

Introduction to Construction Law Digests 2025-2

This work provides an overview of all points of construction law classified by case and topic and explained by courts of every jurisdiction across the country. Taken into consideration are matters relating to the obligations of all parties involved in creating, executing, financing, and insuring a project. These volumes are ideal for attorneys, contractors, architects, engineers, and developers, as they cover virtually every issue arising out of construction endeavors and will aid the practitioner in drafting, interpreting, and enforcing public and private contracts.

This edition now includes cases addressing the following topics:

- **[New] Payment due date**
Unicorp, L. L. C. v. BRaDD, L. L. C., 397 So. 3d 453 (La. Ct. App. 3d Cir. 2024), writ denied, 401 So. 3d 660 (La. 2025). Chapter 6
- **[New] Trivial defect or dangerous condition**
Restivo v. City of Petaluma, 111 Cal. App. 5th 267, 332 Cal. Rptr. 3d 574 (1st Dist. 2025), Kabat v. Department of Transportation, 107 Cal. App. 5th 651, 328 Cal. Rptr. 3d 417 (4th Dist. 2024). Chapter 13
- **[New] Effect of building code violation**
Cullen v. Logan Developers, Inc., 386 N.C. 373, 904 S.E.2d 730 (2024). Chapter 13
- **[New] Exception to duty of care**
Lorenzo v. Calex Engineering, Inc., 110 Cal. App. 5th 49, 331 Cal. Rptr. 3d 513 (2d Dist. 2025), review denied, (July 16, 2025). Chapter 13
- **[New] Subletting and Subcontracting Fair Practices Act**
Golden State Boring & Pipe Jacking, Inc. v. Astaldi Construction Corp., 110 Cal. App. 5th 805, 331 Cal. Rptr. 3d 862 (4th Dist. 2025). Chapter 16
- **[New] Limited immunity for professionals investigating insurance claims**
Henderson v. Day Engineering Consultants, 2024 OK CIV APP 25, 560 P.3d 684 (Div. 2 2024). Chapter 17
- **[New] Breach of insurance contract by insured**
Seneca Specialty Insurance Company v. Jade Beach Condominium Association, Inc., 388 So. 3d 292 (Fla. 3d DCA

2024). Chapter 19

The work additionally incorporates case law discussing these points of law, among others:

- **Third-party beneficiary**
Gerdts v. Donan Engineering Co., Inc., 4 N.W.3d 464 (Iowa Ct. App. 2024) (unpublished opinion). Chapter 1
- **Public contracts**
Golden State Boring & Pipe Jacking, Inc. v. Astaldi Construction Corp., 110 Cal. App. 5th 805, 331 Cal. Rptr. 3d 862 (4th Dist. 2025), Tarlton & Sons, Inc. v. Great American Ins. Co., 111 Cal. App. 5th 376, 332 Cal. Rptr. 3d 558 (2d Dist. 2025), Lusardi Construction Co. v. Department of Industrial Relations, 102 Cal. App. 5th 1329, 322 Cal. Rptr. 3d 301 (4th Dist. 2024). Chapter 1
- **Plain meaning of words employed**
Town of Colonie v. Global Contracting & Painting, Inc., 237 A.D.3d 1280, 230 N.Y.S.3d 796 (3d Dep't 2025). Chapter 3
- **Licenses**
Lack of license: American Building Innovation LP v. Balfour Beatty Construction, LLC, 104 Cal. App. 5th 954, 325 Cal. Rptr. 3d 136, 89 Cal. Comp. Cas. (MB) 868 (4th Dist. 2024), review denied, (Nov. 20, 2024); Clarke v. Dye-Master Group, Inc., 372 Ga. App. 376, 903 S.E.2d 828 (2024), cert. denied, (Dec. 10, 2024). *Substantial compliance:* American Building Innovation LP v. Balfour Beatty Construction, LLC, 104 Cal. App. 5th 954, 325 Cal. Rptr. 3d 136, 89 Cal. Comp. Cas. (MB) 868 (4th Dist. 2024), review denied, (Nov. 20, 2024). *Chapter 5. Violations of license law:* American Building Innovation LP v. Balfour Beatty Construction, LLC, 104 Cal. App. 5th 954, 325 Cal. Rptr. 3d 136, 89 Cal. Comp. Cas. (MB) 868 (4th Dist. 2024), review denied, (Nov. 20, 2024). Chapter 15
- **Written modification**
Unicorp, L. L. C. v. BRaDD, L. L. C., 397 So. 3d 453 (La. Ct. App. 3d Cir. 2024), writ denied, 401 So. 3d 660 (La. 2025). Chapter 6
- **Setoff**
Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. v. Island Pointe, LLC, 445 S.C. 543, 915 S.E.2d 501 (2025), Close Construction, LLC v. City of Riviera Beach Utility Special District, 388 So. 3d 822 (Fla. 4th DCA 2024), review denied, 2025 WL 1683683 (Fla. 2025). Chapters 11 and 17
- **Attorney fees**
Generally: American Building Innovation LP v. Balfour Beatty Construction, LLC, 104 Cal. App. 5th 954, 325 Cal. Rptr. 3d 136, 89 Cal. Comp. Cas. (MB) 868 (4th Dist. 2024), review denied, (Nov. 20, 2024). *Attorney fees recoverable*

INTRODUCTION

when conferred by contract: American Building Innovation LP v. Balfour Beatty Construction, LLC, 104 Cal. App. 5th 954, 325 Cal. Rptr. 3d 136, 89 Cal. Comp. Cas. (MB) 868 (4th Dist. 2024), review denied, (Nov. 20, 2024). *Attorney fees in indemnity clause:* AGK Sierra De Montserrat, L.P. v. Comerica Bank, 109 F.4th 1132 (9th Cir. 2024). *Prevailing party:* American Building Innovation LP v. Balfour Beatty Construction, LLC, 104 Cal. App. 5th 954, 325 Cal. Rptr. 3d 136, 89 Cal. Comp. Cas. (MB) 868 (4th Dist. 2024), review denied, (Nov. 20, 2024). Chapter 11

- **Duty of care**
Lorenzo v. Calex Engineering, Inc., 110 Cal. App. 5th 49, 331 Cal. Rptr. 3d 513 (2d Dist. 2025), review denied, (July 16, 2025), Lynch v. Peter & Associates etc., 104 Cal. App. 5th 1181, 325 Cal. Rptr. 3d 265 (4th Dist. 2024), review denied, (Nov. 26, 2024). Chapter 13
- **Contributory negligence**
Cullen v. Logan Developers, Inc., 386 N.C. 373, 904 S.E.2d 730 (2024). Chapter 13
- **Joint and several liability**
Close Construction, LLC v. City of Riviera Beach Utility Special District, 388 So. 3d 822 (Fla. 4th DCA 2024), review denied, 2025 WL 1683683 (Fla. 2025). Chapter 13
- **Contribution**
Truck Ins. Exchange v. Kaiser Cement & Gypsum Corp., 16 Cal. 5th 67, 321 Cal. Rptr. 3d 761, 549 P.3d 781 (Cal. 2024). Chapter 13
- **Economic loss in negligence cases not recoverable**
Mid-Century Insurance Company v. HIVE Construction, Inc., 2025 CO 17, 567 P.3d 153 (Colo. 2025). Chapter 13
- **Duty to warn**
Cullen v. Logan Developers, Inc., 386 N.C. 373, 904 S.E.2d 730 (2024), Kabat v. Department of Transportation, 107 Cal. App. 5th 651, 328 Cal. Rptr. 3d 417 (4th Dist. 2024). Chapter 13
- **Gross negligence**
Cullen v. Logan Developers, Inc., 386 N.C. 373, 904 S.E.2d 730 (2024). Chapter 13
- **Acceptance doctrine**
Ives v. HMB Professional Engineers, Inc., 2024 WL 2487850 (Ky. Ct. App. 2024), discretionary review granted by supreme court, (Dec. 12, 2024) and not to be published pursuant to operation of cr 76.28(4)(c), rcr 12.02. Chapter 13
- **Liability of property owners**
Vebr v. Culp, 241 Cal. App. 4th 1044, 194 Cal. Rptr. 3d 459, 80 Cal. Comp. Cas. (MB) 1311 (4th Dist. 2015). Chapter 13
- **Fraud in inducement of contract**
Kousisis v. United States, 145 S. Ct. 1382, 221 L. Ed. 2d 781 (2025). Chapter 15

- **False claims**
Hendrix ex rel. United States v. J-M Manufacturing Company, Inc., 76 F.4th 1164 (9th Cir. 2023). Chapter 15
- **Other Causes of Action**
Interference with contract relations: Gerdts v. Donan Engineering Co., Inc., 4 N.W.3d 464 (Iowa Ct. App. 2024) (unpublished opinion). *Contribution:* Truck Ins. Exchange v. Kaiser Cement & Gypsum Corp., 16 Cal. 5th 67, 321 Cal. Rptr. 3d 761, 549 P.3d 781 (Cal. 2024). *Labor law:* Huerta v. CSI Electrical Contractors, 15 Cal. 5th 908, 319 Cal. Rptr. 3d 376, 544 P.3d 1118 (Cal. 2024), Lusardi Construction Co. v. Department of Industrial Relations, 102 Cal. App. 5th 1329, 322 Cal. Rptr. 3d 301 (4th Dist. 2024), Ruiz v. NEI General Contracting, Inc., 719 F. Supp. 3d 139, 118 Fed. R. Serv. 3d 324 (D. Mass. 2024). *False Claims Acts:* Hendrix ex rel. United States v. J-M Manufacturing Company, Inc., 76 F.4th 1164 (9th Cir. 2023). *Nuisance:* Lynch v. Peter & Associates etc., 104 Cal. App. 5th 1181, 325 Cal. Rptr. 3d 265 (4th Dist. 2024), review denied, (Nov. 26, 2024). *Subrogation:* Seneca Specialty Insurance Company v. Jade Beach Condominium Association, Inc., 388 So. 3d 292 (Fla. 3d DCA 2024). *Government Claims Act:* Restivo v. City of Petaluma, 111 Cal. App. 5th 267, 332 Cal. Rptr. 3d 574 (1st Dist. 2025), Kabat v. Department of Transportation, 107 Cal. App. 5th 651, 328 Cal. Rptr. 3d 417 (4th Dist. 2024). Chapter 16
- **Special Defenses**
Jurisdiction: Eagle Fire & Water Restoration, Inc. v. City of Dinuba, 102 Cal. App. 5th 448, 321 Cal. Rptr. 3d 593 (5th Dist. 2024). *Standing:* 50 Exchange Terrace LLC v. Mount Vernon Specialty Insurance Co., 129 F.4th 1186 (9th Cir. 2025). *Privity:* Lynch v. Peter & Associates etc., 104 Cal. App. 5th 1181, 325 Cal. Rptr. 3d 265 (4th Dist. 2024), review denied, (Nov. 26, 2024). *Sovereign immunity:* Ives v. HMB Professional Engineers, Inc., 2024 WL 2487850 (Ky. Ct. App. 2024), discretionary review granted by supreme court, (Dec. 12, 2024) and not to be published pursuant to operation of cr 76.28(4)(c), rcr 12.02. *Res judicata and collateral estoppel:* Paolino v. Commonwealth Engineers & Consulting, Inc., 318 A.3d 209 (R.I. 2024), as corrected, (Aug. 21, 2024). *Immunity of judges and arbitrators:* Hill Country Preservation, LLC v. King, 2024 WL 1893635 (Tex. App. El Paso 2024), review denied, (May 30, 2025) (unpublished opinion). *Setoff:* Palmetto Pointe at Peas Island Condominium Property Owners Association, Inc. v. Island Pointe, LLC, 445 S.C. 543, 915 S.E.2d 501 (2025), Close Construction, LLC v. City of Riviera Beach Utility Special District, 388 So. 3d 822 (Fla. 4th DCA 2024), review denied, 2025 WL 1683683 (Fla. 2025). *Economic loss:* Mid-Century Insurance Company v. HIVE Construction, Inc., 2025 CO 17, 567 P.3d 153 (Colo. 2025). *Preemption:* Ives v. HMB Profes-

INTRODUCTION

sional Engineers, Inc., 2024 WL 2487850 (Ky. Ct. App. 2024), discretionary review granted by supreme court, (Dec. 12, 2024) and not to be published pursuant to operation of cr 76.28(4)(c), rcr 12.02. *Open-and-obvious doctrine*: Cullen v. Logan Developers, Inc., 386 N.C. 373, 904 S.E.2d 730 (2024). *Design immunity*: Kabat v. Department of Transportation, 107 Cal. App. 5th 651, 328 Cal. Rptr. 3d 417 (4th Dist. 2024). Chapter 17

- **Indemnity**

New England Building & Bridge, Co., Inc. v. Town of Cohasset, 2024 WL 2304843 (D. Mass. 2024) (slip op.), Town of Colonie v. Global Contracting & Painting, Inc., 237 A.D.3d 1280, 230 N.Y.S.3d 796 (3d Dep't 2025), Trustees of Boston University v. Clough, Harbour & Associates LLP, 495 Mass. 682, 255 N.E.3d 596 (2025), Havison v. Port Authority of New York & New Jersey, 224 A.D.3d 411, 205 N.Y.S.3d 11 (1st Dep't 2024). Chapter 18

- **Attorney fees**

AGK Sierra De Montserrat, L.P. v. Comerica Bank, 109 F.4th 1132 (9th Cir. 2024). Chapter 18

- **Insurance**

Additional insured: Travelers Prop. Cas. Ins. Co. v. Chipotle Mexican Grill, Inc., 744 F. Supp. 3d 1029 (C.D. Cal. 2024). *Subrogation and contribution*: Seneca Specialty Insurance Company v. Jade Beach Condominium Association, Inc., 388 So. 3d 292 (Fla. 3d DCA 2024), Truck Ins. Exchange v. Kaiser Cement & Gypsum Corp., 16 Cal. 5th 67, 321 Cal. Rptr. 3d 761, 549 P.3d 781 (Cal. 2024). *Obligation to provide independent counsel*: Travelers Prop. Cas. Ins. Co. v. Chipotle Mexican Grill, Inc., 744 F. Supp. 3d 1029 (C.D. Cal. 2024). *Settlement by insured*: Seneca Specialty Insurance Company v. Jade Beach Condominium Association, Inc., 388 So. 3d 292 (Fla. 3d DCA 2024). *Indemnity for sums paid in settlement*: Seneca Specialty Insurance Company v. Jade Beach Condominium Association, Inc., 388 So. 3d 292 (Fla. 3d DCA 2024). *Professional services exclusion*: Allied Design Consultants, Inc. v. Pekin Insurance Company, 2024 IL App (4th) 230738, 479 Ill. Dec. 468, 249 N.E.3d 1050 (App. Ct. 4th Dist. 2024). *Workers Compensation and Employers Liability Insurance*: Vebr v. Culp, 241 Cal. App. 4th 1044, 194 Cal. Rptr. 3d 459, 80 Cal. Comp. Cas. (MB) 1311 (4th Dist. 2015). *Exhaustion of coverage*: Truck Ins. Exchange v. Kaiser Cement & Gypsum Corp., 16 Cal. 5th 67, 321 Cal. Rptr. 3d 761, 549 P.3d 781 (Cal. 2024). Chapter 19

- **Payment bonds**

Tarlton & Sons, Inc. v. Great American Ins. Co., 111 Cal. App. 5th 376, 332 Cal. Rptr. 3d 558 (2d Dist. 2025). Chapter 20

- **Statutes of repose**

Thompson Thrift Construction, Inc. v. Modus Studio, PLLC, 2025 Ark. App. 193, 709 S.W.3d 898 (2025), Trustees of Boston University v. Clough, Harbour & Associates LLP, 495 Mass. 682, 255 N.E.3d 596 (2025). Chapter 21

- **Architect and Engineer Malpractice**

Required duty: Havison v. Port Authority of New York & New Jersey, 224 A.D.3d 411, 205 N.Y.S.3d 11 (1st Dep't 2024). *Contract versus tort liability:* Trustees of Boston University v. Clough, Harbour & Associates LLP, 495 Mass. 682, 255 N.E.3d 596 (2025), Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. Ct. 1st Dist. 2024), appeal denied, 479 Ill. Dec. 767, 251 N.E.3d 389 (Ill. 2025). *Privity of contract defense:* Lynch v. Peter & Associates etc., 104 Cal. App. 5th 1181, 325 Cal. Rptr. 3d 265 (4th Dist. 2024), review denied, (Nov. 26, 2024). *Economic loss defense:* Gerdts v. Donan Engineering Co., Inc., 4 N.W.3d 464 (Iowa Ct. App. 2024) (unpublished opinion). *Expert testimony:* Wings Platinum, LLC v. Westchester Surplus Lines Insurance Company, 2025 WL 391388 (N.D. Tex. 2025) (slip op.), Adrian Smith + Gordon Gill Architecture LLP v. Chicago Shakespeare Theater, 2024 IL App (1st) 230133, 2024 WL 4311799 (Ill. App. Ct. 1st Dist. 2024) (unpublished opinion), Charles Blanchard Construction Corp., Inc. v. 480 King Street, LLC, 443 S.C. 165, 904 S.E.2d 182 (Ct. App. 2024), cert. granted, (Jan. 15, 2025). *Liability to third parties—Contractors:* Thompson Thrift Construction, Inc. v. Modus Studio, PLLC, 2025 Ark. App. 193, 709 S.W.3d 898 (2025). *Liability to third parties—Workers:* Chavarria v. Bruce Nagel & Partners Architects, P.C., 230 A.D.3d 1286, 220 N.Y.S.3d 57, 2024 N.Y. Slip Op. 04540 (2d Dep't 2024). Havison v. Port Authority of New York & New Jersey, 224 A.D.3d 411, 205 N.Y.S.3d 11 (1st Dep't 2024). *Liability to third parties—Invitees, patrons, occupants, and others:* Lynch v. Peter & Associates etc., 104 Cal. App. 5th 1181, 325 Cal. Rptr. 3d 265 (4th Dist. 2024), review denied, (Nov. 26, 2024), New England Building & Bridge, Co., Inc. v. Town of Cohasset, 2024 WL 2304843 (D. Mass. 2024) (slip op.), Henderson v. Day Engineering Consultants, 2024 OK CIV APP 25, 560 P.3d 684 (Div. 2 2024). Ives v. HMB Professional Engineers, Inc., 2024 WL 2487850 (Ky. Ct. App. 2024), discretionary review granted by supreme court, (Dec. 12, 2024) and not to be published pursuant to operation of cr 76.28(4)(c), rcr 12.02. *Damages:* Americo Mallozzi v. Warwick Wings, LLC, 330 A.3d 557 (R.I. 2025). *Certificate of merit:* Dorsey v. Environmental Resources Management Southwest, Inc., 2024 WL 4230031 (Tex. App. Houston 14th Dist. 2024), petition for review filed, (July 23, 2025). *Duty of care:* Lynch v. Peter & Associates etc., 104 Cal. App. 5th 1181, 325 Cal. Rptr. 3d 265 (4th Dist. 2024), review denied, (Nov. 26, 2024). Chapter 25

- **Arbitration Agreements**

INTRODUCTION

Enforceability: McCann Concrete Products, Inc. v. Raineri Construction, LLC, 685 S.W.3d 50 (Mo. Ct. App. E.D. 2024). *Existence of arbitration agreement*: Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. Ct. 1st Dist. 2024), appeal denied, 479 Ill. Dec. 767, 251 N.E.3d 389 (Ill. 2025). *Arbitration agreement unconscionable*: Ramirez v. Charter Communications, Inc., 108 Cal. App. 5th 1297, 330 Cal. Rptr. 3d 211 (2d Dist. 2025). Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. Ct. 1st Dist. 2024), appeal denied, 479 Ill. Dec. 767, 251 N.E.3d 389 (Ill. 2025). *Application of Federal Arbitration Act*: Smith v. Spizzirri, 601 U.S. 472, 144 S. Ct. 1173, 218 L. Ed. 2d 494 (2024). *American Arbitration Association (AAA) rules*: Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. Ct. 1st Dist. 2024), appeal denied, 479 Ill. Dec. 767, 251 N.E.3d 389 (Ill. 2025). *Stay of proceedings*: Smith v. Spizzirri, 601 U.S. 472, 144 S. Ct. 1173, 218 L. Ed. 2d 494 (2024). *Scope of arbitration agreement*: Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. Ct. 1st Dist. 2024), appeal denied, 479 Ill. Dec. 767, 251 N.E.3d 389 (Ill. 2025). *Choice-of-law provisions*: McCann Concrete Products, Inc. v. Raineri Construction, LLC, 685 S.W.3d 50 (Mo. Ct. App. E.D. 2024). *Arbitrability*: Smith v. Spizzirri, 601 U.S. 472, 144 S. Ct. 1173, 218 L. Ed. 2d 494 (2024). *Parties bound by arbitration agreement*: Mobile Enterprises, Inc. v. Briggs Brothers Enterprises Corporation, 389 So. 3d 135 (La. Ct. App. 1st Cir. 2024). Chapter 26

- **Arbitration Award**

Fees: Mogan v. Kellermeyer Godfryt Hart, P.C., 2024 IL App (1st) 232226-U, 2024 WL 4326948 (Ill. App. Ct. 1st Dist. 2024), appeal denied, 479 Ill. Dec. 767, 251 N.E.3d 389 (Ill. 2025). *Error in law*: Mobile Enterprises, Inc. v. Briggs Brothers Enterprises Corporation, 389 So. 3d 135 (La. Ct. App. 1st Cir. 2024). *Petition to confirm or vacate*: Valencia v. Mendoza, 103 Cal. App. 5th 427, 322 Cal. Rptr. 3d 903 (2d Dist. 2024), review denied, (Oct. 16, 2024). *Arbitral immunity*: Hill Country Preservation, LLC v. King, 2024 WL 1893635 (Tex. App. El Paso 2024), review denied, (May 30, 2025) (unpublished opinion). *Vacating award*: Mobile Enterprises, Inc. v. Briggs Brothers Enterprises Corporation, 389 So. 3d 135 (La. Ct. App. 1st Cir. 2024). Chapter 29

As construction relationships become increasingly complex (as do occasions for incurring liability), construction law continues to expand. We work diligently each year to make this publication the leading resource available in this field and hope that you will find it valuable in your practice.

CONSTRUCTION LAW DIGESTS

Should you have any questions or comments or notice anything you think is not accurate, please let me know at annettedavis@aol.com.

Thank you for your subscription.

Annette Davis Perrochet
October 2025