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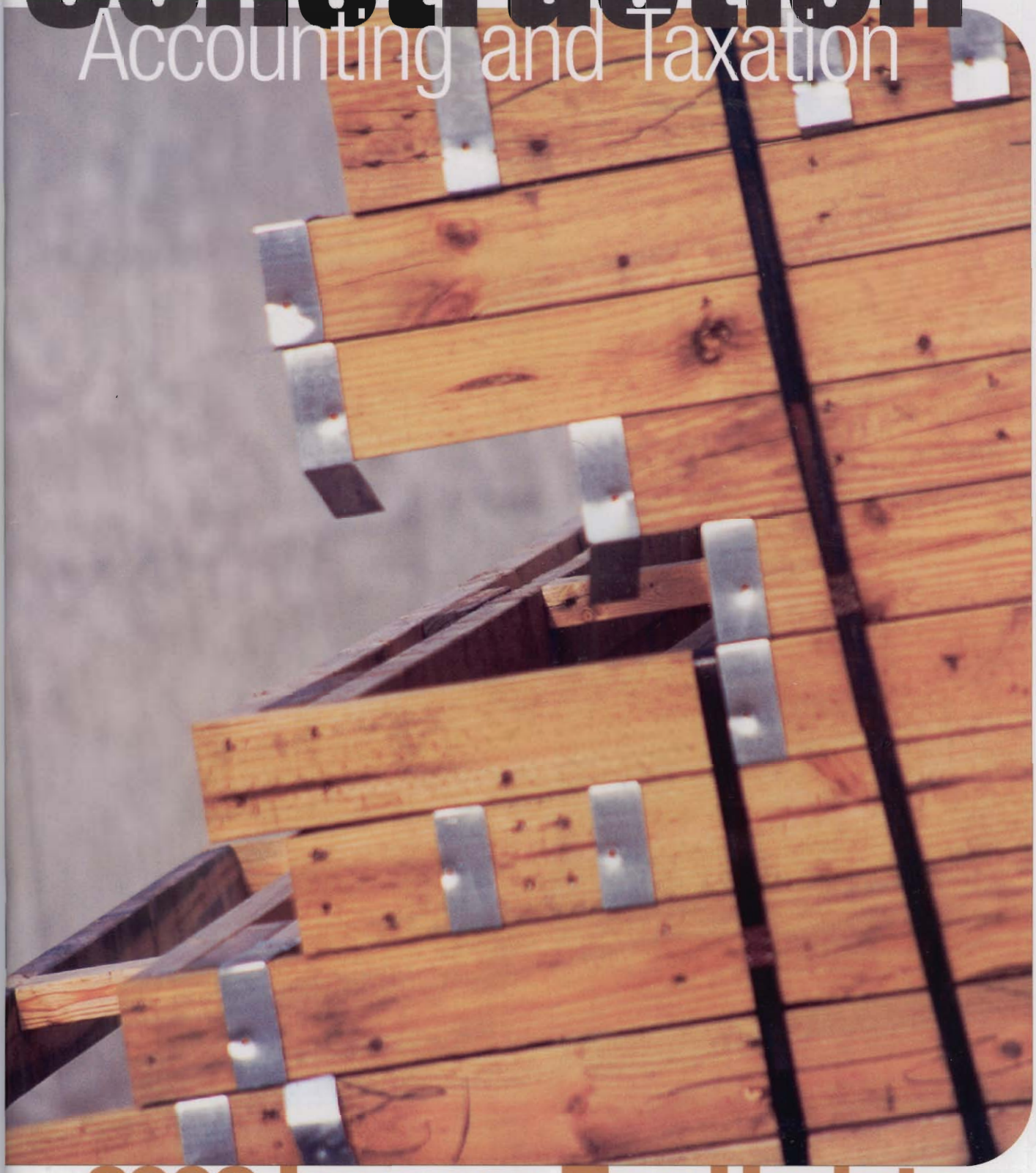

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Construction Accounting and Taxation

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QUALIFIED IMMUNITY

This immunity exists when the A/E is acting in a quasi-judicial manner as an arbitrator.

FOR ARCHITECTS AND ENGINEERS

CHARLES (CJ) SCHOENWETTER, ESQ.

Whether acting as an independent contractor, owner's agent or as an arbiter of disputes, architects and engineers ("A/E's") are at the epicenter of a construction project. They are familiar with most aspects of a project. It is not surprising then, that A/E's often are included in the litigation or arbitration of disputes. On an annual basis, it is estimated the United States construction industry spends $10 to $37 billion on litigation.[1] Given the economic and other costs of litigation, A/E's need to be aware of effective defenses that can be used to extricate themselves from disputes early in the process, before significant expenses are incurred.

Immunity and its importance

The doctrine of immunity is a legal defense that can be effectively used by architects and engineers to shield them from liability. Generally, immunity is described as a freedom or exemption from a penalty, burden or duty; a type of special privilege.[2] There are two categories of immunity: absolute and qualified. Absolute immunity, as its name implies, provides a total shield from liability—without any exemptions. For example, when judges perform judicial acts within their jurisdiction, they are absolutely immune from lawsuits seeking money damages.[3] Qualified immunity, however, provides immunity only within a narrow scope depending on the unique facts of each case. With rare exceptions, the immunity that may protect A/E's is a qualified immunity.

The immunity defense, if raised early in litigation, can be an effective tool in minimizing costs of defense. Although it is technically not an affirmative defense, an A/E may affirmatively raise the immunity doctrine as a preclusive bar to further litigation in a motion to dismiss immediately after a case is filed in court. In applying this defense, the court need only look to the allegations against the A/E in the complaint: "If the tortious conduct with which [the A/E] is charged is connected with and arises out of his determination of an owner-contractor dispute, [the A/E] is usually immune against the charge."[4]

Immunity, whether qualified or absolute, is an entitlement to be free

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The information in this article is intended to familiarize you with the law in this area. It is not intended to be an exhaustive presentation of legal information on this particular subject, and in no way constitutes an opinion of law. Your own attorney must review this information to determine how it may apply to your particular situation.

CHARLES (CJ) SCHOENWETTER, ESQ. JOINS THE BOARD OF ADVISORS AND CONTRIBUTORS FOR *CONSTRUCTION ACCOUNTING AND TAXATION*

Construction Accounting and Taxation welcomes Charles (CJ) Schoenwetter to its Board of Advisors and Contributors. Schoenwetter is a partner with the national law firm of Bowman and Brooke based out of Minnesota and has represented clients in construction disputes throughout the United States. He spearheads Bowman and Brooke's active participation in construction industry trade groups, representing both the Builders Association of Minnesota and the Builders Association of the Twin Cities as amicus curiae parties in the Minnesota Supreme Court. He also sits on the Builders Association of Minnesota's Legal Advisory Council.

Schoenwetter also serves on the Legislative Committee for the Associated Builders and Contractors of Minnesota. He frequently lectures and writes articles for these trade associations and in 2008 lectured widely across the United States. In February, 2008 he addressed attendees at the 81st Annual Window and Door Manufacturers Association meeting on the issue of class action litigation, and in June he taught seminars at the Construction Specification Institute's CONSTRUCT 2008 conference in Las Vegas on effectively resolving construction disputes and change order issues. He is also scheduled to teach a seminar at the Builders Association of Minnesota's 2008 Builder's Symposium in December 2008.

For the past 14 years, Schoenwetter has represented builders, contractors, product manufacturers and developers in a wide variety of litigation and arbitration matters. Typical disputes involve breach of contract, negligence and product liability claims. He also routinely represents clients in cases involving mechanic's lien issues, personal guaranties and construction/product defect claims.

In 1998 Schoenwetter was recognized for his distinguished service rendered as a member of the Minnesota State Bar Association's Board of Governors. He was voted a Rising Star in the Minnesota legal community in each of the years from 2003 through 2007. In addition to his other activities, Schoenwetter also makes time for *pro bono* work with individuals in need of legal representation. He may be reached by telephone at 612/656-4037 or by e-mail at *cj.schoenwetter@bowmanandbrooke.com*.

from the burdens of time-consuming pre-trial matters and the trial process itself.[5] Accordingly, even if a trial court judge disagrees as to the applicability of the immunity doctrine, the issue may be immediately appealed to ensure that a correct decision is made. As explained by one court, the benefits of immunity are "effectively lost" if a case is erroneously permitted to proceed at the district court level while an interlocutory appeal of a denial of immunity is pending.[6]

A number of years ago, experts estimated that litigation fees for a construction lawsuit involving claims of less than $100,000 would cost more than the amount of money in dispute.[7] That conclusion reinforces the need to resolve litigation early. The lifecycle of most construction disputes that go to trial ranges from 12 to 24 months, on average. The immunity doctrine, when applicable, can effectively stop defense costs almost immediately after a case is filed. This can save tens of thousands of dollars.

Historical basis for immunity

Although well-recognized, many state appellate courts have not yet had an occasion to address the immunity doctrine in the context of applying a protective shield to architects and engineers. This may cause some initial hesitancy by trial courts to apply the immunity doctrine in a manner that benefits A/E's. Fortunately, though, the application of the immunity doctrine to A/E's is a natural progression and extension of the judicial immunity doctrine and the arbitral immunity doctrine. Case law protecting judges and arbitrators from civil liability through immunity defenses has existed for hundreds of years, dating back to English common law.[8] Cases

discussing the application of the immunity doctrine to A/E's clearly acknowledge and rely on the analogous actions of an A/E exercising authority as an arbitrator and a judge acting in his or her judicial function:

> As a quasi-arbitrator [the architect] performs what is usually referred to as a 'quasi-judicial' function *** and is clothed with an immunity, *analogous* to judicial immunity, against actions by either of the parties arising out of his performance of his quasi-judicial duties.[9]

USE OF ARCHITECTS AND ENGINEERS AS INITIAL DECISION MAKERS AND ARBITERS OF DISPUTES IS A NATURAL PROGRESSION OF THE A/E'S DUTIES.

Use of architects and engineers as initial decision makers and arbiters of disputes is a natural progression of the A/E's duties. It has been the status quo for many decades. Arguably, no one else—owners and contractors included—knows more about a construction project on which they all work. As professionals, despite often being paid by the project owner, A/E's commit themselves to determining disputed issues fairly and impartially.[10]

All states recognize judicial immunity and the related doctrine of quasi-judicial or arbitrator immunity. Because the policy rationales supporting these established doctrines are equally applicable when A/E's act in the role of an initial decision maker resolving disputes between an owner and a contractor, it is very likely that courts will find A/E's immune from suit when the A/E's are acting within the scope of their contractual duties to determine disputed issues.

Arbitrator immunity rests on the public policy of preserving the integrity and independence of arbitrators (*i.e.*, quasi-judicial officers) so they will impartially act on their convictions free from the apprehension of possible consequences. However, in the absence of an agreement requiring a person to independently exercise authority as an arbitrator in determining a dispute, the immunity afforded an arbitrator is not applicable.

The doctrine of immunity protecting arbitrators, though, was not designed to protect—and does not protect—every action of an arbitrator. It is a qualified privilege that protects the arbitrator only when exercising an authority that is essentially judicial in nature.[11] Purely administrative acts that involve no exercise of judgment typically are not protected by the immunity—although they may qualify if they require investigation and determination of facts.[12]

If no case law exists in a jurisdiction directly applying immunity to A/E's, then an A/E defendant will necessarily rely on existing case law from that jurisdiction applying quasi-judicial and arbitral immunity. This should be supplemented with citations to the numerous cases from other jurisdictions recognizing immunity applied in the context of an A/E making determinations of an essentially judicial nature and setting forth the standard for whether immunity is applicable to A/E's.

Standard for applying immunity

The immunity applicable to architects and engineers depends on the facts of each unique case and, typically, is a qualified and limited privilege. Immunity is inapplicable to claims for breach of contract. Most significantly, immunity is only applicable when the A/E acts in an essentially judicial function, such as when the A/E makes a determination of a disputed issue between the owner and a contractor:

> The rule seems to be well settled that an architect who by agreement between the owner and the contractor is empowered to resolve disputes arising between them acts, in resolving such disputes, as a quasi-arbitrator. As a quasi-arbitrator he performs what is usually referred to as a 'quasi-judicial' function *** and is clothed with an immunity *** against actions brought by either of the parties arising out of his performance of his quasi-arbitrator's duties.
>
> It attaches to every act done in the judicial capacity, but to no other. Thus the architect has no immunity as an architect; immunity attaches only when he is performing those particular and limited functions which require the architect to act in the capacity of a judge.[13]

Accordingly, for the immunity to be applicable:

1. The A/E must be acting as an arbitrator to resolve a dispute, or otherwise be acting in some quasi-judicial capacity;
2. There must be an agreement between the owner and the contrac-

tor pursuant to which the A/E is acting in a quasi-judicial capacity; and

3. The A/E must be acting in good faith.

It is important to understand when immunity does not protect an A/E. Exercising an essentially judicial function is a threshold element. In *J.J. Craviolini v. Scholler & Fuller Associated Architects*,[14] the contractor alleged that when it pointed out deficiencies in the architect's plans and specifications, the architect undertook a course of action to "maliciously, deliberately and intentionally . . . bankrupt [the contractor] and to interfere with the contract relations" between the contractor and the owner by inducing a breach of the contract. The architect defended on the basis that because of its "quasi-judicial" immunity in settling disputes under the contract, the contractor could not maintain a cause of action against it. The Arizona Supreme Court held no quasi-judicial immunity applied to the acts of the architect for which liability was sought because the architect was not deciding a dispute between the owner and contractor.[15]

In the overwhelming majority of cases, immunity is applicable to bar claims of negligence, but is not available to insulate an A/E from liability for intentional tort claims of fraud, conspiracy or other corruption. In Alabama, however, architects and engineers benefit from case law that expressly holds (or at least suggests) that immunity is applicable "where a decision is the result of fraud or corruption."[16] This is the outermost reach of the qualified immunity doctrine as applied to A/E's and may, in fact, constitute absolute privilege. By way of contrast, courts in North Carolina draw the line between immunity and liability much more narrowly and require design professionals to exercise their discretion not only with good faith, but also in a manner that does not constitute a gross mistake.[17]

Ordinarily, the complaining party must carry the burden of establishing fraud or lack of good faith. An A/E, after raising the issue, may not be responsible to prove applicability of the immunity defense in the first instance.[18] An A/E's poor judgment or excessive rigidity in requiring literal compliance with the construction contract will not be sufficient to demonstrate the required element of bad faith.[19]

It is also clear that an A/E must actually exercise discretion, that is, make a determination within his or her arbitral responsibility in order for immunity to be available. When an A/E refuses, or fails, to make a decision in a timely manner, then no protection is afforded by the immunity doctrine.

In *E.C. Ernst, Inc. v. Manhattan Construction Company of Texas*, the owner hired a contractor to build and renovate a hospital. Prior to the beginning of construction, the owner and contractor agreed the architect who designed the renovations would arbitrate any dispute that would arise during construction. A dispute arose between the owner and contractor. After more than a year, the architect had failed to respond to either party's attempts to arbitrate the matter. The court addressed this misfeasance versus nonfeasance issue and held the architect's delay was outside the scope of the arbitral process, and therefore the architect was not immune from suit:

> In his role as interpreter of the contract and as private decision-maker, the [architect] has a duty, express or implied, to make reasonably expeditious decisions. Where his action, or inaction, can fairly be characterized as delay or failure to decide rather than timely decision-making (good or bad), he loses his claim to immunity because he loses his resemblance to a judge. He has simply defaulted on a contractual duty to both parties.[20]

IT IS IMPORTANT TO UNDERSTAND WHEN IMMUNITY DOES NOT PROTECT AN A/E.

Given the standard for applying immunity to protect architects and engineers, there are a number of A/E determinations that are likely subject to an immunity defense in a typical case. Those determinations include, for example:

- Interpreting the meaning and intent of the plans and specifications;
- Authorizing additional work not expressly authorized in the construction contract; and
- Determining whether a change order must be issued, and if so the amount of time or compensation

that must be added or subtracted from the contract.

There is also case law authority holding that issuing a certificate of final completion or recommending final payment may fall within the immunity-protected arbitral function of an A/E.[21] However, under normal circumstances, the majority of courts to consider this issue have refused to extend immunity to A/E's who negligently certify the completion of work.[22] This appears to be the better rule, unless unique circumstances of a particular case demonstrate such a determination was subject to a dispute and required exercise of judgment similar to that which would be exercised by an arbitrator.

RECOGNIZING A QUALIFIED IMMUNITY IN FAVOR OF ARCHITECTS AND ENGINEERS IS A COMPROMISE POSITION.

Policy reasons

There are many sound policy reasons supporting the application of a qualified immunity doctrine to architects and engineers acting in a quasi-judicial role as an arbiter of disputes. To the extent this application of immunity is not recognized in a particular jurisdiction where an A/E is named as a defendant, these policy reasons take on special importance. They may form the basis of case law precedent determining the scope of the immunity defense for future cases brought against A/E's.

It is important to note that recognizing a qualified immunity in favor of architects and engineers is a compromise position. It is far from the absolute privilege applicable to judges. It still provides a theory of liability if an A/E is corrupt, acts fraudulently, or engages in intentional tortious behavior. Moreover, a qualified privilege applicable only when an A/E exercises a contract-based authority that is essentially judicial in nature still allows the possibility of traditional negligence claims against an A/E when acting as the owner's agent and representative on the job site, or when acting as an independent contractor drafting plans and specifications.

A qualified immunity provides the balance needed to ensure that architects and engineers can impartially perform their discretionary duties and render decisions on the merits free from the chilling effect of others trying to influence them. A qualified immunity allows A/E's to exercise their discretion rather than being strong-armed into a decision by the party—often the owner—who is paying for the A/E's services. As explained in *Lundgren v. Freeman:*

> There are strong pressures pushing [architects and engineers] in the direction to being unfair to the contractor.
>
> * * *
>
> If their decisions can thereafter be questioned in suits brought against them by either party, there is a real possibility that their decision will be governed more by fear of such suits than by their own unfettered judgment as to the merits of the matter they must decide.[23]

Acknowledging a qualified immunity also serves other important functions; it promotes efficiency and determination of disputes by professionals familiar with the construction project. The construction process has at times been described as organized chaos, with many opportunities for garden-variety disputes to blossom into litigation. By providing a qualified immunity to A/E's, these disputes are resolved sooner than they would be otherwise and the resolution is determined by someone who already possesses familiarity with the project. This maximizes efficiencies in two respects. First, issues are more likely resolved on the job site in their infancy—before gaining critical mass and momentum that may either lead to a delay of the construction project, protracted litigation, or both. Second, it makes it more likely the A/E on the project makes the decisions without the necessity of retaining a third party who may need to spend many hours studying project documents or interviewing witnesses before turning attention to resolving the dispute at issue.

To a lesser extent, recognizing a qualified immunity defense assists in retaining and maintaining qualified professionals as architects and engineers. These professionals put themselves into contentious positions in order to fairly resolve conflict and assist all parties in completing construction projects within the parameters of the governing contracts. If a qualified privilege is not recognized, then

it may either discourage A/E professionals from taking on this important role as an arbiter of disputes, or it may cause other veteran A/E professionals, who possess the experience and qualification to serve in this capacity, to exit the profession earlier than they would have otherwise. These decisions may be made, in part, due to increased insurance premiums that reflect this additional exposure to liability.

Finally, if application of a qualified immunity is deemed to be unfair under the particular circumstances of a specific construction project, then the parties are free to negotiate a contractual waiver of this limited immunity. Failure of sophisticated parties to negotiate and agree to such a waiver is further evidence that application of such a narrow immunity defense is neither unfair nor overly broad. A substantial factor supporting this conclusion is that parties aggrieved by perceived errors made by A/E's acting in their role as an arbitrator typically have the right to preserve their claim or dispute for determination either in the court system or through formal arbitration.

Future of the immunity defense

A recent trend replacing the architect and engineer with a third party to determine certain disputes may weaken the opportunities to apply the immunity defense in claims alleged against architects and engineers. The most recent and conspicuous example of this trend is in the AIA's Document A201-2007, General Conditions of the Contract for Construction, which was recently revised to introduce the concept of an Initial Decision Maker ("IDM").[24] However, the IDM concept was first introduced by the AIA in its 2004 edition of the A141, Agreement between Owner and Design-Builder.

Appointing a third party rather than the project architect as the IDM, as can be done in the AIA's standard Agreement between Owner and Design-Builder, may arguably achieve many of the same results as a waiver of the immunity defense discussed in the previous section. It also demonstrates that this issue is subject to real negotiation between the parties.

More recently, the 2007 version of the A201 contract now allows the owner and contractor to select a third party (*i.e.*, an individual other than the project architect) to serve as the IDM. The IDM makes initial decisions regarding "Claims" asserted pursuant to section 15.2 of the A201 and certifies termination of the "Agreement" pursuant to section 14.2.2. According to the operative definitions of the A201 contract, the term "Claim" is defined as follows:

> A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract.[25]

The scope of the definition of "Claim" notably stops short of providing that *all* "other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract," fall within its definition. Indeed, sections 4.2.6 and 4.2.12 under the general heading of "Communications Facilitating Contract Administration" demonstrate an attempt to carve out areas of decision making that may be subject to dispute and for which the project architect will not be held liable—so long as those determinations are made in "good faith" as required by the terms of the contract.

Nevertheless, it is possible architects and engineers not selected as an IDM may face arguments they are no longer protected by a qualified immunity if they issue determinations on "Claims" in contracts where a third party is designated as an IDM. This underlies one of the threshold elements required in order for the defense of qualified immunity to be applicable to architects and engineers, namely that they are acting pursuant to an agreement between the owner and the contractor designating them to serve in a quasi-judicial role.

Ironically, in providing a procedure allowing architects to avoid the difficulty of being caught in the middle of disputes between owners and contractors,

A RECENT TREND REPLACING THE ARCHITECT AND ENGINEER WITH A THIRD PARTY TO DETERMINE CERTAIN DISPUTES MAY WEAKEN THE IMMUNITY DEFENSE.

the AIA may have opened the door to further liability of architects. The extent to which the liability of architects may have been increased will be determined in cases going forward. To the extent an architect is no longer contractually responsible for determining "Claims" under the A201 contract, the extent of liability appears to be minimal. However, if an architect volunteers to determine those "Claims," then the door to liability is arguably being opened. ■

NOTES:

[1] *See* Hanna, A. and Gunduz, M., "Impact of Change Orders on Small Labor-Intensive Projects," *Journal of Construction Engineering and Management*, at 726 (Sept./Oct. 2004); Kathleen M.J. Harmon, "Resolution of Construction Disputes: A Review of Current Methodologies," *Leadership and Management in Engineering*, at 188 (Oct. 2003).

[2] Black's Law Dictionary at 751 (6th ed. 1990).

[3] *See, e.g.*, Stump v. Sparkman, 435 U.S. 349, 98 S. Ct. 1099, 1104-09, 55 L. Ed. 2d 331 (1978).

[4] Craviolini v. Scholler & Fuller Associated Architects, 357 P.2d 611, 614 (Ariz. 1960).

[5] *See* Mitchell v. Forsyth, 472 U.S. 511, 526-27, 105 S.Ct. 2806, 2815-16, 86 L.Ed.2d 411 (1985). *See also* Williams v. Brooks, 996 F.2d 728, 730 (5th Cir. 1993).

[6] *Id.* at 526, 105 S.Ct. at 2806.

[7] Kathleen M.J. Harmon, "Resolution of Construction Disputes: A Review of Current Methodologies," *Leadership and Management in Engineering*, at 188 (Oct. 2003).

[8] *See, e.g.*, Corey v. Eastman, 166 Mass. 279, 44 N.E.217 (1896) (recognizing immunity for a design professional based on the English law immunity concept).

[9] J.J. Craviolini v. Scholler & Fuller Associated Architects, 357 P.2d 611, 613 (Ariz. 1961) (emphasis added). *See also* Lundgren v. Freeman, 307 F.2d 104, 117 (9th Cir. 1962) (applying Oregon law)) (analogizing Oregon's immunization of state officials acting in a judicial capacity from suit with private persons such as the architect in that case acting in a quasi-judicial capacity within the jurisdiction established by private agreement).

[10] *See, e.g.*, American Institute of Architect Document A201-2007, section 4.2.6.

[11] L&H Airco, Inc. v. Rapistan Corp., 446 N.W.2d 372, 376 (Minn. 1989); *Dziubak v. Mott*, 503 N.W.2d 771, 775 (Minn. 1993).

[12] Matiatos v. State of Minnesota, A05-383, 2005 WL 2649483 (Minn. Ct. App. Oct., 18, 2005) ("Administrative acts may, however, qualify as quasi-judicial conduct when the acts require investigation and determination of facts.") citing City of Shorewood v. Metro. Waste Control Comm'n, 533 N.W.2d 402, 404 (Minn. 1995).

[13] J.J. Craviolini v. Scholler & Fuller Associated Architects, 357 P.2d 611, 613-14 (Ariz. 1961).

[14] *Id.* at 612.

[15] *Id.* at 614 ("An examination of this complaint shows that no single one of the many acts with which these architects were charged were done in their limited capacity of arbitrators. There is no showing that any controversy ever existed between the owner and the contractor, or that the architects were ever called upon to resolve any such controversy.").

[16] Wilder v. Crook, 34 So.2d 832, 834 (Ala. 1948) ("The same principle seems to apply even where the decision [of the engineer] is the result of fraud or corruption."); *see also* E.C. Ernst, Inc. v. Manhattan Const. Co. of Texas, 551 F.2d 1026, 1033 (5th Cir. 1977) (applying Alabama law). *Cf.* Lundgren v. Freeman, 307 F.2d 104, 117-118 (9th Cir. 1962) (holding that if an architect acts "fraudulently, or with willful and malicious intent to injure the contractor" immunity will not apply, but suggesting that an architect's "actions were intentional, negligent or merely erroneous," then no liability would be found).

[17] RPR & Assoc., O'Brien/Atkins Assoc., P.A., 24 F. Supp.2d 515, 525 (M.D.N.C. 1998) ("[A] design professional, in the absence of bad faith or gross mistake, will not be held liable in damages to a contractor or owner when the professional is acting in the capacity of an arbitrator of a contract dispute between the contractor and the owner.").

[18] Huber, Hunt & Nichols, Inc. v. Moore, 67 Cal. App. 3d 278, 302, 136 Cal. Rptr. 603, 617 (5th Dist. 1977) ("[C]ontractor, in attempting to prove his case, was required to distinguish between those alleged acts of negligence by Architects in their capacity as independent contractors and their negligent acts as agent of the Owner in supervising the work and their acts as quasi-judicial arbiters in resolving disputes between the Owners and Contractor.").

[19] Ballou v. Basic Const. Co., 407 F.2d 1137, 1141 (4th Cir. 1969) (affirming trial court's decision requiring a subcontractor to demonstrate that fraud or bad faith motivated an architect's decision in order to avoid summary judgment based on immunity).

[20] E.C. Ernst, Inc. v. Manhattan Const. Co. of Texas, 551 F.2d 1026, 1033 (5th Cir. 1977) (applying Alabama law).

[21] Blecick v. School Dist. No. 18 of Cochise Cnty., 406 P.2d 750, 755 (Ariz. Ct. App. 1965) ("Where a construction contract such as the one here involved authorizes payments to the builder only after issuance of certificates by the supervising architects and vests the architects with broad supervisory powers, the architects, in making decisions as to the granting of certificates, are acting in the capacity of arbitrators.") citing City of Durham v. Reidsville Engineering Co., 255 N.C. 98, 120 S.E.2d 564, 567 (1961).

[22] Palmer v. Brown, 127 Cal. App.2d 44, 273 P.2d 306 (2d Dist. 1954); Bump v. McGrannahan, 61 Ind. App. 136, 111 N.E. 640 (Div. 1. 1916); Aetna Ins. Co. v. Hellmuth, Obata & Kassabaum, Inc., 392 F.2d 472 (8th Cir. 1968); Peerless Ins. Co. v. Cerny & Assoc., Inc., 199 F. Supp. 951 (D. Minn. 1961).

[23] Lundgren v. Freeman, 307 F.2d 104, 118 and 117 (9th Cir. 1962).

[24] C. Schoenwetter and M. Carey, "The 2007 AIA Revisions: What Contractors Need To Know About A201," 18 *Construction Accounting and Taxation*, No. 3 at 5 (May/June 2008).

[25] American Institute of Architect Document A201-2007, section 15.1.1.