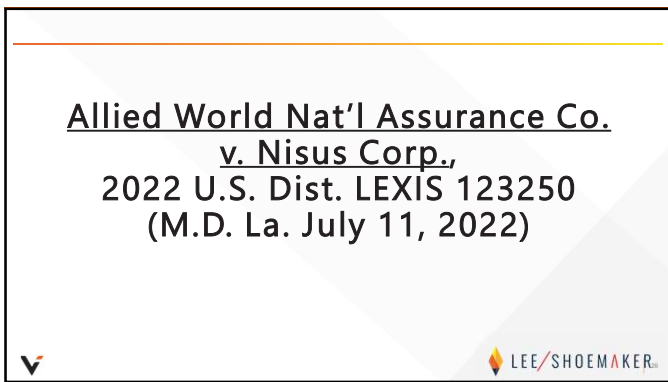


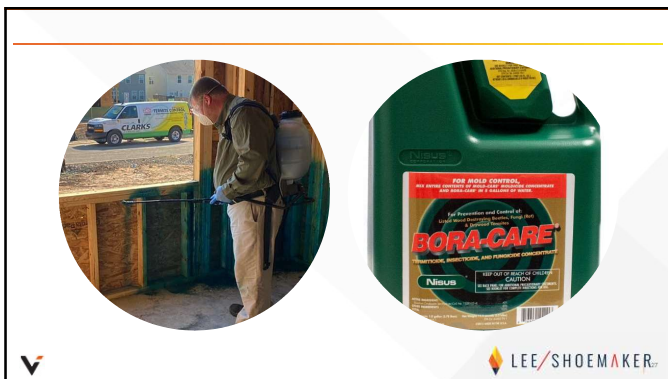


Trial court holds Engineer's limitation of liability provision is inapplicable to services performed prior to execution of contract.



LESSON LEARNED: How might design firms ensure their Limitation of Liability provision encompasses pre-contract or multi-phase services?











Manufacturer permitted to bring indemnity action against Architect.



LESSON LEARNED: Can a possible indemnity obligation owed to a non-client be avoided by contract?



**Walbridge Aldinger LLC v. Cape Fear Engineering, Inc.,
2022 U.S. Dist. LEXIS 17111
(E.D.N.C. Jan. 31, 2022)**





Engineer liable for deficient surveying due to lack of contractual indemnity clause.

LESSON LEARNED: Courts usually refuse to look outside a written contract to imply indemnity obligations. Do your contracts adequately cover the range of scenarios in which you expect to be indemnified?

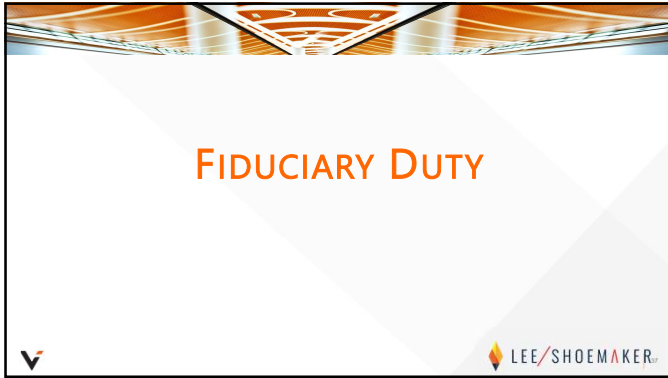
FSI Architecture, P.C. v. Acheson
Doyle Partners Architecture, P.C.,
2022 U.S. Dist. LEXIS 9922
(S.D.N.Y. Jan. 19, 2022)

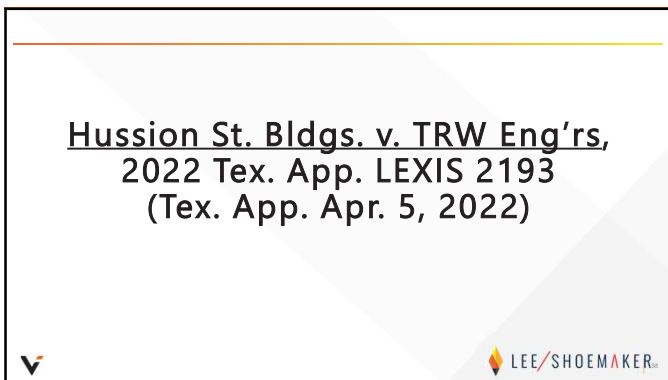


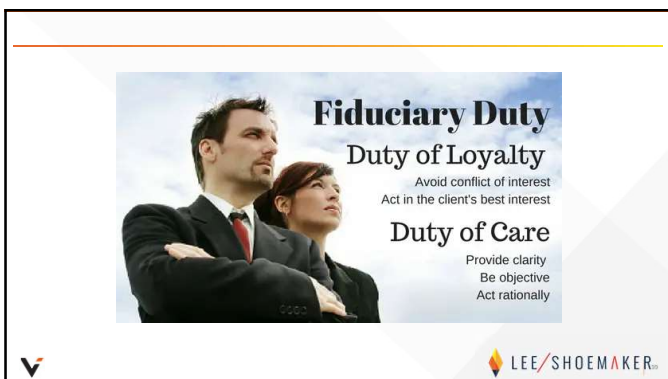


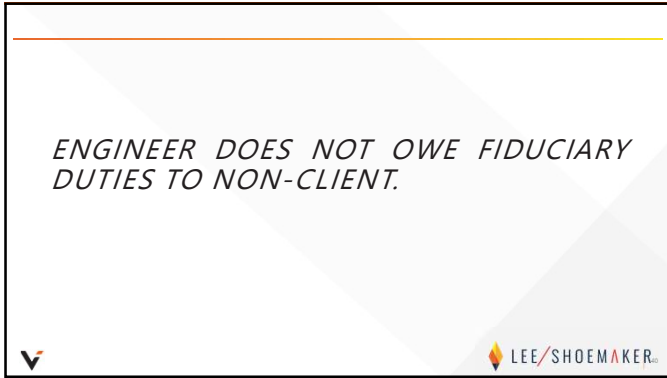
*Replacement architect entitled to
defense and indemnity by owner
against original architect's copyright
infringement lawsuit.*




















In re Johnston,
2021 N.J. Super. Unpub. LEXIS
3157 (N.J. Super. App. 2021)









45:1-21 Refusal to license or renew, grounds.

§ A board may refuse to admit a person to an examination or may refuse to issue or may suspend or revoke any certificate, registration or license issued by the board upon proof that the applicant or holder of such certificate, registration or license:



- a. Has obtained a certificate, registration, license or authorization to sit for an examination, as the case may be, through fraud, deception, or misrepresentation;
- b. Has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense;
- c. Has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare, safety or property of any person;
- d. Has engaged in repeated acts of negligence, malpractice or incompetence;
- e. Has engaged in professional or occupational misconduct as may be determined by the board;
- f. Has been convicted of, or engaged in acts constituting, any crime or offense involving moral turpitude or relating adversely to the activity regulated by the board. For the purpose of this subsection a judgment of conviction or a plea of guilty, non vult, nolo contendere or any other such disposition of alleged criminal activity shall be deemed a conviction;





*ENGINEER'S LICENSE REVOKED
BASED ON ILLEGAL CAMPAIGN
CONTRIBUTIONS.*



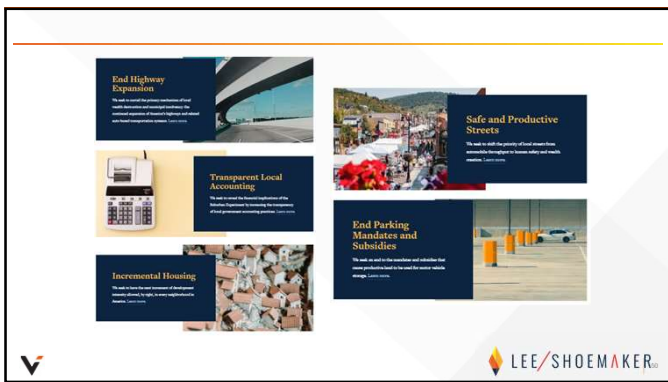
**LESSON LEARNED: DESIGN
PROFESSIONALS WHO COMMIT
CRIMES RISK LOSING THEIR LICENSE
NO MATTER WHETHER THE CRIME
RELATES TO PROFESSIONAL PRACTICE.**



**Marohn v. Minn. Bd. of
Architecture,
2021 U.S. Dist. LEXIS 236792
(D. Minn. Dec. 10, 2021)**












State board may discipline non-practicing engineer for holding himself out as licensed.

LESSONS LEARNED: Design professionals should regularly audit their licensures to avoid inadvertent violations.





Hotels of Deerfield, LLC v. Studio 78, LLC,
2022 U.S. Dist. LEXIS 142911
(S.D. Fla. Aug. 10, 2022)







ARCHITECT MUST DEFEND MALPRACTICE LAWSUIT DESPITE SUCCESSOR ARCHITECT SIGNING AND SEALING.





ABSENT CONTRACT PROVISIONS OR A RELEASE AGREEMENT TO THE CONTRARY, MERELY BEING TERMINATED FROM A PROJECT WILL NOT PROTECT A DESIGN PROFESSIONAL FROM POTENTIAL FUTURE LIABILITY.

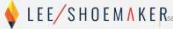








WAIVER OF SUBROGATION



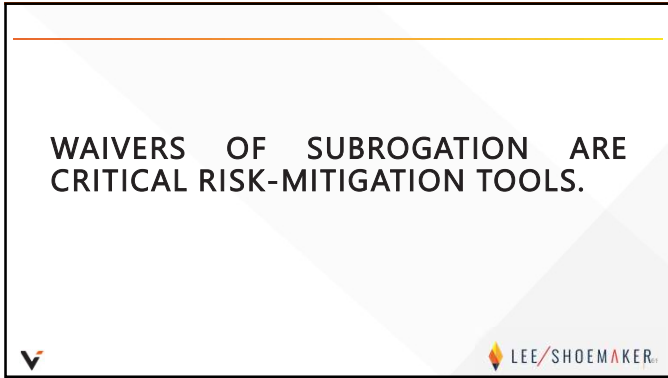
Bd. Of Trs. v. Legat Architects, Inc.,
2022 Ill. App. Unpub. LEXIS 656
(Ill. App. April 22, 2022)



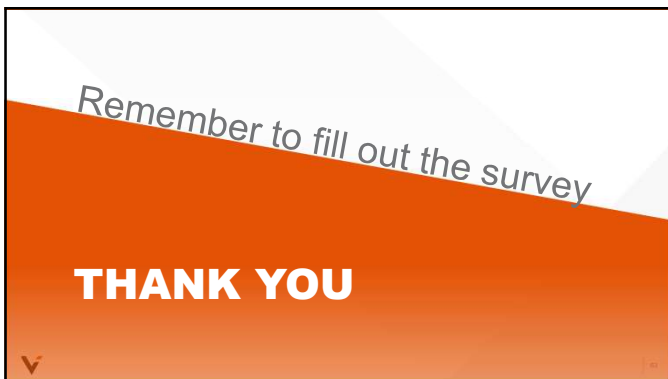


*SUBROGATION CLAUSE OF CONSTRUCTION
AGREEMENT SAVES ARCHITECT FROM
COSTLY LITIGATION.*









VICTOR SCHOOL OF RISK MANAGEMENT
<https://www.victorinsuranceus.com/school-of-risk-management/>

School of Risk Management

NEW Victor Contract Sifter
Insureds-only access to AI-powered contract review tool. Look out for an email from Victor Contract Sifter once your account is ready.
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Learn More

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Tools and resources to help manage your projects and run your firm.
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Running Your Firm

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LOG IN/REGISTER NEED ASSISTANCE?

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THE NEXT WEBINAR IS

Protecting Your Profitability and Reputation from Bodily Injury Claims

Tue, April 18, 1:00 – 2:00 pm EDT

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