LOUISIANA

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I. MECHANIC'S LIEN BASICS

A. Private Projects.

The perfection of a mechanic's lien for private project is addressed at La. R.S. 9:4801, *et seq*. Under 9:4801, the following parties have a privilege on an immovable to secure payment for its work: contractors; laborers (or employees of the owner); material suppliers; lessors; professional consultants engaged by the owner; and the professionals subconsultants of those professional consultants.[1] However, employees of a professional consultant/subconsultant do not have any privilege.

1. Deadlines. All filing deadlines under the Private Works Act depend on whether a notice of contract was filed in the parish mortgage records prior to the commencement of work.

Pursuant to 9:4822, if a notice of contract is properly and timely filed in the manner provided by 9:4811, the persons to whom a claim or privilege is granted by 9:4802 (subcontractors, laborers, materialmen, sellers, etc.) must file its lien and deliver it to the owner no later than: (1) 30 days after the filing of the notice of termination, or (2) 6 months after substantial completion or abandonment of the work, if a notice of termination is not filed. [2]

If a notice of contract is not properly and timely filed, any party granted a claim and privilege by 9:4801 must file its statement of claim or privilege no later than 60 days after (1) the filing of a notice of termination of the work, or (2) the substantial completion or abandonment of the work, if a notice of termination is not filed.

A general contractor is required to file its statement of claim and privilege within (1) 60 days after the filling of a notice of termination of the work, or (2) **7 months** after the substantial completion or abandonment of the work if a notice of termination is not filed.[3]

2. Lien Requirements/Contents. The lien is in the form of a sworn affidavit of the party pursuing the privilege. Its basic contents must include the following:

A. Shall be in writing;

B. Shall be signed by the person asserting the same or his representative;

C. Shall contain a reasonable identification of the immovable with respect to where the work was performed or the materials supplied or services rendered;

D. Shall set forth the amount and nature of the obligation giving rise to the claim or privilege and reasonably identify the element comprising it. The claimant is not required to attach copies of the unpaid invoices **unless** the statement of claim specifically states that the invoices are attached.

3. Filing. Liens are filed with the mortgage office in the parish where the project is performed.

4. Extent of Claims. La. R.S. 9:4803(C) clarifies that the privilege does not secure attorney's fees owed to the claimant, whether arising by contract or law. However, this does not affect any other provision of the Act which expressly provides for the recovery of attorney's fees.

5. General Contractor Prerequisite. If the value of the project exceeds $100,000, the general contractor must file a notice of contract prior to work beginning on the project. If the general contractor failed to file the notice of contract, he will **not** retain the right to assert a lien or privilege against the immovable – either as a general contractor or as a regular contractor.

Thus, a general contractor that fails to file timely notice of a contract exceeding $100,000 is deprived of any privileged under the act without exception and is prohibited from filing a statement of claim or privilege.[4]

6. Subrogation Rights. A new addition to the Private Works Act is a clarification related to subrogation rights of a contractor or subcontractor under La R.S. 9:4802(F). Specifically, the Act now provides that a party who pays the claims of another claimant arising from work performed on its behalf is legally subrogated to the contractual claims, but cannot assert subrogation to that party's claim against the owner or the privileges arising under the Private Works Act. Permitting the contractor to assert subrogation to the rights of a person holding a claim arising under this Section or to the privilege securing the claim would frustrate the indemnity that the contractor owes to the owner against the claim under Subsection F and could provide a mechanism for manipulation of the ranking rules under R.S. 9:4821.

7. Notice of Contract. As stated above, pursuant to 9:4811, a written notice of a contract between the general contractor and an owner must be filed before the contractor begins work on the immovable. The notice: (1) shall be signed by the owner and contractor; (2) shall contain the complete property description[5] of the immovable upon which the work is to be performed and the name of the project, if any; (3) shall identify the parties and give their mailing addresses; (4) shall state the price of the work or, if no price is fixed, describe the method by which the price is to be calculated and give an estimate of it; (5) shall state when payment of the price is to be made; (6) shall describe in general terms the work to be done.

8. Effectiveness. Under 9:4820, the lien and/or privilege is effective as to third parties when: (1) notice of the contract is filed as required by R.S.9:4811; or (2) the work is begun by

placing materials at the site of the immovable to be used in the work or conducting other work at the site of the immovable the effect of which is visible from a simple inspection and reasonably indicates that the work has begun. Certain activities, such as surveying/ engineering work, the driving of test pilings, cutting or removal of trees and debris, placing of fill dirt, demolition of existing structures, the leveling of the land, or the placing of materials on the immovable having an aggregate price of less than $100.00, shall not be considered as "work begun."

If the project is the addition, modification, or repair of an existing building or other construction, that part of the work performed before a third person's rights become effective shall, for the purposes of R.S. 9:4821, be considered a distinct work from the work performed after such rights become effective if the cost of the work done, in labor and materials, is less than one hundred dollars during the thirty-day period immediately preceding the time such third person's rights become effective as to third persons.[6]

9. Notice to Third Parties. The effect of recordation of the statement of claim ceases as to third persons if no **lis pendens** is filed **within one year** of filing of the Statement of Claim with the respective mortgage office.[7]

10. Ranking. La R.S. 9:4821 provides the ranking of the privileges under the LPWA and, by virtue of the 2019 amendments, was revised to clarify that its application was limited to the privileges among themselves and against other encumbrances on the immovable. The relative ranking of other encumbrances is left to other laws to address.

11. Substantial Completion Requests. Under 9:4822(I) & (J), a claimant may request that an owner provide it express notice of substantial completion, termination, or abandonment of the work. Additionally, if the owner fails to provide the requesting claimant the notice within 10 days of substantial completion, termination, or abandonment, then the claimant's failure to file a timely statement of claim or privilege does not result in the loss of his privilege/claim against the owner under 4802(A). Nevertheless, the claimant will still lose their privilege under 4802 (B) by failing to file.

B. Public Projects.

The perfection of a mechanic's lien for public work is addressed at La. R.S. 38:2241, *et seq*. To perfect such a lien,

1. Filing of Contract. Pursuant to 38:2241.1, whenever a public entity enters into a contract for the construction, alteration, or repair of any public works, the official representative of the public entity must record in the office of recorder of mortgages, in the parish where the work has been done, an acceptance of the work or of any specified area thereof upon substantial completion of the work. Those public entities which do not file such recordation shall require the contractor to file such recordation no more than 45 days after the completion or substantial completion of the work.

2. Deadline & Filing. Under 38:2242(B), any claimant may, after the maturity of his claim and **within 45 days after** the recordation of acceptance of the work or of notice of default of the contractor or subcontractor, file a sworn statement of the amount due him with the

governing authority having the work done and recorded in the office of the recorder of mortgages for the parish in which the work was done.

3. Privilege Exceptions. Under 38:2242(E), if an architect or engineer has not been employed by the contractor or subcontractor, he has no claim to or privilege on the funds due the contractor or subcontractor.

4. Notice of Acceptance. The notice of acceptance is filed at substantial completion of the project, i.e., the "finishing of construction in accordance with the contract documents as modified by any change orders, to the extent that the public entity can use or occupy the public work." La. R.S. 38:2241.1.

5. Lien Notice. The filed lien should be sent by certified mail to the party with whom the claimant contracted, the general contractor, the owner/public entity, and the respective sureties.

6. Effectiveness to Third Parties. Pursuant to 38:2242.1(F), the effect of filing for recordation of a statement of claim or privilege and the privilege preserved by it shall cease as to third persons unless a notice of lis pendens identifying the suit is filed **within one year** after the date of filing the claim or privilege.

7. Suit by Public Entity. If at the expiration of the 45 days any filed and recorded claims are unpaid, the public entity shall file a petition in the proper court of the parish where the work was done, citing all claimants and the contractor, subcontractor, and surety on the bond and asserting any claims it has against any of them, and shall require the claimants to assert their claims. If the governing authority fails to file the proceeding, any claimant may do so.[8]

II. STATUTES OF LIMITATION AND REPOSE

A. Statute of Limitations ("Prescription")

1. Contract for Sale.

Redhibitory actions against a seller who did not know the existence of a defect in the thing sold prescribes two years from the day of delivery or one year from the day the defect was discovered, whichever occurs first.[9] However, when the defect is of residential or commercial immovable property, an action for redhibition against a seller who did not know of the existence of the defect prescribes in one year from the day delivery of the property was made. Nevertheless, if the seller knew, or is presumed to have known, of the existence of a defect, the action prescribes one year from the day the defect was discovered by the buyer.[10]

2. Contract action to recover for personal injuries.

The statute of limitation for a contract action to recover for personal injuries is one year.[11]

3. Contract actions.

An action against a contractor or an architect on account of defects of construction, renovation, or repair of buildings and other works is subject to a liberative prescription of ten years.[12]

4. Enforcement of a Privilege/ Lien against the Owner/Contractor.

Under the Private Works Act, an action on a privilege, or a claim against the owner/contractor must be brought one year from the date the lien was filed.[13]

Under the Public Works Act, action against the surety or the contractor (or both) must be made within one year from the registry of acceptance of the work or of notice of default of the contractor.

Additionally, under the Public Works Act, before any claimant having a direct contractual relationship with a subcontractor but **no contractual relationship with the contractor** shall have a right of action against the contractor or the surety on the bond furnished by the contractor, he shall in addition to the notice and recordation required in R.S. 38:2242(B) **give written notice to said contractor within forty-five days from the recordation of the notice of acceptance** by the owner of the work or notice by the owner of default, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor or service was done or performed.[14]

5. Public Works.

Actions against the contractor on the contract or on the bond, or against the contractor or the surety or both on the bond furnished by the contractor, all in connection with the construction, alteration, or repair of any public works let by the state or any of its agencies, boards or subdivisions prescribes five years from the substantial completion or acceptance of such work, whichever occurs first, or of notice of default of the contractor.[15]

Actions by the contractor on the contract or on the bond, or by the contractor or the surety or both on the bond furnished by the contractor, against the state, or any of its agencies, boards or subdivisions, all in connection with the construction, alteration, or repair of any public works prescribes five years from the completion, substantial completion or acceptance of such work, whichever occurs first, or of notice of default of the contractor or other termination of the contract.[16]

B. Statute of Repose ("Peremption")

La. R.S. 9:2772(A) provides, in pertinent part, that "no action, whether ex contractu, ex delicto, or otherwise, ... shall be brought against any person performing or furnishing ... the construction of an improvement to immovable property (1) more than **5 years** after the date of registry in the mortgage office of acceptance of the work by owner; or (2) if no such acceptance is recorded within six months from the date the owner has occupied or taken possession of the improvement, in whole or in part, more than 5 years after the improvement has been thus occupied by the owner ..."

The statute does not encompass allegedly deliberate fraudulent planning and building.[17]

The phrase "construction of an improvement to immovable property" as used in the statute for actions arising out of such improvements refers to renovations as well as to new construction.[18]

III. PRE-SUIT (OR PRE-LIEN) NOTICE OF CLAIM

Under the **Private Works Act**, professional consultants, sellers of movables (materialmen) and lessors are required to give pre-suit notice.

A. Professional Consultants

Under La R.S. 9:4804(A), professional consultants and subconsultants shall deliver written notice to the owner within thirty (30) days after the date of being engaged on the project. However, no notice is required for those who are directly engaged by the Owner. [19]

B. Materialmen:

Under the Private Works Act, materialmen are required to provide pre-lien filing notice if the materials, products, or movables are used on a project:

> *If notice of contract has been timely filed, the seller of a movable sold to a subcontractor shall deliver to the owner and contractor notice of nonpayment of the price of the movable* ***no later than seventy-five [75] days*** *after the last day of the calendar month in which the movable was delivered to the subcontractor…*[20]

As such, a seller who does not deliver to both the owner and contractor notice of nonpayment of the price of a movable shall not be entitled to a claim or privilege under this Part for the price of the movable.

Similarly, **under the Public Works Act**, the notice required for materialmen is as follows:

> *[I]f the materialman has not been paid by the subcontractor and has not sent notice of nonpayment to the general contractor and the owner, then the materialman shall lose his right to file a privilege or lien on the immovable property. The return receipt indicating that certified mail was properly addressed to the last known address of the general contractor and the owner and deposited in the U.S. mail on or before seventy-five days from the last day of the month in which the material was delivered, regardless of whether the certified mail was actually delivered, refused, or unclaimed satisfies the notice provision hereof or no later than the statutory lien period, whichever comes first.*[21]

C. Lessors

Lastly, lessors of movables are also required to provide notice prior to filing a lien on the project, within **30 days** after the lessor's movables are first placed at the site. If the notice is

provided after the 30 day deadline, the claim and privilege of the lessor is limited to rents accruing after the notice is given. No notice need be given to a party to the lease.[22]

** Lien Extension Deadline Note: Under the revised version of 9:4822, materialmen and lessors on **residential projects** where no timely notice of contract was recorded, provides that notice to the owner, setting forth the amount and nature of the obligation giving rise to the claim and privilege at least 10 days prior to filing its statement of claim and privilege, the time for filing the claim and privilege shall be **70 days** from (1) the filling of the notice of termination for the work; or (2) the substantial completion or abandonment of the work, if a notice of termination is not filed.

IV. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues

Louisiana accepts as normative standard commercial general liabilities ("CGLs") policies, as well as builder's risk workers' compensation and professional liability policies.

Typically, general liability policies exclude coverage for professional acts or services, all of which should be defined by the policy itself. In *North American Treatment Systems, Inc. v. Scottsdale Ins. Co.*, the court found "professional services" to typically mean "services performed by one in the ordinary course of the practice of his profession, on behalf of another, pursuant to some agreement, express or implied, and for which it could reasonably be expected compensation would be due.[23] Whether professional judgment are required of a particular skill or special training, or whether the act could be done by an unskilled person are also considered.

B. Trigger of Coverage

Generally, coverage begins on the effective date of the policy. Coverage ends when the contract expires. Furthermore, most policies are classified as either "occurrence" based or "claims-made" based. An "occurrence" based policy provides coverage for acts or event that occurred during the policy period, regardless of when the claim is actually made. As such, coverage attaches when the occurrence takes place even though a claim has not been made yet.[24] On the other hand, a "claims made" policy provides coverage for claims made during the policy's effective dates.

C. Additional Insurance Issues

Determining who an additional insured is under the policy is just one of many important insurance related issues on construction projects. Louisiana jurisprudence has held that interpretations of additional insured endorsements are questions of law.[25] Previously, courts generally held that an insurance company's liability only extended coverage to an additional insured when the additional insured's liability was derivative of the named insured. However, in *Jones v. Capitol Enterprises*, the court looked to the policy and held that the insurance company "failed to include language in its policy clearly reflecting the intent that coverage extended only to the named insured's wrongs."[26]

V. CONTRACTUAL INDEMNIFICATION

Louisiana statutory law only limits the enforceability of indemnity provisions in public construction contracts. La. R.S. 38:2216(G) states that:

> "…[A]ny provision contained in a public contract, other than a contract of insurance, providing for a hold harmless or indemnity agreement, or both,
>
> > (1) from the contractor to the public body for damages arising out of injuries or property damage to third parties caused by the negligence of the public body, its employees, or agents, or,
> >
> > (2) from the contractor to any architect, landscape architect, engineer, or land surveyor engaged by the public body for such damages caused by the negligence of such architect, landscape architect, engineer or land surveyor
>
> is contrary to the policy of the state, and any and all such provisions in any and all contracts are null and void."

However, the statute merely bars a contractor from indemnifying a public body for damages to third parties caused by the public body's negligence. It does not bar indemnity due to claims of strict liability or claims of damages because of defective work performed by the contractor.[27]

With respect to private construction contracts, indemnity provisions are generally valid. Interpretation of such a contract requires an application of the general rules governing the interpretation of other contracts.[28] Consequently,"[t]he contract of indemnity forms the law between the parties and must be interpreted according to its own terms and conditions."[29] "Interpretation of the contract is the determination of the common intent of the parties and when the words of the contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent."[30] Moreover, "[t]he determination of the intention of the parties is the foremost requirement in the interpretation and construction of a contract."[31] However, when an indemnity contract contains anything doubtful, the court must ascertain the common intention of the parties, rather than adhere to the literal meaning of its terms.[32] Notwithstanding an important caveat: a contract indemnifying an indemnitee against his own negligence must be strictly construed, and the contract will not be enforceable unless such an intention was expressed in unequivocal terms.[33]

VI. CONTINGENT PAYMENT AGREEMENTS

Contingent payment agreements are typically recognized in Louisiana jurisprudence as "pay-when-paid" or "pay-if-paid" provisions and are generally enforceable based on the fundamental notion of contractual freedom.[34] Such agreements commonly appear within construction subcontracts. While some courts have used the phrases "pay-when-paid" and "pay-if-paid" clauses interchangeably, Louisiana courts construe "pay-when-paid" clauses differently

than "pay-if-paid" provisions. In Louisiana, "pay-if-paid" provisions are construed as transferring the risk of owner nonpayment to the subcontractor whereas "pay-when-paid" provisions are interpreted as simply delaying payment to a subcontractor until the owner pays the general contractor.[35]

The Louisiana Supreme court has expressly enforced "pay-when-paid" provisions and interpreted them not as suspensive conditions, but rather as provisions creating terms for payment relating "to the time when [the] contractor must pay, and not the fact or certainty of such payment."[36] Under these payment agreements, a contractor's obligation to pay the subcontractor arises upon the receipt of payment by the owner. Louisiana jurisprudence generally construes these payment provisions to mean that the contractor's obligation to make payment is suspended for a reasonable amount of time for the contractor to receive payment from the owner.[37] Accordingly, such agreements have been viewed by Louisiana courts as creating a timing mechanism only and not as imposing a condition precedent to the obligation to ever make payment.[38] Thus, Louisiana courts do not interpret these provisions as shifting the risk of nonpayment by the owner to the subcontractor.

Louisiana law does recognize that contingent payment provisions can be very burdensome for the subcontractor, particularly in situations where payments are withheld from the general contractor for a prolonged period of time typically arising in the event of an owner-general contractor dispute, or where the owner becomes financially unable to make any further payments to the general contractor. Thus, even when a "pay-when-paid" provision appears within a contract, Louisiana courts will typically require payment to the subcontractor by the general contractor within a reasonable period of time.

Additionally, in 1987, La. R.S. 9:2784 was amended to provide that if a contractor or subcontractor, without reasonable cause, fails to make any payment to the subcontractors or suppliers within fourteen consecutive days of the receipt of payment from the owner for improvements to an immovable, the contractor or subcontractor shall pay to the subcontractors and suppliers, in addition to the payment, a penalty in the amount of one-half of one percent of the amount due, per day, not to exceed 15% of the outstanding balance, together with reasonable attorneys' fees.[39] Further, under La. R.S. 14:202, a contractor may face criminal penalty including jail and fines for misappropriation of funds. If a contractor only receives partial payment from the owner, to escape criminal and civil liability, the contractor must still apply all funds to the payment of subcontractors, laborers, and materials, even if the amount paid is not adequate to pay all of the outstanding bills.[40]

The Louisiana Supreme Court has yet to directly address the enforceability of "pay-if-paid" provisions, however, Louisiana appellate courts have upheld such provisions as creating a valid suspensive condition.[41] Louisiana Civil Code article 1767 provides that an obligation subject to a suspensive condition depends upon the occurrence of an uncertain event. Accordingly, under Louisiana law, if a "pay-if-paid" provision appears within a construction subcontract, a general contractor's obligation to pay the subcontractor arises if, and only if, he is paid by the owner.

However, because "pay-if-paid" provisions create a possibility that there may be an utter and complete failure of any payment to the subcontractor, Louisiana jurisprudence requires parties to use explicit language to indicate that payment by the owner is not contemplated by the parties as a reasonably certain event.[42] Further, as a general rule of contractual interpretation, Louisiana jurisprudence holds that contractual provisions should be construed as *not* to be suspensive conditions whenever possible.[43]

VII. DAMAGE LIMITATIONS

A. Private Projects

For private works, "[a]ny seller … whose claims have not been settled may file any action for the amount due, including reasonable attorney fees and court costs."[44] In cases of fraud, where the amount misapplied is one thousand dollars or less, the civil penalties shall be not less than two hundred fifty dollars nor more than seven hundred fifty dollars. Where misapplied funds total $1,000.00 or greater, civil penalties shall be assessed at a rate between $500.00 and $1,000.00 per $1,000.00 misapplied.[45]

B. Public Projects

For public works, La. R.S. 38:2246(A) provides that:

After amicable demand for payment has been made on the principal and surety and thirty days have elapsed without payment being made, any claimant recovering the full amount of his timely and properly recorded or sworn claim … shall be allowed ten percent attorney's fees which shall be taxed in the judgment on the amount recovered.

C. Louisiana Unfair Trade Practices Act

The Louisiana Unfair Trade Practices Act ("LUTPA") codified in La. R.S. 51:1401 *et seq*. dictates that persons subject to unfair and/or deceptive business practices have a civil action and can recover treble damages and attorney's fees against the opposing party. The wording of the statute is extremely broad and undoubtedly encompasses conduct on construction projects.

D. Interest

Louisiana allows for the collection of legal interest in any contracts dispute.[46]

VIII. CASE LAW AND LEGISLATION UPDATE

As noted above, the Louisiana Private Works Act was significantly amendment in July, 2019, the changes to which are memorialized and incorporated above. In addition to the changes to the LPWA, the Legislature also enacted several other construction related laws, the most relevant to this compendium being:

A. Use of A+B Bidding Method for Public Works (La R.S. 38:2211.2), which is essentially "cost-plus-time" bidding;

B. Amendments and Simplification of the Contractor Licensing Process (La R.S. 37:2150 *et seq.*); and

C. Time Limitations for Disciplinary Proceedings by Professional or Occupational Boards and Commissions (La R.S. 37:21(A)).

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[1] Professional consultants and sub-consultants' privilege only extends to the price of professional serves rendered in connection with a work that is undertaken by the owner.
[2] In 2019, the legislature specifically changed the phrasing to "no later than" rather than "within," which was previously used, to signal that a claimant does not need to wait to file until the delays for filing commence.
[3] This 7-month period is a newly imposed time period that provides an outside deadline where none previously existed.
[4] *See* La. R.S. 9:4811 comment (e).
[5] A "legal property description," as was formerly required. The definition of what constitutes a "complete property description" is contained in 9:4810(3).
[6] La. R.S. 9:4820(B).
[7] La. R.S. 9:4833(E).
[8] La. R.S. 38:2243.
[9] A defect is redhibitory when it renders the thing useless, or its use so inconvenient that it must be presumed that a buyer would not have bought the thing had he known of the defect. The existence of such a defect gives the buyer the right to obtain rescission of the sale. A defect is redhibitory also when, without rendering the thing totally useless, it diminishes its usefulness or its value so that it must be presumed that a buyer would still have bought it but for a lesser price. The existence of such a defect limits the right of a buyer to a reduction of the price. La. C.C. art. 2520.
[10] La. C.C. art. 2534.
[11] La. C.C. art. 3492; NOTE – 2022 Louisiana House Bill No. 109, Louisiana 2022 Regular Session seeks to repeal this article in its entirety, amending and reenacting La. C.C. art. 3493.10 to make the prescriptive period for delictual actions two years. As of the date of this Compendium, House Bill No. 109 has not yet been passed.
[12] La. C.C. art. 3500.
[13] La. R.S. 9:4823.
[14] La. R.S. 38:2247.
[15] La. R.S. 38:2189.
[16] La. R.S. 38:2189.1.
[17] La R.S. 9:2772 (H); *Academy Park Improvement Assoc. v. City of New Orleans*, 469 So.2d 2, 4 (La.App. 4th Cir. 1985).
[18] *Dugas v. Cacioppo*, 583 So.2d 26, 27 (La.App. 5th Cir. 1991).
[19] La R.S. 9:4804(a).
[20] La R.S. 9:4804(c).
[21] La. R.S. 38:2242(F).
[22] La R.S. 9:4804(b).
[23] 943 So. 2d. 429 (La. App. 1 Cir. 2006).
[24] *Guthrie v. Louisiana Medical Mut.. Ins. Co.*, 975 So.2d 804 (La. App. 2008).
[25] *Jones v. Capitol Enterprises, Inc.*, 89 So.3d 474 (La. App. 4 Cir. 2012).
[26] The *Jones* ruling was distinguished by *Chatelain v. Fluor Daniel Construction Co., 179 So.3d 791 (La.App. 4 Cir. 11/10/15)* where the issue turned on the interpretation of the "ongoing operations" clause of the additional insured endorsement—"liability arising out of your [Fluor's] ongoing operations performed for that insured." The issue was whether "ongoing operations" can be construed encompass liability arising after the insured's work was completed. Answering that question in the negative, the federal Fifth Circuit in *Carl E. Woodward, L.L.C. v. Acceptance Indem. Ins. Co.*, 743 F.3d 91, 98, reh'g denied, 749 F.3d 395 (5th Cir.2014), held that there was no coverage for the additional insured when the liability arose out of completed—as opposed to ongoing—operations.

[27] *Roberts v. State, through DOTD*, 576 So.2d 85, 90 (La.App. 2nd Cir. 1991); *Recotta Trucking Co. v. State*, 573 So.2d 526, 527 (La.App. 4th Cir. 1990).
[28] *Yocum v. City of Minden,* 566 So.2d 1082, 1086 (La.App. 2nd Cir. 1990).
[29] *Id*.
[30] *Id*.
[31] *Id*.
[32] *Polozola v. Garlock, Inc.,* 343 So.2d 1000, 1003 (La. 1977).
[33] *Id*.
[34] *See Southern States Masonry, Inc. v. J.A. Jones Const. Co.*, 507 So.2d 198, 204 (La. 1987). *Imagine Const., Inc. v. Centex Landis Const. Co., Inc.*, 707 So.2d 500, 502 (La.App. 4 Cir. 1998). *Vector Elect. & Controls, Inc. v. JE Merit Constr., Inc.*, 2006 WL 3208462, at *4 (La.App. 1 Cir. 2006). Louisiana Civil Code article 1971 states, "[P]arties are free to contract for any object that is lawful, possible, and determined or determinable."
[35] *Imagine Const., Inc.*, 707 So.2d at 502.
[36] *Southern States Masonry, Inc.*, 507 So.2d 198, 204. The Louisiana Supreme Court has recognized that the common law term "condition precedent" is analogous to the civilian term "suspensive condition." *Id.* at 204 n. 15.
[37] *Id.* at 204.
[38] *Id. See also Chartres Corp. v. Charles Carter & Co., Inc.*, 346 So.2d 796 (La.App. 1 Cir. 1977); *Pelican Const. Co. v. Sewerage and Water Bd. of New Orleans*, 240 So.2d 556 (La.App. 4 Cir. 1970).
[39] La. R.S. 9:2784(C). However, in the event the claimant loses he is obligated to pay all costs and attorneys' fees of the defendant. *Id.*
[40] *State v. Weems*, 595 So.2d 358 (La. App. 2 Cir. 1992); *State v. Marshall*, 808 So.2d 376 (La.App. 1 Cir. 2000)
[41] *Imagine Const., Inc.*, 707 So.2d at 502; *see also Vector Elect. & Controls, Inc.*, 2006 WL 3208462, at *4.
[42] *C Bel for Awnings, Inc. v. Blaine-Hays Const. Co.*, 532 So.2d 830 (La.App. 4 Cir. 1988). *See also Artificial Lift, Inc. v. Production Specialties, Inc.*, 626 So.2d 859 (La.App. 3d Cir. 1993).
[43] *Southern States Masonry, Inc.*, 507 So.2d at 204.
[44] La. R.S. 9:4856(A).
[45] La. R.S. 9:4814(C).
[46] La. R.S. 9:3500.