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As your source for current information on recent cases, decisions, and trends in the engineering industry, *ASCE Risk Management Update* was established to help you prevent claims before they happen.

This issue discusses the issue of limitation of liability. The following recent Florida court ruling shows that even individuals practicing through a corporation can be personally liable for negligent acts, and the corporation is also responsible for this liability. As always, maintaining a solid Engineers Professional Liability policy can help safeguard you and your career from the damages this type of claim can incur.

We hope you find this *Update* informative—please remember to review your policy regularly to be certain you have adequate malpractice coverage. Watch your inbox next quarter for your next quarterly installment of this important ASCE policyholder benefit.

Florida Court Bars Limitation of Liability Provisions in Professional Negligence Cases Against Individual Professionals

By *Kristen R. Ragosta, Esq.*

Florida Appellate Court has held that contractual limitation of liability provisions are invalid and unenforceable, as a matter of law, with respect to malpractice claims against individual professionals.

Gerhardt M. Witt and Associates, Inc. (“GMWA”), a geotechnical firm, entered into various agreements

with the La Gorce Country Club (“the Club”) to provide hydrogeological consulting services and project coordination (“the Agreements”) during the installation of a reverse osmosis water treatment system to irrigate a golf course (“the Project”). The Agreements contained a limitation of liability clause which limited liability for GMWA and its sub-consultants to the total fee for services rendered on the Project. The Project experienced numerous technical problems during design and construction, and the irrigation system essentially failed approximately 14 months after the Project’s completion.

Subsequently, the Club filed suit against various parties, including GMWA and individual geologist Gerhardt M. Witt (“Witt”). After a two-week trial, the trial judge found that both Witt and GMWA were liable to the Club for professional malpractice and that the limitation of liability clause applied to GMWA but not to Witt. In determining that Witt could not benefit from the limitation of liability clause, the trial judge reasoned that Witt was not a party to the Agreements containing the limitation clause and that “it is questionable whether Florida law allows a professional to ethically limit a client’s remedies by contract.”

Section 492.111 (2005) states, in relevant part, that: “The fact that a licensed professional geologist practices through a corporation or partnership shall not relieve the registrant from personal liability for negligence, misconduct, or wrongful acts committed by her or him. Partnership and all partners shall be jointly and severally liable for negligence, misconduct, or wrongful acts committed by their agents, employees, or partners while acting in a professional capacity. Any officer, agent or employee of a corporation shall be personally liable and accountable only for negligent acts, or misconduct committed by her or him or committed by any person under her or his direct

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supervisions and control, while rendering professional services on behalf of the corporation...The corporation shall be liable up to the full value of its property..."

Witt appealed the lower court's ruling arguing that, while he may be liable for professional negligence, any such liability should be capped by the limitation of liability provisions present in the GMWA Agreements. The Appeals' Court disagreed with Witt's argument and affirmed the lower court's ruling. The Appeals' Court held that the limitation of liability provision was invalid and unenforceable as a matter of law as to Witt. The Appeals Court reasoned that, "a cause of action against an individual professional exists irrespective, and essentially, independent of a professional services agreement."

The Appeals Court ruling in Witt extends the argument in *Moransais* that claims against professionals exist independent of contractual agreements. In *Moransais v. Heathman*, 744 So.2d. 973 (Fl. 1999), the court held that the Economic Loss Doctrine does not bar a negligence claim against a professional where the professional is not in privity with the plaintiff, reasoning that the cause of action against the professional exists independent of any contract. The Witt case expands the reasoning in *Moransais* so that, not only can a plaintiff sue a professional with whom the plaintiff has no contract, it is questionable whether a professional may contractually limit his or her liability. These cases are examples of a growing trend in Florida to allow suits against professionals.

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