



Arizonans for Fair Contracting

Proportional Liability – Fairness & Accountability in Arizona Construction

Background

The concept of “*proportional liability*” is based upon common-sense principles. However, by insisting upon indemnity clauses and requiring additional insured endorsements in contracts, the parties can override tort law and ***unfairly shift responsibility for one party’s negligence to another***. In Arizona, the law governing indemnity provisions in construction contracts is *different* for public and private projects. For public projects, it is prohibited to require this type of indemnification as a condition of doing business. Each party bears the cost of its own negligence, and in proportion to each party’s negligence. In other words, you are responsible for what you do – no more, no less.

Objective

Fairness in Arizona’s construction industry!

In order for this to be accomplished we must change the law governing contract indemnity for *private* construction to mirror the law for *public* projects – ***liability should be proportional to negligence***. Each party should pay their respective share of any loss, and each share should be based on the extent of fault attributable to that party.

Talking Points

- Subcontractors typically perform the vast majority of the work on a construction project. Often, subcontractors perform 100% of the work.
- In private projects, ***Arizona law allows contractors and owners to shift their liability and risk to the subcontractors***. In public projects, however, Arizona law prohibits this unfair transfer of responsibility.
- “Hold harmless” and “additional insured” provisions in a construction contract seek to hold the subcontractor accountable for worksite accidents or other losses that are not the fault of the subcontractor.
- These contractual provisions are problematic to subcontractors because *they unfairly shift the financial responsibility for claims to the subcontractor* or its insurance company.
- In addition to this unfair shift in responsibility, the party who is indemnified by the subcontractor may use less care to avoid injury or loss because the indemnified party



is not liable for its own actions. This carelessness may result in more accidents on the worksite that could have been avoided.

- Ultimately, the “leakage” (such as attorney fees, increased insurance costs, and etc.) that occurs as a result of indemnifying others is passed on to the consumer in the form of higher prices.
- The law governing contract indemnity for private construction should mirror the law for public projects – *liability should be proportionate to negligence*. In other words, negligent parties should each pay their respective share of any loss, and each share should be based on the extent of fault attributable to that party.
- Arizona’s contractors are not seeking an unfair advantage. This issue is about accountability. Subcontractors simply want to ensure that each contractor, including the general contractor, will take responsibility for their own actions.

How Can I Help?

- **Join AFC’s Grassroots Army:** Please go to www.azfaircontracting.com and join the growing grassroots army, or contact info@azfaircontracting.com.
- **Testimonials:** If broad indemnity provisions have hurt you and your business, please share your experience with AFC so that we may share your collective experiences with policymakers. Email your testimonials to info@azfaircontracting.com.
- **Contact Your Legislators:** Share with them how broad indemnity provisions have hurt you and your business, and express your support for proportional liability.
- **Request to Speak System:** The Legislature’s “Request to Speak System” allows members of the public to officially register their position on legislation being considered by members lawmakers. Provide us with your contact information so that we may create an account for you to communicate with policymakers at the State Capitol from your home or office.
- **Be Prepared to Visit the Capitol:** Taking the time out of your busy day to attend a hearing or meet with your legislator will truly show lawmakers just how important this issue is to you.
- **Fundraising:** A legislative effort of this magnitude will take considerable financial resources. Please consider making a contribution to Arizonans for Fair Contracting!

To learn more about Proportional Liability, and what you can do to help, please visit:
www.azfaircontracting.com

