



"Do not withhold good from those to whom it is due, when it is in your power to act."

Proverbs 3:27

Greetings from Derreck Brown

Greetings from the Austin office! I can't believe that it is already September. This year has absolutely flown by. My kids are back in school. Autumn is only a couple of weeks away, and stores already have Halloween decorations for sale. While I had hoped that we would be closer to our old normal by now, we do seem to be moving towards the light at the end of this COVID tunnel.



One of the biggest downsides to this past year-and-a-half has been not seeing our clients in person as much as we would like because there is nothing more important to us than our relationships with our clients. Hopefully, we can correct that issue when we see you at our annual Texas Legal Update seminar in Dallas on October 29, 2021, which will be in-person. We got a bigger space this year, so everyone can spread out, and we will be taking recommended precautions. Regardless of whether you can make it, though, we do hope to see you soon. In the meantime, please stay happy and safe.

SB 219: An Update on a Contractor's Liability in Construction Defect Cases

by Miguel Bustilloz

This past session, the legislature passed SB 219, which provides

Welcome Iris Harris



We welcome [Iris Harris](#) to the Dallas office. She is a member of the firm's appellate practice group.

The Texas Law Update Seminar is Back!



Registration is open for the Annual Texas Law Update in DALLAS

more protection for contractors in construction defect cases. Whereas previously a contractor could be held liable for construction defects stemming from faulty plans, SB 219 shifts that paradigm under certain circumstances.

Prior to this change in the law, Texas followed the Lonergan Doctrine, which prevented a contractor in Texas from asserting a claim for breach of contract based on defective plans and specifications unless the contract in place contained language that shifted the burden of risk from the contractor to the owner. In the absence of such language, a contractor would be held liable for construction defects caused by faulty plans and specifications provided by the owner.

SB 219, which took effect on September 1, 2021, added Chapter 59 to the Texas Business and Commerce Code. The new law reads as follows: “A contractor is not responsible for the consequences of design defects and may not warranty the accuracy, adequacy, sufficiency, or insufficiency in the plans, specifications, or other design documents provided to the contractor by a person other than the contractor’s agents, contractors, fabricators, or suppliers, or its consultants, of any tier.”

Although SB 219 offers more protection to contractors, it does not come without its limitations. SB 219 requires a contractor to disclose any defect, inaccuracy, inadequacy, or insufficiency that the contractor discovers or should discover through “ordinary diligence.” The bill defines “ordinary diligence” as the observations a contractor would make in the reasonable preparation of a bid or fulfillment of its scope of work under normal circumstances. Furthermore, the contractor must disclose these issues in writing within a reasonable period of time of learning about them. If a contractor fails to do so, the contractor may be held liable for these issues.

That said, SB 219 does not apply to all construction projects. For example, it does not apply to a project involving the construction or repair of a critical infrastructure facility or a facility that is necessary or related to the operation of a critical infrastructure facility. Such facilities include a power plant, water treatment plant, and oil and gas pipelines. Additionally, SB 219 does not apply to projects performed under a “design-build” contract or “engineering, procurement, and construction” contract where the contractor provides



Don't miss our Annual Texas Law Update in **Dallas** on Friday, October 29th, 2021, at the Double Tree by Hilton - Campbell Centre.

For more information and to register, [click here](#).

Registration is open for the Annual Texas Law Update in CHICAGO



Don't miss our Annual Texas Law Update in **Chicago** on Thursday, November 18th, 2021, at the Swissotel.

For more information and to register, [click here](#).

Events

Insurance Defense 101: What Insurers Need From Today's Counsel

[Joanna Salinas](#) joined a panel discussion examining the evolving relationship between outside counsel and insurers in

design plans. Finally, the bill does not apply to a project where a contractor has agreed to provide input and guidance on plans, specifications, or other design documents to the extent that it is: (1) the work product of a licensed architect, engineer, or land surveyor; and (2) incorporated into the plans, specifications, or other design documents used in construction.

SB 219 will undoubtedly impact construction defect cases and result in legal arguments centered on the requirements and limitations imposed by the bill. In the years to come, courts will likely be asked to address legal issues such as the ordinary diligence exhibited by a contractor, the reasonable period of time for a contractor to report issues, and whether a project falls under this new law.

Conflicts Resolved

Fletcher Farley Obtains Summary Judgment

[Julia Sinor](#) won a summary judgment for a real estate inspector and his employer in a statutory fraud case. Plaintiffs claimed the inspector failed to report visible signs of water infiltration which would have prevented Plaintiffs from buying the home. After closing, Plaintiffs claimed they discovered water infiltration had degraded the home's structural support so it was at risk of collapsing, and sought actual damages near \$1 million, plus punitive damages. Plaintiffs claimed that the water damage would have been obvious to a qualified real estate inspector, but that the inspector misrepresented his qualifications, his inspection, and the condition of the home. The court granted a motion to strike Plaintiffs' expert, then granted summary judgment for both the inspector and his employer on all Plaintiffs' claims.

a webinar hosted by AM Best on September 8th.

DFW RIMS Golf Tournament

We were proud to be a sponsor at the DFW RIMS Golf Tournament on Thursday, September 2nd, in Grapevine, Texas.

Arkansas Trucking Association Annual Conference

We were proud to be a sponsor at the ATA Annual Business Conference on August 25-26, in Hot Springs, AR.

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