



NAVIGATING THE LEGAL MINEFIELD FACED BY DESIGN PROFESSIONALS

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In This Economic Downturn, Be Intentional

- Relationships
 - Contracts
 - Performance
- Documentation
 - Collections

THE BOTTOM LINE

TRENDS



- Pre-2008 Claims
- Post-2008 Claims
 - Litigious State / Last Decade of A&E Claims
 - Same types of claims
 - More collections
 - Liens
 - A&E professionals looking for forensic work

From the Bench

- 1800 Ocotillo
- Valley Forge
- Flagstaff Affordable Housing



1800 Ocotillo LLC v. The WLB Group, Inc.,

219 Ariz. 200, 196 P.3d 222 (2008)

- Facts
- Decision
- Remaining Issues
- Impact



Valley Forge Ins. Co. v. Sam's Plumbing, LLC,

2009 WL 723347, Ariz. App. Div. 2, March 19, 2009

*Flagstaff Affordable Housing Ltd.
Partnership v. Design Alliance, Inc.,*

2009 WL 755285, Ariz. App. Div. 1, March 24, 2009

- Facts
- Decision
- Remaining Issues
- Impact



War Stories

- Frustrating claims
- Retaliation Claims
- Upside down claims



Frustrating Claims

- Plaintiff's own negligence
- Old Projects
 - Statute of Limitations
 - Statue of Repose
- Coordination Claims Against Architects
- Duration of Claims



Statutes of Limitations

- A.R.S. § 12-542 (excerpts)

Except as provided in section 12-551 there shall be commenced and prosecuted within **two years** after the cause of action accrues, and not afterward, the following actions:

1. For injuries done to the person of another

2. For injuries done to the person of another when death ensues from such injuries, which action shall be considered as accruing at the death of the party injured.

3. For trespass for injury done to . . . Property of another.

. . . .

Discovery Rule

- A.R.S. § 12-542

Except as provided in section 12-551 there shall be commenced and prosecuted within two years **after the cause of action accrues**, and not afterward, the following actions

- General Rule – An injured party must be on “reasonable notice to investigate whether the injury is attributable to negligence.” *Walk v. Ring*, 202 Ariz. 310, ¶ 25, 44 P.3d 990, ¶ 25 (2002). “At the very least, we . . . Require the knowledge that would put a reasonable patient or client on notice to investigate whether the injury may be attributable to negligence of a professional or fiduciary.” *Id.* at ¶ 30, 44 P.3d at ¶ 30.

Statutes of Limitations

- A.R.S. § 12-543 (excerpts)

There shall be commenced and prosecuted within **three years** after the cause of action accrues, and not afterward, the following actions:

1. For debt where the indebtedness is not evidenced by a contract in writing.

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Statutes of Limitations

- A.R.S. § 12-548

An action for debt where indebtedness is evidenced by or founded upon a contract in writing executed within the state shall be commenced and prosecuted within **six years** after the cause of action accrues, and not afterward.

Statute of Repose

- A.R.S. § 12-552

A. Notwithstanding any other statute, no action or arbitration based in contract may be instituted or maintained against a person who develops or develops and sells real property, or performs or furnishes the design, specifications, surveying, planning, supervision, testing, construction or observation of construction of an improvement to real property more than eight years after substantial completion of the improvement to real property.

B. Notwithstanding subsection A of this section, in the case of injury to real property or an improvement to real property, if the injury occurred during the eighth year after the substantial completion, or, in the case of a latent defect, was not discovered until the eighth year after substantial completion, an action to recover damages for injury to the real property may be brought within one year after the date on which the injury to real property or an improvement to real property occurred or a latent defect was discovered, but in no event may an action be brought more than nine years after the substantial completion of the improvement.

Frustrating Claims

- Plaintiff's own negligence
- Old Projects
 - Statute of Limitations
 - Statute of Repose
- Coordination Claims Against Architects
- Duration of Claims



Retaliation Claims



- Initial Complaint
- Counterclaim
- Discuss More Later

Upside Down Claims



- Small Collections
- Limited Issue Claims

Contract Issues

- Always use a written contract
- Negotiate
- Scope of Services
- Limitation of Liability
- Indemnity
- Standard of Care



Always Use a Written Contract

- Handshakes
 - Pros
 - Cons
- Written Contracts
 - Pros
 - Cons



Negotiate



- Positions of Parties
- Selected for a Reason
- Discuss options

Scope of Services

- Be Clear
- Total vs. Partial



Limitation of Liability

- Issue
 - Typical Provision
- 1800 Ocotillo v. WLB Group
 - History
 - Motion Practice
 - Court of Appeals' Decision
 - What Remains

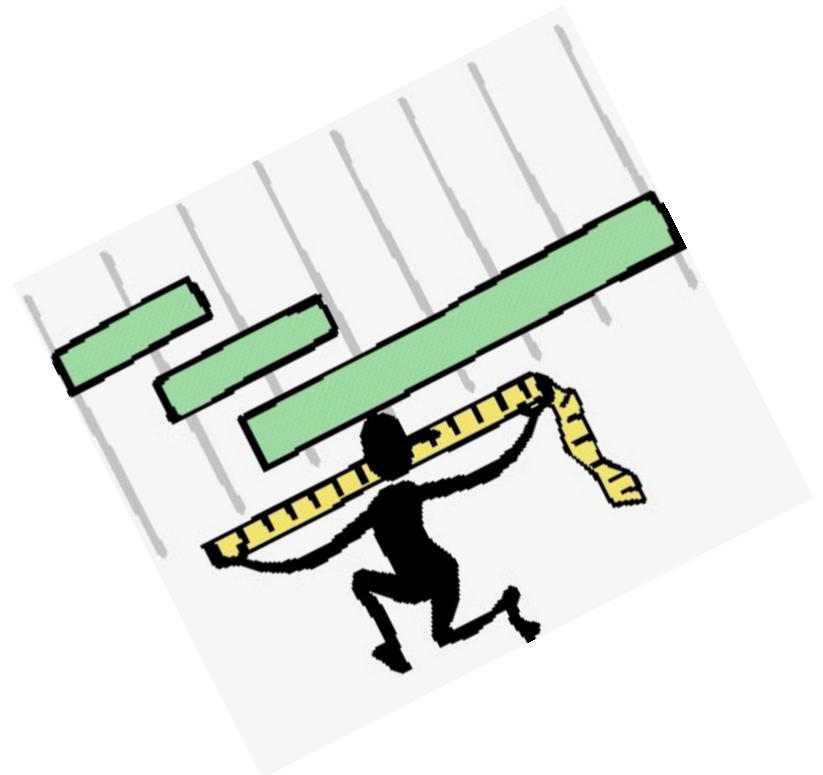


Indemnity

- Express vs. Implied
(Contractual vs. Common Law)
- General vs. Specific
- Defend vs. Defend and Indemnify

Standard of Care

- Certificate of Merit/A.R.S. § 12-2602
- Implied by Law
- Avoid Putting in Contract
- Tort vs. Contract Claims
- Attorneys' Fees



Collections



- General Rule
- Stay on top of payments
 - Document
 - Address responses/objections
- Additional Services
 - Requested in Writing
 - Unjust Enrichment/Quantum Meruit
- Evaluate Claim and Likelihood of Counterclaim
- Negotiate

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