

ARIZONA

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I. Mechanic's Lien Basics

Unpaid providers of services, labor, materials, fixtures and equipment used in the construction of improvements to real property in Arizona have the opportunity to secure payment through imposition of a mechanics' lien on the improved property.¹ Mechanics' liens are creatures of statute that are available only on private construction projects, and which are granted preferential rights over certain other encumbrances.² A perfected mechanics' lien can be foreclosed on, compelling the sale of the improved property to fund payment to lienholders.³

A payment bond may be substituted for the lien right.⁴ Lien claims should be processed with care as property owners can sue for damages resulting from the recording of an invalid mechanics' lien.⁵

Arizona law also provides for stop notices to the project owner or the construction lender that can tie up project funds until the claimant is paid.⁶ As with mechanics' liens, stop notices apply only to private projects.

A. Requirements

Mechanics' liens may be obtained against owner-occupied dwellings only where the lien claimant contracts in writing directly with the owner-occupant.⁷

To impose a mechanics' lien, the lienor must:

1. Have a written contract with the owner, or with an architect/engineer or general contractor who has an agreement with the owner, or for mechanics' liens against owner-occupied dwellings, have a written agreement directly with the owner-occupant;⁸
2. Have a contracting license where required, or registration, in the case of an architect or engineer;⁹ and
3. Timely comply with the statutes requiring a preliminary 20-day notice and proof of service.¹⁰

The format for the pre-lien notice is prescribed by statute.¹¹ The pre-lien notice must be given no later than 20 days after beginning work or supplying materials or equipment.¹² If more than 20 days passes, a pre-lien notice can still be given to secure payment for services, materials or equipment provided to the site during the past 20 days and thereafter.¹³ Owners receiving a 20-day pre-lien notice should require waivers from all noticing parties before paying their contractor.

Arizona statutes prescribe the format for proof of mailing of a preliminary 20-day notice and to substantiate its receipt.¹⁴ If the recipient does not return the acknowledgement, proof of mailing may be made by affidavit.¹⁵

A stop notice claimant must comply with the 20-day pre-lien notice statute, and serve the stop notice by the statutory deadlines for notices and claims of lien.¹⁶

B. Enforcement and Foreclosure

To enforce a mechanics' lien, a notice and claim of lien must be timely recorded and served.¹⁷ The deadline for recording, and the format and contents of the notice and claim of lien, are given in the authorizing statute.¹⁸ An owner can shorten the time for filing a notice and claim of lien from 120 to 60 days by serving and recording a notice of completion, in the format prescribed by statute.¹⁹ After the lien is perfected, title to the property can be cleared by substituting a bond for the lien.²⁰

A recorded notice and claim of mechanics' lien is good for six months, after which the lienor loses the right to file an action to foreclose the lien.²¹ When a foreclosure action is filed, a *lis pendens* must also be timely recorded.²²

Contractors must defend lien foreclosure actions brought by claimants "beneath" them (i.e., the general contractor must defend lien claims by subcontractors; subcontractors must defend lien claims by materialsmen or sub-subcontractors, etc.).²³

C. Ability to Waive and Limitations on Lien Rights

The pre-lien notice must give an estimated value of the claim and a general description of what is to be supplied to the property.²⁴ If the lien is to be perfected, the actual price of the services or materials or equipment supplied may not exceed the estimate by more than 20 percent. If there is a change during the project that will increase the price by more than 20 percent, a new pre-lien notice should be served. The 20 percent rule was recently extended to 30 percent for "construction projects for which labor, professional services, materials, machinery, fixtures or tools are first commenced to be furnished from and after December 31, 2019." Thus, the 30 percent rule applies to new construction, but the old 20 percent rule still applies to construction projects that began before December 31, 2019.

Arizona statutes prescribe the forms for waivers and releases of lien rights.²⁵

II. Public Project Claims

Construction of state and local projects is governed by Ariz. Rev. Stat. Title 34.²⁶ Indemnity provisions in contracts for construction or design of state and local improvement projects are limited by statute.²⁷ Contracts for construction of state and local projects may not call for application of the laws of other states.

A. State and Local Public Work

Payments for construction of state and local projects are, by statute, required to be secured by surety bonds.²⁸

i. Notices and Enforcement

The timing of progress payments is statutorily directed.²⁹ Enforcement of a right to payment from a bond issued for a state or local project is governed by statute.³⁰

B. Claims to Public Funds

Not applicable; see above.

i. Notices and Enforcement

Not applicable; see above.

III. Statutes of Limitation and Repose

A. Statutes of Limitation and Limitations on Application of Statutes

General statutes of limitation that may apply to construction-related lawsuits are the six-year limitations period for breach of contract claims³¹ and the two-year limitations period for tort-based property damage claims.³² The four-year statute of limitations under the Arizona Uniform Commercial Code may apply to claims concerning defective materials.³³ Statutes of Limitations do not usually apply in suits by governmental entities.

B. Statutes of Repose and Limitations on Application of Statutes

The statute of repose for economic losses resulting from construction defects bars *contract* actions against developers, builders, designers and the like eight years from the project's substantial completion (defined in the statute), unless injury to real property or an improvement to real property or a latent defect is discovered in the eighth year, in which case, suit may be filed one year from such date.³⁴ In any event, the statute of repose bars all *contract* actions against developers, builders, designers, and the like nine years from the project's substantial completion.³⁵ The statute of repose applies only to contract and implied warranty actions, and not, for instance, to tort or common law indemnity actions.³⁶ Where there is contractual privity between the plaintiff and defendant, the claimant is limited to contract remedies, unless the contract expressly reserves tort remedies for purely economic losses.³⁷ There is a question as to whether tort remedies can be pursued in a case involving both

economic and noneconomic losses, even where economic losses predominate. Although Statutes of Limitation do not usually apply in suits by governmental entities, the Statute of Repose has been found to apply to governmental entities.

IV. Pre-suit Notice of Claim and Opportunity to Cure

Arizona requires prior notice of a lawsuit “arising out of or related to the design, construction, condition or sale” of a dwelling.³⁸ A prospective defendant must respond to the owner of a dwelling’s notice within 50 days. Within 10 days of receiving such response from the prospective defendant, the owner must provide the prospective defendant and all of the prospective defendant’s “construction professionals” access to the property for inspection. Within 60 days of receiving the notice, the prospective defendant must make a good faith response and offer to repair or pay compensation.³⁹ The owner may then accept or reject the offer.⁴⁰ If the owner accepts all or part of the prospective defendant’s proposed repairs, the parties must make reasonable efforts to ensure that such repairs begin the later of 35 days after the prospective defendant makes its offer or 10 days after receipt of the permit for such work.

In 2015, the Arizona legislature repealed the statute (Ariz. Rev. Stat. §12-1364) that previously had provided for an award of attorneys’ and expert fees to the successful party in a “dwelling action.” In 2019, in a compromise between the plaintiff’s bar and the general contractor’s lobbyists, the Arizona legislature reinstated an amended Ariz. Rev. Stat. §12-1364. In exchange, if the prospective defendant has complied with its requirements under the Purchaser Dwelling Act, the Act now tolls the statutes of limitation and repose from the date that the prospective defendant receives the owner’s original notice until nine months after a Complaint is filed.

V. Insurance Coverage and Allocation Issues

A. General Coverage Issues

Construction project participants may have claims brought against them under an indemnification theory, either under an express contractual provision, or under a common law implied indemnification theory. It is important that contractors obtain insurance that is commensurate with their express or implied undertakings, including express provisions for indemnification, or indemnification liability that may be imposed by law.

Most Commercial General Liability (CGL) insurers do not cover the cost to repair bad work by the insured. However, Arizona courts have held that a contractual liability exclusion in a CGL policy will not preclude coverage for the insured’s liability to its customers unless the policy very specifically excludes such liability.⁴¹

For coverage of a claim by typical CGL policies, there must be property damage occurring during the policy period.⁴² The subsidiary often-litigated issues are (1) what is “property damage,” and (2) what is an “occurrence”?

B. Trigger of Coverage

An “occurrence” requires “actual damage.”⁴³ Issues in defining “occurrence” arise in situations where damage accrues over time. Where damage is ongoing, “the relevant date for coverage purposes is the date the property damage occurs, even if that damage is incremental.”⁴⁴ In the event of an “occurrence” with ongoing incremental damage, “insurers must provide coverage for ongoing property damage that occurs during the policy period even if other similar damage preceded that damage.”⁴⁵

C. Allocation Among Insurers

If there are multiple policy periods with different insurers, damages must be allocated to the different policy periods and among the various insurers.⁴⁶ The typical approach is to allocate based on time on risk; however, there is very little case law in this area, and at a couple of insurance companies have attempted to argue that all damages must be equally allocated. Where multiple insurers insure the same risk, allocation is made on equitable contribution grounds.⁴⁷

There may be coverage under a policy purchased by the contractor itself, or policies where it is an endorsed additional insured.

VI. Contractual Indemnification

A. Statutory Limitations on the Scope of Contractual Indemnity

By statute, parties to construction contracts on private projects may not agree to indemnify the other for losses resulting from the sole negligence of the indemnitee; such provisions are void as against public policy.⁴⁸ This limitation does not apply to most contracts with governmental bodies.⁴⁹ Ariz. Rev. Stat. §32-1159 voids, as against public policy, indemnification provisions for losses resulting from the sole negligence of the indemnitee, in construction contracts between private parties.⁵⁰

As a part of the 2019 Purchaser Dwelling Act changes, a new statute, Ariz. Rev. Stat. §1159.01, was created. Ariz. Rev. Stat. §1159.01 applies to private-party construction and architect-engineer dwelling contracts. Ariz. Rev. Stat. §1159.01 provides:

Notwithstanding Section 32-1159, a covenant, clause or understanding in, collateral to or affecting a construction contract or architect-engineer professional service contract involving a dwelling that purports to insure, to indemnify or to hold harmless the promisee from or against liability for loss or damage is against the public policy of this state and is void only to the extent that it purports to insure, to indemnify or to hold harmless the promisee from or against liability for loss or damage resulting from the negligence of the promisee or the promisee’s indemnities, employees, subcontractors, consultants or agents other than the promisor.

The addition to Ariz. Rev. Stat. §1159.01 is an attempt to statutorily overrule the unpublished February 23, 2017 Court of Appeals ruling in the *Amberwood Dev., Inc. v. Swann's Grading, Inc.* case.⁵¹ In that case, because of the indemnity provision in the subcontract the last-standing grader had to indemnify the general contractor for the fault of the other subcontractors, which arose out of the work of the grader, even though the grader was not at fault for the work of the other subcontractors. Ariz. Rev. Stat. §1159.01 is an attempt to preclude the general contractor recovering more than the subcontractor's share of fault in indemnity in a lawsuit involving a dwelling.

B. No Common Law Indemnity Where There Is Express Indemnity Provision

Where the parties' contract includes an express provision for indemnity, there can be no recovery under common law implied indemnity principles.⁵²

C. Limited/Intermediate/Broad Forms of Contractual Indemnity

In a construction project/injury case, a recent Arizona District Court opinion used the terms "limited," "intermediate" and "broad" to describe the various types of contractual indemnity, rather than the more frequently used terms, "general" or "specific," explaining:

Arizona law "permits a party to protect itself contractually by shifting liability for its fault to another via the mechanism of indemnity." There are three types of indemnities: the "limited form indemnity," the "intermediate form indemnity," and the "broad form indemnity." The limited form indemnity requires the indemnitor to save and hold harmless the indemnitee only for the *indemnitor's* own negligence. The intermediate form indemnity requires the indemnitor to indemnify for all liability, *excluding* that which arises out of the indemnitee's sole negligence. Finally, the broad form indemnity obligates the indemnitor to save and hold harmless the indemnitee from *all* liability arising from the project, "regardless of which party's negligence caused the liability."⁵³

Under the narrow (or limited) form of indemnity, the indemnitor does not have a duty to indemnify in advance of a determination of indemnitor's fault.⁵⁴

D. Duty to Defend

The indemnitor's duty to defend is broader than the duty to indemnify:

"The duty to defend ... is not the same as the duty to indemnify. The duty to defend arises at the earliest stages of litigation and generally exists regardless of whether the insured is ultimately found liable." In evaluating whether [the carrier] had a duty to defend, the question whether the alleged liability of [the builder] "arose out of" [the subcontractor's] work must be determined initially from the allegations in the complaint against [the builder] and the facts known at that time. It is possible that the requisite nexus ("arising out of") could be established for the duty to defend but not for the duty to indemnify. ("[T]he insurer would have the duty to defend a suit alleging facts that, if true, would

give rise to coverage, even though there would ultimately be no obligation to indemnify if the facts giving rise to coverage were not established.”⁵⁵

However, where a subcontract included a narrow form of indemnity, but did not mention defense, the court found there is no duty to defend in advance of a determination of the indemnitor’s fault.⁵⁶ The damages for breach of the duty to defend is payment of the indemnity’s defense costs.⁵⁷

VII. Contingent Payment Agreements

A. Enforceability

Where there is clarity of contract, Arizona courts will enforce “pay when paid” clauses.⁵⁸ Arizona courts may refuse enforcement where there is evidence of gross mistake, fraud, or error that amount to failure to exercise honest judgment.⁵⁹

B. Requirements

To enforce a condition precedent that limits recovery to a specific fund, the contract must demonstrate “the parties’ unequivocal intent that the obligation is to be paid out of that fund and not otherwise.”⁶⁰

VIII. Scope of Damage Recovery

A. Personal Injury Damages vs. Construction Defect Damages

Personal injury damages follow the tort-based model of damages. Damages for construction defects are most frequently contract-based, but Arizona may allow tort theories where the parties are not in privity of contract.⁶¹ This area of law is still evolving in Arizona.⁶²

Arizona does not have case law discussing whether emotional distress damages may be recovered in a construction defect case. However, Arizona case law in other areas holds that a tenant with a mold claim may pursue an emotional distress claim,⁶³ while a client with an attorney negligence claim may not recover for negligent infliction of emotional distress, absent harm in the nature of personal injury.⁶⁴ This case law suggests that only where defective construction has a physical impact on the claimant, would recovery for emotional distress be allowed.

The measure of damage for nonconforming or defective work is the cost to repair or to bring the work into conformance with the contract, EXCEPT where such repair work would result in “economic waste” (i.e., the building would have to be substantially destroyed to completely remedy the defects), in which case, the measure of damage is the difference in market value of the building as designed, less the value as constructed.⁶⁵

The measure of damages for claims against a material supplier may be governed by the Arizona Uniform Commercial Code.⁶⁶

In 1984, Arizona enacted a comparative fault regime as part of the Uniform Contribution Among Tortfeasors Act (“UCATA”). UCATA outlawed almost all forms of joint liability in favor of liability based on comparative fault. The jury is charged with finding percentages of fault among all of the parties, including plaintiff, and non-parties at fault.

Allocated fault under UCATA, however, does not apply to breach of contract claims.⁶⁷ UCATA’s allocation of fault was found to apply in a strict liability claim brought under Arizona’s product liability statutes, where an under-sink reverse osmosis water filtration system leaked.⁶⁸

An allocation of damages under the narrow form of indemnity must be based on the indemnitor’s relative fault as a cause of alleged damages.⁶⁹

Damages that could have been mitigated by the claimant are not recoverable.⁷⁰ The claimant need only exercise reasonable care to mitigate and need not undertake measures that are possible, but extraordinary, or risky or not reasonable to attempt.⁷¹

Arizona follows the “*Spearin* doctrine,” under which contractors are not liable for construction defects caused by following inadequate or defective plans.⁷²

B. Attorney’s Fees Shifting and Limitations on Recovery

The “successful party” on a claim arising out of contract is eligible for a discretionary award of attorneys’ fees.⁷³ Recovery of attorneys’ fees is mandatory where a contract between the parties provides for recovery of attorneys’ fees and costs.⁷⁴

C. Consequential Damages

Consequential damages are recoverable in the context of construction claims if such damages are a foreseeable result of a breach of duty.⁷⁵ The economic loss rule includes recovery of “consequential damages such as lost profits.”⁷⁶

D. Delay and Disruption Damages

With respect to public construction projects, by statute, the construction contract must provide for negotiations for payment to the contractor for delay damages.⁷⁷ With respect to private projects damages caused by delay or disruption are a species of consequential damages.⁷⁸ The terms of the contract may govern the recoverability of such damages.

E. Economic Loss Doctrine

Where there is contractual privity and the contract does not preserve tort remedies for economic losses, a claimant’s redress for economic loss is limited to an action on the contract.⁷⁹ This doctrine applies only where there is actual contract privity between the plaintiff and the defendant.⁸⁰

F. Interest

Only liquidated claims accrue prejudgment interest.⁸¹ A liquidated claim is one capable of ascertainment and calculation without resort to expert opinion.⁸² Accrual of prejudgment interest on a liquidated claim begins only after the initial demand for claimant of the liquidated claim.⁸³

G. Punitive Damages

It would be a rare construction case where punitive damages would be recoverable, which require clear and convincing evidence of aggravated, outrageous, evil-minded conduct.⁸⁴

H. Liquidated Damages

Contractual provisions for liquidated damages are enforceable when the claimant meets its burden of proving a breach of contract permitting the recovery.⁸⁵

I. Other Damage Limitations

An owner may not recover damages from a contractor where the contractor encounters hazardous substances requiring removal and causing interruption of the work.⁸⁶ Where the cost of repair measure of damages would result in economic waste, damages may be calculated as the value of the improvements as designed, less their value as constructed.⁸⁷

IX. Case Law and Legislative Update

The 20-percent lien rule, in which a lien was still valid as long as the total amount billed did not exceed 20-percent of the original notice of lien was recently extended to 30-percent for “construction projects for which labor, professional services, materials, machinery, fixtures or tools are first commenced to be furnished from and after December 31, 2019.” Thus, the 30-percent rule applies to new construction, but the old 20-percent rule still applies to construction projects that began before December 31, 2019.

In 2019, the Arizona legislature revised the Act governing Purchaser Dwelling Actions.⁸⁸ The changes include the deadline that a prospective defendant has to respond to the owner, scheduling and access at inspections, and general deadlines about the owner’s acceptance or partial acceptance of an offer. The 2019 changes also reinstated an amended Ariz. Rev. Stat. §12-1364. In exchange, if the prospective defendant has complied with its requirements under the Purchaser Dwelling Act, the Act now tolls the statutes of limitation and repose from the date that the prospective defendant receives the owner’s original notice until nine months after a Complaint is filed.

As a part of the 2019 Purchaser Dwelling Act changes, a new statute, Ariz. Rev. Stat. §1159.01, was created. Ariz. Rev. Stat. §1159.01 applies to private-party construction and architect-engineer dwelling contracts. Ariz. Rev. Stat. §1159.01 provides:

Notwithstanding Section 32-1159, a covenant, clause or understanding in, collateral to or affecting a construction contract or architect-engineer professional service contract involving a dwelling that purports to insure, to indemnify or to hold harmless the promisee from or against liability for loss or damage is against the public policy of this state and is void only to the extent that it purports to insure, to indemnify or to hold harmless the promisee from or against liability for loss or damage resulting from the negligence of the promisee or the promisee's indemnities, employees, subcontractors, consultants or agents other than the promisor.

The addition to Ariz. Rev. Stat. §1159.01 is an attempt to statutorily overrule the unpublished February 23, 2017 Court of Appeals ruling in the *Amberwood Dev., Inc. v. Swann's Grading, Inc.* case.⁸⁹ In that case, because of the indemnity provision in the subcontract the last-standing grader had to indemnify the general contractor for the fault of the other subcontractors, which arose out of the work of the grader, even though the grader was not at fault for the other subcontractors' work. Ariz. Rev. Stat. §1159.01 is an attempt to preclude the general contractor recovering more than the subcontractor's share of fault in indemnity in a lawsuit involving a dwelling.

In 2018, the Arizona Supreme Court declined to expand implied indemnity to include an indemnitee's right to recover indemnity from an indemnitor via Restatement (First) of Restitution §78.⁹⁰

In 2019, Division 1 of the Arizona Court of Appeals determined that general contractors are not "sellers" of undisputedly defective plumbing products, pursuant to Ariz. Rev. Stat. §12-681(9).⁹¹ Therefore, general contractors cannot recover indemnity from a plumbing manufacturer for its undisputedly defective plumbing products under Ariz. Rev. Stat. §12-681 *et seq.*⁹²

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- ¹ Arizona's mechanics' lien statutes are found at Ariz. Rev. Stat. §§ 33-981 *et seq.*
- ² See Ariz. Rev. Stat. §33-992; *The Weitz Co. v. Heth, et al.*, 235 Ariz. 405, 333 P.3d 23 (2014) (held lien statutes do not preclude application of equitable subrogation rights).
- ³ See Ariz. Rev. Stat. §§ 33-997 and 999.
- ⁴ Ariz. Rev. Stat. §§33-997, Ariz. Rev. Stat. 33-1003.
- ⁵ Ariz. Rev. Stat. §§33-420 and 1006.
- ⁶ See Ariz. Rev. Stat. §33-1051, *et seq.*
- ⁷ Ariz. Rev. Stat. §33-1002.B; *Marco Crane & Rigging Co. v. Masaryk*, 341 P.3d 490 (App. 2014).
- ⁸ See Ariz. Rev. Stat. §33-981.F. Also see Ariz. Rev. Stat. §33-982, permitting lien rights by an assignee of a contract or account for materials, or labor.
- ⁹ Ariz. Rev. Stat. §33-981.F. Also see contractor regulation statutes at Ariz. Rev. Stat. §32-1101 *et seq.*
- ¹⁰ Ariz. Rev. Stat. §§33-981.D and 992.01.B.
- ¹¹ Ariz. Rev. Stat. §33-992.01.C.
- ¹² Ariz. Rev. Stat. §33-992.01.
- ¹³ Ariz. Rev. Stat. §33-992.01.E.
- ¹⁴ Ariz. Rev. Stat. §33.992.02.
- ¹⁵ Ariz. Rev. Stat. §33-992.02.B.
- ¹⁶ Ariz. Rev. Stat. §33-1056.
- ¹⁷ *Wang Elec., Inc. v. Smoke Tree Resort*, 230 Ariz. 314, 283 P.3d 45 (App. 2012).
- ¹⁸ Ariz. Rev. Stat. §33-993.
- ¹⁹ Ariz. Rev. Stat. §33-998.F.
- ²⁰ Ariz. Rev. Stat. §33-1004.
- ²¹ Ariz. Rev. Stat. §33-998.
- ²² Ariz. Rev. Stat. §33-998.A.
- ²³ Ariz. Rev. Stat. §33-995.
- ²⁴ Ariz. Rev. Stat. §33-992.01.H.
- ²⁵ Ariz. Rev. Stat. §33-1008.D.
- ²⁶ Ariz. Rev. Stat. § 34-226.
- ²⁷ Ariz. Rev. Stat. § 34-227.
- ²⁸ Ariz. Rev. Stat. §§ 34-221(c)(1) and 34-222.
- ²⁹ Ariz. Rev. Stat. § 34-221.
- ³⁰ Ariz. Rev. Stat. § 34-223.
- ³¹ Ariz. Rev. Stat. §12-548.
- ³² Ariz. Rev. Stat. §12-542.
- ³³ See Ariz. Rev. Stat. §47-2725.
- ³⁴ Ariz. Rev. Stat. §12-552.
- ³⁵ *Id.*
- ³⁶ *Evans Withycombe, Inc. v. Western Innovations, Inc.*, 215 Ariz. 237, 159 P.3d 547 (App. 2006).
- ³⁷ *Flagstaff Affordable Housing v. Design Alliance, Inc.*, 223 Ariz. 320, 223 P.3d 664 (2010).
- ³⁸ Ariz. Rev. Stat. §§12-1361.3 and 12-1362.
- ³⁹ Ariz. Rev. Stat. §12-1363(B) and (C).

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- ⁴⁰ Ariz. Rev. Stat. §12-1363(E).
- ⁴¹ *Desert Mountain Properties, L.P. v. Liberty Mutual Fire Ins. Co.*, 226 Ariz. 419, 250 P.3d 196 (2011) (affirming 225 Ariz. 194, 236 P.3d 421 (App. 2010)).
- ⁴² E.g., *Lennar Corp. v. Auto-Owners Ins. Co.*, 214 Ariz. 255, 265 151 P.3d 538, 548 (App. 2007).
- ⁴³ *Id.*
- ⁴⁴ *Id.*
- ⁴⁵ *Id.* at 549.
- ⁴⁶ *Id.*
- ⁴⁷ See *Quanta Ind. Co., v. Amberwood Development*, 2014 WL 1246144 (D. Ariz. 2014) at * 20 (applying Arizona law).
- ⁴⁸ Ariz. Rev. Stat. §32-1159.
- ⁴⁹ Ariz. Rev. Stat. §32-1159.C.
- ⁵⁰ See discussion of Ariz. Rev. Stat. §32-1159 in *James v. Burlington Northern Santa Fe Railway Co.*, 2007 WL 2461682 (D. Ariz. Aug. 27, 2007). Also see Trisha Strode, *Comment: From The Bottom of the Food Chain Looking Up: Subcontractors Are Finding That Additional Insured Endorsements Are Giving Them More Than They Bargained For*, 23 St. Louis U. Pub.L.Rev. 697 (2004) (cited in *James v. Burlington*, *supra*, at *5), which discusses the use of additional insured status as an end-run around the statutory prohibition on indemnity for the sole negligence of the indemnitee, and the deleterious economic impact this practice is having on some subcontractors.
- ⁵¹ *Amberwood Dev., Inc. v. Swann's Grading, Inc.*, 2017 WL 712269 (Ariz. App. Sep. 12, 2017).
- ⁵² *Grubb & Ellis Mgmt. Services, Inc. v. 407417 B.C. LLC*, 213 Ariz. 83, 138 P.3d 1210 (App. 2006).
- ⁵³ *James v. Burlington Northern Santa Fe Railway Company*, 2007 WL 2461682 (D. Ariz. Aug. 27, 2007) (Judge Neil V. Wake) *5 (emphasis added and in original; internal citations omitted).
- ⁵⁴ *MT Builders, L.L.C. v. Fisher Roofing, Inc.*, 219 Ariz. 297, 197 P.3d 758 (App. 2008) (construing indemnity provision in subcontract).
- ⁵⁵ *Regal Homes, Inc. v. CNA Insurance*, 217 Ariz. 159, 164, 171 P.3d 610, 615 (App. 2007) (internal citations omitted) (builder attempting to find coverage for owner's claims of water intrusion under concrete subcontractor's policy).
- ⁵⁶ *MT Builders*, *supra*.
- ⁵⁷ *Sprint Communications Co. v. Western Innovations, Inc.*, 640 F.Supp.2d 1122 (D. Ariz. 2009).
- ⁵⁸ *L. Harvey Concrete, Inc., v. Agro Constr. & Supply Co.*, 189 Ariz. 178, 939 P.2d 811 (Ariz. App. 1997) and see cases cited therein.
- ⁵⁹ *Id.* 189 Ariz. at 182, 939 P.2d at 815.
- ⁶⁰ *Id.* 189 Ariz. at 182, 939 P.2d at 815.
- ⁶¹ *Sullivan v. Pulte Home Corp.*, 232 Ariz. 344, 306 P.3d 1 (2013) (“*Sullivan P*”).
- ⁶² *Sullivan v. Pulte Home Corp.*, 237 Ariz. 547, 354 P.3d 424 (App. 2015) (“*Sullivan IP*”).
- ⁶³ *Killian v. Equity Residential Trust*, 2004 WL 3558509 (D. Ariz. 2004).
- ⁶⁴ *Reed v. Mitchell & Timbanard*, 183 Ariz. 313, 903 P.2d 621 (App. 1995).
- ⁶⁵ *Blecick v. Sch. Dist. No. 18 of Cochise County*, 2 Ariz. App. 115, 406 P.2d 750 (1966); *County of Maricopa v. Walsh & Oberg Architects, Inc.*, 16 Ariz. App. 439, 494 P.2d 44, 46 (1972).
- ⁶⁶ Ariz. Rev. Stat. §47-2101, *et seq.*
- ⁶⁷ See *Bowen Prods., Inc. v. French*, 231 Ariz. 424, 296 P.3d 87 (App. 2013).

⁶⁸ *State Farm Ins. Co. v. Premier Manufactured Sys., Inc.*, 213 Ariz. 419, 142 P.3d 1232 (App. 2006) (holding fault must be allocated between the reverse osmosis water system manufacturer and the distributor).

⁶⁹ *MT Builders, supra*, at 197, P.3d at 774.

⁷⁰ *Fairway Builders, Inc. v. Malouf Towers Rental Co., Inc.*, 124 Ariz. 242, 255, 603 P.2d 513, 526 (App. 1979).

⁷¹ *Id.*

⁷² *U.S. v. Spearin*, 248 U.S. 132, 136 (1918); *Willamette Crushing Co. v. State*, 188 Ariz. 79, 932 P.2d 1350 (1977).

⁷³ Ariz. Rev. Stat. §12-341.01.

⁷⁴ *E.g., Lisa v. Strom*, 183 Ariz. 415, 904 P.2d 1239 (App. 1995).

⁷⁵ *See Desert Mountain Properties Ltd. Partnership v. Liberty Mutual Fire Ins. Co.*, 236 P.3d 421, 436 (Ariz. App. 2010) and cases cited therein.

⁷⁶ *See Sullivan I*, at 346, 306 P.3d at 3.

⁷⁷ Ariz. Rev. Stat. § 34-221.

⁷⁸ *Elar Invs., Inc., v. Sw. Culvert Co.*, 139 Ariz. 25, 676 P.2d 659 (App. 1983).

⁷⁹ *Flagstaff Affordable Hous. Ltd. P'ship v. Design Alliance, Inc.*, 223 Ariz. 320, 223 P.3d 664 (2010).

⁸⁰ *Sullivan I, supra*.

⁸¹ *E.g., Fairway Builders, Inc.* at 264, 603 P.2d at 535; Ariz. Rev. Stat. § 44-1201 (D)(1).

⁸² *Vigilant Ins. v. Sunbeam Corp.*, 231 F.R.D. 582, 596 (D. Ariz. 2005) (finding building repair costs not liquidated because of complexity and need for expert testimony).

⁸³ *Id.*

⁸⁴ *E.g., Saucedo v. Salvation Army*, 200 Ariz. 179, 24 P.3d 1274 (App. 2001); *but see Custom Roofing Co. v. Alling*, 146 Ariz. 388, 706 P.2d 400 (App. 1985) (punitive damages permitted where roof insulation, material seller apparently maliciously cancelled roofing contractor's order for insulation, causing loss of contract on large school project).

⁸⁵ *Thomas v. Montelucia Villas, LLC*. 232 Ariz. 92, 96-97, 302 P.3d 617, 621-22 (2013).

⁸⁶ Ariz. Rev. Stat. §32-1129.03.

⁸⁷ *Fairway Builders, supra*.

⁸⁸ Ariz. Rev. Stat. §§ 12-1361 *et seq.*

⁸⁹ *Amberwood Dev., Inc. v. Swann's Grading, Inc.*, 2017 WL 712269 (Ariz. App. Sep. 12, 2017).

⁹⁰ *KnightBrook Ins. Co. v. Payless Car Rental Sys., Inc.*, 243 Ariz. 422, 409 P.3d 293 (2018)

(abrogating *Hatch Dev., LLC v. Solomon.*, 240 Ariz. 171, 377 P.3d 368 (App. 2016)).

⁹¹ *Okland Constr. Co. v. Zurn Indus. LLC*, 2019 2233298 (Ariz. App. May 23, 2019).

⁹² *Id.*