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SB286: A Bill Limiting the Individual Liability of Design Professionals

Recently, Governor Rick Scott signed into law SB286. The purpose of the law is to assist design professionals in avoiding personal liability under certain circumstances. For purposes of the legislation, a "design professional" is defined to include architects, interior designers, landscape architects, engineers, surveyors, and geologists.

The legislation appears to be in response to the case of *Witt v. LaGorce Country Club, Inc.*, 35 So.3d 1033 (Fla. 3d DCA 2010), which determined that design professionals could not insulate themselves from liability through contractual provisions. In order to take advantage of the limitation on liability provided by SB286, the design professional must be employed by a "business entity" or must be an agent of the business entity. The design professional will not be personally liable for damages resulting from "negligence occurring within the course and scope of a professional services contract" as long as the following conditions are met:

1. There is a written contract between the business entity which employs the design professional and the claimant who would otherwise seek to impose liability upon the design professional;
2. The written contract does not name as a party to the contract the individual employee or agent who will perform the professional services;
3. The written contract contains a provision (in upper case font that is at least five point sizes larger than the rest of the text) that an individual employee or agent may not be held individually liable for negligence;

4. The business entity which employs the design professional maintains any professional liability insurance required under the contract; and
5. Any damages suffered by the claimant are solely economic in nature and do not include personal injuries or damage to property that is not subject to the contract.

Although the bill should assist the individual design professional in avoiding liability under certain circumstances, several aspects of the bill are not entirely clear. For example, there are questions as to the extent that a design professional will be protected from liability where the damages claimed involve both economic damages and personal injuries or property damage. Presumably, the design professional should be protected at least to the extent that economic damages are claimed, but this is not clear from the language of the bill. Similarly, although the bill specifically applies to partnerships, it is not clear whether an individual partner within a partnership will be protected from liability based upon the negligence of one of its employees. These issues will likely need to be flushed out through case law interpreting the bill. Nevertheless, design professionals seeking to limit their exposure for economic damages arising from negligence in connection with a project would likely be well served to comply with the terms of the statute as a means of minimizing their risk.

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