

# Design and Construction Management Professional Reporter

September 2015

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## New Jersey's Joint Tortfeasor Law Warrants Strict Application in the Courts

By Lauren M. Ippolito, Esq.

**T**HE NEW JERSEY SUPERIOR COURT CASE *South Constitution Condominium Owners' Association, Inc. v. South Constitution Associates, L.P.* addresses whether an engineer may be held liable for a law firm's negligent performance of its duties. The South Constitution Condominium in Hoboken, New Jersey was constructed in 1999. Following completion of the Project, the condominium association ("Owner") alleged that the Project had been deficiently designed, and they retained a consultant to study the issues in connection with the Owner's anticipated claim against the Project's developer ("Developer") for defective construction.

Also in anticipation of litigation, in March 2004 the Owner retained a building envelope engineer ("Engineer") to investigate the building envelope performance issues and submit a report with its findings and recommendations. In 2008, the Owner retained a law firm ("Lawyers") to represent the Owner in connection with its claim against the developer. The Owner also retained the Engineer to prepare a preliminary mediation report for the litigation. As part of its report, the Engineer retained a contractor ("Contractor") to prepare a cost estimate for the remedial work that the Engineer recommended for the Project. While the Contractor was not specifically identified in the Engineer's report, the report clearly stated that the cost estimate was prepared by a separate contractor, and not by the Engineer.

The Owner filed suit in 2008 against the Developer in the New Jersey Superior Court. The Engineer was designated by the Lawyers as the Owner's expert witness. During the course of the action, email communications demonstrated that the Lawyers were aware that the Contractor, and not the Engineer, had

*continued on page 7...*

## *Inside this issue:*

- 1 New Jersey's Joint Tortfeasor Law Warrants Strict Application in the Courts**  
By Lauren M. Ippolito, Esq.
- 2 Sovereign Immunity: Still (Mostly) for Sovereigns**  
By Lucas M. Blackadar, Esq.
- 3 New Hampshire Supreme Court Enforces the Statute of Repose**  
By Michael E. Coghlan, Esq.
- 5 Project Management Firm Has No Implied Duty to Ensure the Safety of Subcontractors' Employees**  
By Gregory S. Paonessa, Esq.
- 6 Expert Testimony and Proof of an Independent Legal Duty Are Required To Establish a Design Professional's Liability**  
By Lauren M. Ippolito, Esq.

# Sovereign Immunity: Still (Mostly) for Sovereigns<sup>1</sup>

By Lucas M. Blackadar, Esq.

**IMMUNITY PROTECTS THE GOVERNMENT.** An independent contractor is not the government. Therefore, immunity does not protect an independent contractor.<sup>2</sup> If only it were that simple.

This past April, in a case of first impression, the Texas Supreme Court held that sovereign immunity did not protect a private Engineering Firm whose traffic designs allegedly caused the death of two motorists. To some, the Court's opinion in *Brown & Gay Eng'g v. Olivares* delivers a thoughtful analysis and helpful guidance on what can become a genuinely murky area of law. To others, like the concurring justice quoted above, the opinion is entirely unnecessary.

The case arose out of an automobile accident taking place on a toll road ("Tollway"). An intoxicated driver entered an exit ramp of the Tollway, driving down the wrong lane for nearly eight miles before colliding with another vehicle, killing both himself and the other driver.

The estate of the driver who was hit by the intoxicated driver ("Estate"), brought suit against the Engineering Firm responsible for designing the signs and traffic layout for the Tollway, the Government Corporation responsible for operating the Tollway, and others. The Plaintiffs dismissed the Government Corporation after the denial of its plea for sovereign immunity was reversed on interlocutory appeal. The Engineering Firm followed suit, filing its own plea, arguing that it was the Government Corporation's employee and, therefore, also entitled to sovereign immunity. The trial court granted the plea, but was quickly reversed by the court of appeals, which held that the Engineering Firm was an independent contractor of the Government Corporation, not an employee.

The Engineering Firm then petitioned the Texas Supreme Court, asserting supplemental arguments. Ultimately, the Engineering Firm concluded that it should be encompassed within the County's sovereign immunity whether or not it was an independent contractor. It first argued that the court of appeals, in reversing the decision to grant sovereign immunity, improperly relied on the Tort Claims Act. The Tort Claims Act "uses 'employee' to delineate the circumstances where the government will be liable under a waiver of immunity, not to limit the scope of . . . unwaived governmental immunity."<sup>3</sup> Indeed, the Engineering Firm argued that sovereign immunity

extends to private entities contracting to perform government functions unless otherwise provided by statute. Finally, the Engineering Firm argued that extending sovereign immunity to private contractors will save the government money in the long term, as a contractor's exposure to litigation will be reflected in higher contract prices.

The Estate, on the other hand, argued that the occasional affirmative statutory extension of immunity to private contractors demonstrates that the legislature *only* ever intends to extend such immunity by legislative grant. Though the Court was not particularly persuaded by either side's position, it ultimately found in favor of the Estate.

The Court began its analysis with an overview of the purpose of sovereign immunity, explaining how that purpose has transformed since its original use at English common law. Now, rather than perpetuating "the feudal fiction that the King can do no wrong," sovereign immunity protects the government from having to expend valuable resources to cover unanticipated litigation costs.<sup>4</sup> Unfortunately, this means that when individuals are injured by the government, those individuals must bear the costs. In addition to protecting public funds, sovereign immunity also preserves principles of separation-of-powers preventing the judiciary from interfering with the legislature's allocation of tax dollars.

The Court was not convinced that extending immunity to the Engineering Firm would serve these critical public purposes. It found that sovereign immunity is not merely a cost-saving measure, but also a protection for the government from *unexpected* expenditures. Private contractors can, and do, manage risk exposure by purchasing insurance. Even if those risk-management costs are reflected in a higher contract price, that contract price is a cost the government can anticipate, negotiate, and prepare for at the outset of a project. Litigation costs, on the other hand, are impossible to predict when contracting.

Further, the Engineering Firm was exercising its independent

discretion in designing the signs and traffic pattern for the Tollway. Sovereign immunity does not extend to private companies exercising independent discretion. Rather, it applies to private contractors who act solely at the direction of the government. “The [Estate did] not complain about the decision to build the Tollway or the mere fact of its existence, but that the engineering firm was independently negligent in designing the signs and traffic pattern for the Tollway.”<sup>5</sup>

The Court made quick work of the Engineering Firm’s argument for qualified immunity, concluding that it protects a government official’s personal coffers and, more importantly, is a uniquely federal doctrine, and thus not relevant to state actions.

Ultimately, the Court rejected the Engineering Firm’s arguments for extending sovereign immunity, finding ample factual and legal ground to support its conclusions. While this was a case of first impression, it is interesting that the Court issued such a thorough response, especially in light of the Engineering Firm’s relatively weak arguments.

*Brown & Gay Eng’g* sheds light on the Court’s considerations and priorities in determining whether to apply sovereign immunity. It may also be a cautionary tale: absent a statutory grant of immunity, private contractors, and particularly independent contractors, have a challenging battle ahead if they seek to enjoy the same immunity as the government entity with which they contract, thereby identifying a need to build more protections into the those contracts. ■

<sup>1</sup> *Brown & Gay Engineering, Inc. v. Olivares*, No. 13-0605, 2015 Tex. LEXIS 341 (Tex. Apr. 24, 2015) (Hecht, J., concurring).

<sup>2</sup> *Id.* at \*3.

<sup>3</sup> *Id.* at \*5-6.

<sup>4</sup> *Id.* at \*7-8.

<sup>5</sup> *Id.* at \*19.

## New Hampshire Supreme Court Enforces the Statute of Repose

By Michael E. Coghlan, Esq.

**T**HE NEW HAMPSHIRE SUPREME COURT’S DECISION IN *Lennartz v. Oak Point Associates, et al.*, 2015 N.H. Lexis 20, illustrates the validity of Revised Statute Annotated (“RSA”) 508:4-b (I), also known as New Hampshire’s statute of repose, in preventing potentially infinite liability in the building industry. It further provides that a tort claimant seeking to assert claims relating to a construction project must comply with both the statute of limitations and the statute of repose.

RSA 508:4 is New Hampshire’s three-year statute of limitations for personal actions. A qualification to this statute, commonly known as the discovery rule, states that if a plaintiff’s injury and the relationship of the damages to the act complained of were not discovered, and could not have reasonably been discovered within three years, then the action must be brought within three years of the plaintiff’s discovery of the injury and its causal relationship to the act. In the context of actions relating to the construction or improvement of real property, the discovery rule can leave project participants open to potentially infinite liability. This is why a statute of repose is so crucial.

New Hampshire’s statute of repose, RSA 508:4-b (I), requires

any action for damages for injury to property, injury to the person, wrongful death or economic loss arising out of any deficiency in the creation of an improvement to real property to be brought no later than eight years from the date of substantial completion. The statute contains an exception for actions involving fraudulent misrepresentations or concealment of material facts, but does not contain a similar discovery rule.

In November 2009, the Plaintiff sustained injuries after being exposed to toxic fumes while working in a research laboratory at a university. The injuries were caused by the failure of a laboratory ventilation system designed to protect workers from exposure to such fumes. The Defendants, Oak Point Associates, PA (“OPA”) and a mechanical service contracting

company (“Contracting Company”) were involved in various aspects of the design, construction and installation of the laboratory, including the ventilation system (the “Project”). The Project was substantially completed in November 2003. As such, under the statute of repose, the Plaintiff had two years remaining to bring claims against the defendants.

The Plaintiff filed a negligence action against OPA in February 2012, several months after the lapse of the eight-year statute of repose. In November 2012, the Plaintiff added the Contracting Company as a defendant. OPA and the Contracting Company filed summary judgment motions claiming that the Plaintiff’s claims were barred by the statute of repose. The Plaintiff opposed the motion, arguing that the statute of repose violated her rights to a remedy, to equal protection and to due process under the New Hampshire Constitution.

The trial court granted the summary judgment motions, concluding that the statute of repose barred the Plaintiff’s claims because she sued OPA and the Contracting Company more than eight years after the Project was substantially completed. The court also determined that the statute of repose did not violate her constitutional rights.

The Plaintiff appealed on the grounds that the trial court erred in concluding that the statute of repose did not violate her state Constitutional rights as those rights applied to her, conceding that the statute may be constitutional in many of its applications but that, under the particular circumstances of her case, application of the statute was unconstitutional.

The New Hampshire Supreme Court (“Court”) reviews challenges to the constitutionality of a statute *de novo*, with a fresh look at the facts and law. Statutes are presumed to be constitutional and are not declared invalid except on unavoidable grounds. Since the right to seek reparation from the courts is an important substantive right, the Court reviews challenges to statutes that abbreviate or eliminate that right against a standard of intermediate scrutiny. To pass constitutional muster under intermediate scrutiny, a statute must be substantially related to an important governmental objective. New Hampshire places the burden of establishing the constitutionality of the challenged statute on the party seeking to uphold the statute — in this case, the defendants.

In support of the constitutionality of the statute of repose, OPA and the Contracting Company employed the legislative record under the statute which provided that, without the statute of repose, those engaging in the building industry in New Hampshire would be exposed to nearly infinite liability

from an injured plaintiff because of the liberal “discovery rule” contained in the statute of limitations. Without the statute of repose, persons in the New Hampshire building industry would likely avoid building projects in New Hampshire in favor of states with statutes of repose. As such, the state legislature had an important interest in supporting the building industry in New Hampshire. The Court agreed, finding prevention of potentially unlimited liability to the building industry was an important objective, and the statute of repose bore a substantial relationship to that objective.

The Plaintiff argued that, as applied to her, the statute of repose did not bear a substantial relationship to its stated purpose because, here, the defendants were not exposed to unlimited liability under the statute of limitations. The Plaintiff further argued that her right to recover outweighed the important governmental purpose underlying the statute of repose because, during the time between the accrual of her action and the lapse of the statute of repose, she had unsuccessfully tried to identify and sue the defendants. Additionally, she argued that, had she been injured earlier, she could have sued before statute of repose expired. The Court was not persuaded.

The Plaintiff next argued that applying the statute of repose to her claims violated her right to procedural due process under the State Constitution because it deprived her of the “discovery rule” under the statute of limitations. The Court found that this argument was insufficiently developed and declined to consider it.

Finally, the Plaintiff argued that her procedural due process rights were violated because she lacked adequate notice of the statute of repose. The Court rejected this argument, holding that every person is presumed to know the law, and she should have conducted her affairs accordingly. The Court held that she was presumed to have known about both the statute of repose and the statute of limitations prior to filing her action.

Ultimately, the Court declined to carve out any exceptions for the statute of repose based on the factual circumstances in this instance and in doing so, also left the door open for possible future erosion of the statute based on as-applied constitutional challenges. However, it made clear that, to succeed on such a challenge, the factual circumstances must be unique and compelling. Arguing, as this Plaintiff did, that the statute of repose operated to shorten the time to bring a claim from three to two years was insufficient for overriding the compelling governmental interest for which the statute was created. ■

# Project Management Firm Has No Implied Duty to Ensure the Safety of Subcontractors' Employees

By Gregory S. Paonessa, Esq.

***N RODRIGUES V. TRIBECA BUILDERS CORP.***, the Massachusetts Superior Court ("Court") entered judgment for a project management firm whose role was akin to that of a "Clerk of the Works" on a claim brought by a subcontractor's employee for injuries sustained on the project. The Court found that the firm had no responsibility for construction means and methods and, as such, owed no duty to ensure the safety of workers.

On November 10, 2012, the Plaintiff was injured when a handicap chairlift he was moving fell, striking his right thigh and ankle. Plaintiff was employed by a demolition, extraction and clean-up subcontractor whose services were retained by the Landlord to assist with the development of a restaurant and concert venue ("Project"). Plaintiff filed suit, alleging negligence against the General Contractor, a Subcontractor retained by the General Contractor, and the Project Management Firm ("Firm") retained by the Landlord. The Firm filed a motion for summary judgment seeking dismissal of Plaintiff's claims.

The Court first addressed whether a summary judgment motion was the proper vehicle for disposing of a negligence action at such an early stage in the proceeding. The Court held that "[a]lthough the latter three elements of proof [breach of a duty, damages and causation] are generally regarded as 'the special province of the jury,' the 'existence or non-existence of a duty is a question of law' and thus suitable for resolution at the summary judgment stage." (*Internal citations omitted*).

The court next determined whether the Firm owed a duty to the Plaintiff. In doing so, the court analyzed factors to evaluate whether the Firm maintained control over the means and methods of construction, rather than engaging in only administrative duties and responsibilities. The court first noted that the contract between the Landlord and Firm required the Firm to carry out logistical, managerial and administrative functions related to monitoring adherence to the Project budget and schedule. Notwithstanding Plaintiff's argument to the contrary, the court found that there was only a tenuous relationship between these functions and the contractor's

means and methods – that was insufficient to establish a duty on the Firm's part to monitor the safety of the workers.

In entering judgment for the Firm, the court relied heavily on the fact that the Landlord-Firm contract was silent as to "safety," and the Landlord-General Contractor contract vested sole responsibility for construction means and methods, and "initiating, maintaining and supervising *all* safety precautions and programs in connection with performance of the Contract," in *Tribeca*. (*Emphasis added*). The General Contractor's delegation of its duty to ensure worker safety to its subcontractors was also identified by the Court as evidence that "[The General Contractor] and its subcontractors assumed *full and unqualified responsibility for the safety of construction work* carried out on their watch." (*Emphasis added*). Since the Firm did not owe any duty of care to any party for the safety of job-site workers, the court found that no facts presented by the Plaintiff would establish a breach of a duty of care by the Firm.

This decision reaffirms the Massachusetts position that a firm overseeing a construction project, which assumes only an administrative role and performs no actual construction work, directs no work of any kind on the project site, and undertakes no contractual responsibility for construction-related safety, owes no duty of care to job-site workers and will not be held responsible for worker safety or resulting injuries. In light of the court's holding, an argument could be made that a design professional performing services under a contract for construction administration services and, as such, performing services similar to those of a project management firm, would similarly assume no liability and owe no duty for worker safety on a construction project. ■

# Expert Testimony and Proof of an Independent Legal Duty Are Required To Establish a Design Professional's Liability

By Lauren M. Ippolito, Esq.

**T**HE NEW YORK COUNTY SUPREME COURT DISMISSED CLAIMS against a design professional in the recent case of *Rothberg v. Kaufman, et al*<sup>1</sup> because the Plaintiff failed to introduce sufficient evidence of the design professional's breach of the standard of care, or any independent duty it may have owed to the Plaintiff to enable a claim of negligence.

In *Rothberg*, the Plaintiff entered into a contract with a Landscape Designer to provide landscape design services for Plaintiff's new residence ("Project"). These services encompassed performing an inventory and conceptual master plan for the landscaping, but did not include civil engineering or geotechnical services — services which the Plaintiff had agreed to provide. The contract did provide an estimated fee for the landscaping services.

During the Project, the Landscape Designer performed services in accordance with the contract and submitted invoices to the Plaintiff on a routine basis. Although the Plaintiff regularly asked the Landscape Designer to perform work beyond its contractual scope, it was repeatedly advised by the Landscape Designer that such requests would be deemed additional services, subject to supplemental compensation. Nonetheless, the Plaintiff authorized the Landscape Designer to proceed with the additional work.

Despite the Plaintiff's prior authorization of the additional services, when the Landscape Designer submitted its final project invoices, the Plaintiff refused to pay in full for the work actually performed. Furthermore, the Plaintiff claimed that the work performed failed to meet the standard of care and brought suit against the Landscape Designer and others that performed work on the Project. As to the Landscape Designer, the Plaintiff alleged claims for negligence, breach of contract, fraudulent misrepresentation, breach of implied warranty, and breach of the covenant of good faith and fair dealing. The Plaintiff also alleged that the Landscape Designer was responsible for reviewing and inspecting the civil engineer's work, and that it failed to do so.

Following extensive litigation, the Landscape Designer filed a motion for summary judgment which was granted by the Court, thereby successfully terminating the Plaintiff's claim.

In its decision, the Court held that the Landscape Designer had established "prima facie entitlement to judgment as a matter of law on the breach of contract cause of action by demonstrating that plaintiff waived any claim for exceeding a budget when she promptly paid the invoices without objection and by demonstrating that the work it performed complied with the terms of the contract." The Court held further that Plaintiff had failed to raise a triable issue of fact as to any alleged liability of the Landscape Designer as to deficiencies in the civil engineering because Plaintiff had retained its own civil engineer for that specific purpose.

The Court dismissed the Plaintiff's negligence claim because it duplicated the existing breach of contract claim. The parties' contract did not impose a duty upon the Landscape Designer to review the civil engineer's work, and the Plaintiff failed to demonstrate any breach of its contractual obligations as to its landscaping services. Specifically, the Court held that the Plaintiff's failure to demonstrate the Landscape Designer's alleged "depart[ure] from the good and accepted practice of a landscape architect or designer" through expert testimony was fatal to the Plaintiff's claim. Without any expert testimony delineating deviations from the applicable standard of care, the Plaintiff could not establish a triable issue of fact. Due to lack of evidence, the Court dismissed the balance of the claims against the Landscape Designer.

The significance of the *Rothberg* ruling is twofold. First, one seeking to assert claims against a design professional must establish its claims through introduction of expert testimony, setting forth the purported deviations from accepted standards of care.

Second, a plaintiff cannot assert claims of both breach of contract and negligence against a defendant, unless it can establish existence of a legal duty independent of

the contract itself and a breach of that independent duty. Without this, a plaintiff cannot demonstrate violation of any special relationship or legal duty aside from the contractual relationship, and the claims will be deemed duplicative.

Lack of expert testimony can result in an effective argument for dismissal of a case against a design professional where a

plaintiff has not done its due diligence in effectively proving its case. Further, the case illustrates that a plaintiff cannot bring both a breach of contract claim and a negligence claim against a party without an independent showing of a legal duty that is separate and distinct from the contract that was breached by the defendant. ■

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<sup>1</sup> *Rothberg v. Kaufman*, 106 A.D.3d 975 [2nd Dept 2013].

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## **New Jersey's Joint Tortfeasor Law** *continued from page 1...*

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prepared the cost estimate included in the Engineer's report. However, the Lawyers made a strategic decision not to disclose to all parties that the Contractor had prepared the estimate, or to designate the Contractor as an expert.

The Engineer was deposed as an expert witness on behalf of the Owner. During the deposition, the Engineer was asked questions concerning the Contractor's cost estimate; specifically the manner in which the costs contained in the cost estimate had been developed. The Engineer testified that he had no first-hand knowledge concerning the derivation of those costs because the Contractor had prepared them.

Following the Engineer's deposition, the Developer's counsel filed several motions seeking to bar and/or limit the Engineer's testimony at trial due to his lack of knowledge of the cost estimate and damages that the Owner claimed to have sustained, but the motions were denied. The only stipulation the court placed on the Owner was that it had to produce a representative of the Contractor at trial. Nonetheless, the Lawyers failed to do so, and the Owner was left without a damages expert.

The underlying lawsuit settled for \$1.3 million. However, thereafter, the Owner sued the Lawyers, claiming that it had settled for less than it was entitled due to the Lawyers' malpractice, including, but not limited to, their failure to timely disclose the Contractor as an expert witness. Alleging that the Engineer had improperly performed its expert services, the Lawyers, in turn, brought a third party action against the Engineer for contribution, indemnification and breach of the duty of care. The Lawyers further alleged that they had not learned that the Engineer had not prepared its own cost estimate until the Engineer's deposition, notwithstanding e-mail correspondence to the contrary.

Following the close of discovery, the Engineer filed a motion for summary judgment on the grounds that: it neither owed nor breached a duty of care to the Lawyers; it was not the proximate

cause of the Owner's damages; it had properly performed its services in accordance with the terms of its agreement with the Owner; and it had clearly disclosed that the construction cost estimates were prepared by a third party contractor, a fact that the Engineer had disclosed to the Lawyers prior to service of the report. The Lawyers, not the Engineer, failed to disclose the Contractor's identity prior to the Engineer's deposition.

The Engineer also argued that the Lawyers were not entitled to contribution based on the Owner's claims of negligence and intentional misconduct against the Lawyers themselves. Although contribution may be available between joint tortfeasors, there was no evidence supporting a finding that the Engineer was a joint tortfeasor or contributed to any damages sustained by the Owner that may have been caused by the Lawyers. Joint tortfeasors, as defined by *N.J.S.A. 2A:53A-1 to -5*, are "two or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them."

Under the statute, the Engineer was not a joint tortfeasor with the Lawyers for four reasons. First, the Engineer did not breach any duty owed to the Owner. Second, the Engineer was not "jointly liable" with the Lawyers because separate claims were alleged against each party. The Owner sued the Lawyers for legal malpractice and intentional misconduct, while the Lawyers sued the Engineer for engineering malpractice. As such, the Engineer could not be liable for the Lawyers' misconduct. Third, the injuries were not the same. The Owner sued the Lawyers for their alleged malpractice in the underlying litigation, while the Lawyers had sued the Engineer for its unsatisfactory deposition testimony that precluded introduction of the expert report at trial. Fourth, the Lawyers were not entitled to common law indemnification from the Engineer because the Lawyers were sued for their own wrongdoing by the Owner, and not for any wrongdoing allegedly undertaken by the Engineer. It is well settled law in New Jersey that indemnity cannot be obtained by a party who is, itself, at fault.<sup>1</sup>

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## New Jersey's Joint Tortfeasor Law *continued from page 7...*

The Engineer argued the Lawyers' expert report constituted a net opinion which is "an expert's bare opinion that has no support in factual evidence or similar data."<sup>2</sup> In essence, the Lawyers' expert opinion that the Engineer had violated the standard of care failed to cite to any objective industry standard that was breached, and did not reference any authority or recognized industry practice. As a result, the Engineer asked the court to disregard the report.

The Superior Court of New Jersey granted the Engineer's summary judgment motion and dismissed the third-party complaint. The court held that the Lawyers' contribution claim was unsupported in that they could not demonstrate joint liability between the Lawyers and the Engineer, nor could they establish that all claims arose from the same injury. The court also held that the Lawyers were not entitled to common law indemnity because there was no written contract between the parties, and the Owner had brought suit against the Lawyers for their own resulting negligence based on the underlying litigation. Finally, the court found that the Lawyers' expert report was, indeed, a net opinion that failed to provide any authority for its conclusion.

This case highlights the difficulty in obtaining contribution

from third parties. Not only must a party seeking contribution prove "joint liability" by demonstrating "common liability" to a plaintiff after the plaintiff's cause of action has accrued and they have committed similar torts, but the party must also prove that the torts arose out of the "same injury," and that the negligence alleged against each is of the same nature and basis. Here, the Lawyers were unable to satisfy either required element. The Owner brought suit for damages sustained in the underlying litigation due to the Lawyers' legal malpractice. Conversely, the Lawyers sued the Engineer, a non-attorney, for engineering malpractice. In essence, the New Jersey courts' strict application of the joint tortfeasor statute prevents innocent parties from liability for damages for which that party is not legally responsible.

Although the Engineer was not found liable for damages, this case serves as a reminder of the importance of proper documentation. Had the Engineer's report explicitly identified the Contractor as the cost estimator, the Lawyers would have been hard-pressed to assert a claim against the Engineer for failing to disclose the source of the information. Nor would there have been any opportunity for the Lawyers to strategically, or otherwise, avoid disclosing the information themselves. ■

<sup>1</sup> *Cartel Capital Corp. v. Fireco of New Jersey*, 81 N.J. 548, 566 (1980).

<sup>2</sup> *Pomerantz Paper Corp. v. New Cmty. Corp.*, 207 N.J.344, 372 (2011).

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