OKLAHOMA

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I. MECHANIC'S & MATERIALMEN'S LIEN BASICS

42 O.S. §§ 141 - 152 govern the procedures for how to invoke a mechanics' and materialmen's lien under Oklahoma law. These sections of the Oklahoma statutes also provide the procedures and guidelines for how a lienholder of such lien can enforce its lien.

A. Requirements.

i. Right to Lien (§ 141). Any person who performs labor, furnishes material, leases or rents equipment to be used on the subject property for the erection, alteration or repair of any building, improvement or structure thereon, shall have a lien upon the whole tract of land, the building and appurtenances in an amount equal to all sums owed to the potential lienholder at the time of the lien filing, which may include profit and overhead costs.

ii. Lien Statement (§ 142). The lien statement is the document filed in order to obtain a lien. A person or entity seeking to obtain a mechanics' or materialmen's lien must file a lien statement at the county clerk's office *in the county where the property is located*. The lien statement must set forth: (1) the amount claimed and items claimed; (2) the name of the property owner; (3) the name of the contractor; (4) the name of the claimant; and (5) the legal description of the property. *The lien statement must be verified by affidavit*. The lien statement must also be filed within four (4) months of the date when the material or equipment was used on said land or last furnished or labor last performed if the claimant is a general contractor. When work under the original contract has been completed, the performance of repairs does not extend the time to file a lien statement.[1]

i. For Subcontractors (§143). For subcontractors seeking to obtain a mechanics' and materialmen's lien on certain property, the procedures are identical to the procedures identified in § 142 above, but the subcontractor must file its lien statement within ninety (90) days of the date when the material or equipment was used on said land or labor was last performed on the subject property.

1. Pre-Lien Statement (§ 142.6). A pre-lien statement only has to be sent when the claimant is a contractor, other than the original contractor (an original contractor is someone who

contracts with the property owner), and the material or services are performed on a commercial property (exception: if it is a residential property and has more than five (5) dwelling units a subcontractor must provide a pre-lien statement). A pre-lien statement is not required for a subcontractor who is performing work upon a residential property (single family or less than five (5) dwelling units) or if the aggregate claim is less than $10,000. The pre-lien statement must contain: (1) a statement that the notice is a pre-lien notice; (2) the complete name, address, and telephone number of the claimant, or the claimant's representative; (3) the date material, services, labor, or equipment was supplied; (4) a description of the material, services, labor, or equipment; (5) the name and last-known address of the person who requested that the claimant provide the material, services, labor, or equipment; (6) the address, legal description, or location of the property to which the material, services, labor, or equipment has been supplied; (7) a statement that the dollar amount of the material, services, labor, or equipment furnished or to be furnished exceeds Ten Thousand Dollars ($10,000.00); and (8) the signature of the claimant, or the claimant's representative. The pre-lien statement must be filed no later than 75 days after the last date of supply of material, services, labor, or equipment.[2]

iii. Notice of the Lien Statement Filing (§ 143.1). Within five days of filing the lien statement being filed, a notice of the lien statement being filed shall be mailed by certified mail, return receipt requested, to the owner of the property on which the lien attaches. The claimant must provide the county clerk where the lien was filed with the last known address of the person, persons, or entity, against whom the claim is made and the owner of the property. The county clerk will mail the lien notice.

i. Notice Requirements. The notice of the lien statement filing must contain: 1) the date of the lien statement's filing; 2) the name and address of the person claiming the lien, the person against whom the claim is made, the owner of the property, a legal description of the property; and 3) and the amount of the claim made.

B. Enforcement and Foreclosure. A civil lawsuit must be brought on a mechanic's and materialmen's lien within one (1) year after the lien accrues.[3] The lien begins to accrue on the date the lien is filed with the county clerk. If suit is not filed within one year of the lien's accrual, the lien is unenforceable. In all cases where judgment may be rendered in favor of any person or persons to enforce a lien, the real estate or other property shall be ordered to be sold as in other cases of sales of real estate to satisfy the judgment.[4] If an action to foreclose a lien is filed by a subcontractor, the original contractor must be joined as a defendant.[5] A party who obtains a judgment against the person who the

lien is sought to be enforced against is entitled to recovery of his/her/its attorney's fees, to be fixed by the court.[6]

C. Ability to Waive and Limitations on Lien Rights. The exception for leased and rented equipment does not apply to property on which a homestead exemption is filed or property used for agricultural purposes.[7]

II. PUBLIC PROJECT CLAIMS

Public construction contracts exceeding $50,000.00 in Oklahoma are controlled by the Public Competitive Bidding Act of 1974, Okla. Stat. tit. 61, §§ 101-138.

A. State and Local Public Work.

A public construction contract means any contract exceeding $50,000.00 in amount awarded by any public agency for the purpose of making public improvements or constructing any public building or making repairs to or performing maintenance on the same. A "public agency" means the State of Oklahoma and any county, city, town, school district, or other political subdivisions of the state, any public trust, or any public entity created by statute. The term "public improvement" does not include the direct purchase of materials, equipment or supplies by any public agency.[8]

All public construction contracts shall be awarded to the lowest responsible bidder by open competitive bidding after solicitation for sealed bids in accordance with the Public Competitive Bidding Act of 1974. No work shall be commenced on a public construction contract until a written contract is executed and all required bonds and insurance have been provided by the contractor to the awarding public agency.[9]

Other construction contracts for the purpose of making any public improvements or constructing any public building or making repairs to the same for less than $50,000.00 but more than $5,000.00 shall be awarded to the lowest responsible bidder by receipt of written bids or on the basis of competitive quotes to the lowest responsible qualified contractor. Other construction contracts for less than $5,000.00 may be negotiated with a qualified contractor. Construction contracts for minor maintenance or minor repair work to public school district property for less than $25,000.00 may be negotiated with a qualified contractor, while contracts for more than $25,000.00 but less than $50,000.00 shall be awarded to the lowest responsible bidder by receipt of written bids.[10]

i. Notices and Enforcement.

All proposals to award public construction contract shall be made equally and uniformly known to all prospective bidders and the public by publication in the newspaper in the county where the work is to be done with the first publication to be at least 20 days prior to the date set for opening bids and by sending notice to one in-state trade or construction publication.[11] All bid notices shall set forth (1) the character of the proposed public construction contract in sufficient detail that all bidders know exactly what their obligation will be, (2) the name of the officer,

agent or employee of the awarding public agency and the office location and address of such person from whom a complete set of bidding documents regarding the proposed contract can be obtained (together with the amount of the cost deposit required), (3) the date, time, and place of opening of the sealed bids, (4) the name and office location and address of the awarding public agency to whom the sealed bids should be submitted, and (5) any additional information regarding the proposed contract deemed by the awarding agency to be of beneficial interest to prospective bidders or the public.[12]

A bidder on a public construction contract exceeding $50,000.00 shall send the bid with (1) a certified check, a cashier's check, or bid bond equal to 5% of the bid, which shall be deposited with the awarding public agency as a guaranty or (2) an irrevocable letter of credit containing terms prescribed by the Construction and Properties Division of the Office of Management and Enterprise Services and issued by a financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation in an amount equal to 5% of the bid. These items shall be returned to the successful bidder upon execution of the contract and provision of required bonds and insurance; however, these items may be forfeited at the discretion of the awarding public agency if the successful bidder fails to execute the contract or provide the required bonds and insurance. Checks, bonds, or letters of credit of unsuccessful bidders shall be returned to them in accordance with the terms of the bid solicitation.[13]

Each written bid shall also be accompanied by a written statement under oath disclosing (1) the nature of any partnership, joint venture, or other business relationship with the architect, engineer, or other party to the project then-in-effect or which existed within one (1) year prior to the date of such statement, (2) any such business relationship between any officer or director of the bidding company and any officer or director of the architectural or engineering firm or other party to the project then-in-effect or which existed within one (1) year prior to the date of the statement, and (3) the name of all persons have any such business relationships and the positions they hold within their respective companies or firms. If none of these business relationships exist, then a statement to that effect shall be provided.[14] An awarding agency may require prospective bidders, general contractors, subcontractors, and material supplies to prequalify as responsible bidders prior to submitting bids on a public construction contract.[15]

Any bid received by the awarding public agency more than 96 hours (excluding Saturdays, Sundays and holidays) before the time set for the opening of bids or any bid received after the time set for opening of bids shall not be considered by the awarding public agency and shall be returned unopened to the bidder.[16] All bids shall be sealed and opened only at the time and place mentioned in the bidding documents and read aloud by the awarding public agency. This bid opening shall be opening shall be open to the public and all bidders.[17] The contract shall be awarded to the lowest responsible bidder within 30 days of the opening of the bids unless the awarding public agency by formal recorded action shows good cause for

an extension which shall not exceed 15 days where only state and local funds are utilized and 90 days where funds are furnished by the U.S. government. The lowest responsible bidder and the awarding agency may by written mutual agreement extend the contract period by no more than 120 days from the bid opening date.[18] The successful bidder and the awarding agency shall execute a contract embodying the terms set forth in the bidding documents and the successful bidder shall provide the required bonds, letters of credit, and/or insurance within the period of time specified in the bid notice but not to exceed 60 days.[19]

If any award is made to other than the lowest bidder, the awarding agency shall accompany its action with a publicized statement setting forth the reason for its action.[20]

Public construction contracts cannot be assigned without the written consent of the awarding public agency evidenced by resolution.[21] Contracts may not be split into partial contracts to avoid compliance with the Public Competitive Bidding Act of 1974.[22] Within ten (10) days of the execution of a public construction contract, any taxpayer of the State of Oklahoma or unsuccessful bidder may bring suit in the district court of the county where the work, or the major part of it, is to be done to enjoin the performance of the contract if entered into in violation of the Public Competitive Bidding Act of 1974.[23] Any public construction contract on which no work has been done or no formal claim or litigation has been commenced within the last 24 months shall be terminated by the awarding agency, which releases the public agency from further liability on the contract.[24]

B. Claims to Public Funds.

i. Notices and Enforcement.

All statements and invoices submitted to an awarding public agency for work performed on a public construction contract shall contain a certification by the supervising architect, engineer, or other supervisory official if no engineer or architect is employed for the project that the work for which payment is claimed has been performed and that such works conforms to the plans and specifications for the project. No statement or invoice can be paid without such a certification. If project progressive payments are based upon the public agency's estimated quantities of materials and work performed, such certifications are not required. Claims for payment shall only be approved after proper inspection as provided in the plans and specifications for the project have been made.[25]

III. STATUTES OF LIMITATION AND REPOSE

A statute of limitation starts to run when the cause of action occurs, i.e., the date of the injury or the date the contract is completed. A statute of limitation limits the time period whereby a person may pursue a remedy. Whereas, a statute of repose is a time period which limits the time

within which a party may acquire a cause of action, i.e., the date of injury cannot be more than 10 years after the construction project was completed.

A. Statute of Limitations. The Oklahoma statute of limitations period for a construction defect based on a written breach of contract is five (5) years, or three (3) years for an oral breach of contract. The period begins to run when the home or project is completed.[26] The Oklahoma Supreme Court, in *Jaworsky v. Frolich*, expressly rejected the argument that the statute of limitations begins to run at the time the defect is discovered.[27] On the other hand, the Oklahoma statute of limitations period for a construction defect based on tort is two (2) years. The two (2) year statute of limitations period starts to run when the Plaintiff is vested with a cause of action, *i.e.* at the time the Plaintiff knows, or should know in the exercise of due diligence, of the injury.

B. Statute of Repose. The statute of repose period for a tort alleging a construction defect is ten (10) years after substantial completion of improvements on the property.[28] Thus, in order to have a valid action, a tort plaintiff must fall within the tort statute of limitation of two (2) years from vesting as well as the ten (10) year from substantial completion statute of repose.[29]

IV. PRE-SUIT NOTICE OF CLAIM AND OPPORTUNITY TO CURE

In the residential property context, a contract for the construction of a new residence or for an alteration of, repair of, or addition to an existing residence may include provisions which the following, but may not be limited to:

(1) require a homeowner, prior to filing a lawsuit for construction defects, to present to the contractor a written notice of construction defects; and

(2) allow the contractor to inspect any construction defects and present to the homeowner with a written response which shall include the contractor's offer to repair the defects or compensate the homeowner for such defects within thirty (30) days after receipt of the notice of defects.[30]

If the above-mentioned provisions are included in a contract, the homeowner shall not file a lawsuit against the contractor until both of the above conditions have been met. In the event the homeowner files a lawsuit against the contractor without fulfilling the conditions precedent, the contractor shall be entitled to a stay of proceedings until such conditions have been fulfilled. The homeowner may be considered in breach of the contract, but will not likely be subject to damages unless the contractor is damaged by not having had notice of the alleged defects. If the conditions precedent have not been fulfilled, or not fulfilled within thirty (30) days of the notice, the homeowner may seek remedies against the contractor as provided by law.[31]

V. INSURANCE COVERAGE AND ALLOCATION ISSUES

A. General Coverage Issues. Normally, a commercial general liability ("CGL") policy provides insurance coverage for an insured's tort liability for personal injury or property damage. In certain situations, a separate professional liability policy, *i.e.* an errors and omissions policy a/k/a a professional liability policy, may cover the same tort loss, but unlike a CGL policy, a professional liability policy also usually covers defects in construction caused by a professional's failure to properly perform his work, including covering breach of contract claims.

Additionally, builders' risk policies are available to cover property damage losses to projects under construction, renovation, or repair. If the injuries at issue are to a contractor's employee, workers' compensation insurance may also be necessary. These types of policies generally provide "primary" insurance coverage for a loss, but "excess" insurance policies may also be available to provide extra coverage once the "primary" policy underlying it has been fully exhausted.

An additional endorsement, commonly known as a "Completed Operations Hazard" endorsement, insures a contractor against accidents which occur during the policy period, but after the completion of a project. Such a provision is important to possess if the contractor's Commercial General Liability policy is project specific. Even under a "Completed Operations Hazard" endorsement in a policy providing coverage for a specific construction project, an insurer can restrict the coverage to occurrences during the policy period; thus, coverage may not be afforded for a loss occurring after the policy period expires depending upon the terms of the specific policy.[32]

Where there are multiple CGLs, builders' risk policies, and/or errors and omissions policies covering different time frames, it is critical to determine which policies cover the loss. The paramount questions in determining the application of a particular policy are:

(1) What policies cover the asserted loss, *i.e.* CGL, professional liability, builder's risk, or workers' compensation?
(2) What triggers coverage under the applicable insurance policy, *i.e.* is it a "claims made" policy or an "occurrence" policy? and
(3) For an "occurrence" policy, when did the injury occur? or For a "claims made" policy, when did the insured become aware of an injury that might give rise to a claim and notify the insurance carrier?

B. Trigger of Coverage. Under a "claims made" liability insurance policy, coverage is only triggered when, during the policy period, an insured becomes aware of ***and*** notifies its insurer of either claims against the insured or occurrences that might give rise to such claim. Under a "claims made" policy, it is the *notice* of the claim (or circumstances that could give rise to a claim) to the insurer that invokes coverage under the policy, and notice of a claim must be made to the insurer ***during the policy period***.[33] An "occurrence" liability policy allows for notice to be made after the term of the insurance contract, so long as the insurable event occurred ***during the term of coverage***.[34]

It is very important to know what type of policy you possess because if you do not properly report your claim as required by your type of policy, you will not be provided coverage. You need to make sure that your insurance policies are tailored to provide coverage for all phases of construction and even for injuries after completion of a construction project, so you will be covered in the event of a claim.

C. Allocation Among Insurers. Allocation among insurers becomes an issue only if more than one insurance policy covers the loss at issue. An insurance policy will provide either "primary" or "excess" coverage, and the specific language of the policy will determine which coverage a particular policy provides.

Generally, "primary" insurance provides immediate coverage for the insured upon the occurrence of a loss or the happening of an event which, under the terms of the policy, gives rise to immediate liability. In the context of liability insurance, a primary insurer generally has the primary duty to defend and indemnify the insured unless specific language in the policy provides otherwise.

An "excess" insurance policy is one by which its terms provides coverage that is secondary to the primary coverage; there is usually no obligation to the insured until after the primary coverage limits have been exhausted. When both a primary insurance policy and an excess insurance policy is in force, the excess insurance carrier is not responsible to participate in the costs of defense until the limits of coverage on the primary policy are exhausted. If an excess insurer does participate and provides defense costs before the primary policy limits are exhausted, the excess carrier may assert the equitable right of subrogation against the primary insurance carrier to recover funds it had not obligation to pay.[35]

More than one primary insurance policy could also provide coverage for a particular claim. Two insurance carriers who both owe primary coverage may seek equitable contribution against one another to recover funds paid in excess of the insurer's proportionate share of common liability.[36] Legal subrogation is also available to recover against a co-insurer later discovered to share primary liability with another insurer.[37]The rights to apportionment of claim coverage between two primary insurance carriers are determined by the express language of the insurance contracts, and generally both carriers owe a duty to defend and pay to the insured and only later may seek to equalize payment amongst themselves, if necessary.[38]

VI. CONTRACTUAL INDEMNIFICATION

Oklahoma does not allow indemnification in construction contracts that require an entity to indemnify another entity against liability for damage arising out of death or bodily injury to persons, or damage to property, which arise out of the negligence or fault of the indemnitee, its agents, representatives, subcontractors, or suppliers, because such indemnification is considered void and unenforceable as against public policy.[39]

However, a construction contract may require an entity to indemnify another entity against liability for damage arising out of death or bodily injury to persons, or damage to property, but such indemnification *shall not exceed* any amounts that are greater than that represented by the degree or percentage of negligence or fault attributable to the indemnitor, its agents, representatives, subcontractors, or suppliers.[40]

VII. CONTINGENT PAYMENT AGREEMENTS

Subcontracts often provide that payments to subcontractors shall be payable "if" or "when" the contractor receives payment from the owner. These provisions are often referred to as "pay-if-paid" and "pay-when-paid" provisions.

Under a typical "pay-when-paid" provision, a contractor's obligation to pay the subcontractor is triggered upon receipt of payment from the owner, and most courts hold this type of clause to mean the contractor's obligation to make payment is suspended for a reasonable amount of time for the contractor to receive payment from the owner. In other words, a "pay-when-paid" clause creates a timing mechanism only and does not create a condition precedent to the obligation to ever make payment and, thus, does not expressly shift the risk of the owner's non-payment to the subcontractor. On the other hand, under a typical "pay-if-paid" clause, the subcontractor expressly assumes the risk of the owner's non-payment, and receipt of payment by the contractor from the owner is an express condition precedent to the contractor's obligation to pay the subcontractor.[41]

A. Enforceability. There is no constitutional or statutory prohibition against "pay-if-paid" clauses in Oklahoma,[42] and Oklahoma generally allows contingent payment contracts.[43] When the contract at issue clearly provides that payment by the owner is a condition precedent to the general contractor's duty to pay the subcontractor, the courts will generally enforce a "pay-if-paid" clause under Oklahoma law.[44]

B. Requirements. The key for enforcement of a "pay-if-paid" or "pay-when-paid" provision under Oklahoma law is to demonstrate a clear intent by unambiguous contract language that the payment by the owner is a condition precedent to the general contractor's duty to pay the subcontractor. Otherwise, the clause will be read to only postpone payment for a reasonable period of time because under Oklahoma law, a construction of a contract which makes it dependent upon a future contingency is not favored, meaning courts will not construe contract stipulations as conditions precedent unless required to do so by the plain, unambiguous language of the contract. For instance, an enforceable "pay-if-paid" contractual provision stated "payment . . . by Owner is a condition precedent to [general contractor's] duty to pay [subcontractor]."[45]

VIII. SCOPE OF DAMAGE RECOVERY

A. Personal Injury Damages vs. Construction Defect Damages. The general measure of damages for personal injuries is the amount that will compensate the injured party for all detriment proximately caused by the harm, whether they could be anticipated or not, while the general measure of damages for breaches of contract is the amount that

will compensate the aggrieved party for all the detriment proximately caused by the breach or in the ordinary course of things would be likely to result therefrom.[46] Damages for personal injury can include punitive damages, while damages for breach of contract generally cannot.

B. Attorney's Fees Shifting and Limitations on Recovery. In an action brought to enforce any lien, the party for whom judgment is rendered shall be entitled to recover reasonable attorneys' fees, to be fixed by the court, which shall be taxed as costs in the action.[47] A prevailing party may be awarded its reasonable attorneys' fees, to be taxed as costs, for a suit predicated on breach of an express warranty and in a civil action to recover for labor or services rendered or for a contract relating to the purchase or sale of goods or merchandise.[48] Moreover, an Oklahoma court will enforce a contract provision which grants the prevailing party attorneys' fees. Otherwise, a litigant will bear its/his/her own attorney fees.[49]

C. Consequential Damages. Recovery for a breach of contract is generally limited to consequential damages. Consequential damages are damages naturally flowing from the contract breach or damages that were reasonably contemplated as probable at the time the contract was executed. Such damages can include expenses due to a party's failure to perform in a workmanlike manner, costs to settle with the owner for a subcontractor's breach, excess costs, loss of use, and lost profits which are reasonably ascertainable.[50]

D. Delay and Disruption Damages. Delay and disruption damages are collectable and the prevailing party may be awarded actual costs, escalation costs in materials and labor, overhead, and profits.[51]

E. Economic Loss Doctrine. Oklahoma has adopted the economic loss doctrine in strict products liability cases, including cases alleging defective construction materials, when the only injury suffered by the claimant is to the product itself or when the damages suffered include only consequential damages, such as to damages to ancillary equipment, clean-up, repair, and reinstallation costs. However, the economic loss rule does not apply where the claimant alleges personal injury or damage to other property. If the economic loss doctrine applies, the claimant's only remedy is for breach of contract or breach of warranty.[52]

F. Interest. A prevailing party is entitled to collect prejudgment interest on the amount of the obligation in a breach of contract suit, starting from the time he or she is vested with the right to recover.[53] A prevailing party may collect prejudgment interest for personal injuries. In a personal injury action filed after January 1, 2010, the prejudgment interest starts accruing 24 months after the lawsuit is filed and ends on the earlier of the date the verdict is accepted by the trial court or the date the judgment is filed with the court clerk.[54] In addition, a prevailing party may collect post judgment interest. Post judgment interest accrues from the earlier of the date the judgment is rendered or the date the judgment is filed with the court clerk.[55] For July 1, 2013, through October 31, 2013, the prejudgment rate is 5.25%, and November 1, 2013, through the first business day of January, 2014 is 0.09%. For 2014, prejudgment interest is .05% and post judgment interest

is 5.25%. For 2015, prejudgment interest is .03%, and post judgment interest is 5.25%. For 2016, prejudgment interest is .06%, and post judgment interest is 5.50%.[56] For 2017, prejudgment interest is .31% and post-judgment interest is 5.75%. For 2018, prejudgment interest is .92% and post-judgment interest is 6.50%. For 2019, prejudgment interest is 1.94% and post-judgment interest is 7.50%. For 202, prejudgment interest is 2.08 % and post-judgment interest is 6.75%. Contracting parties may set a different interest rate via express contractual terms. Interest on punitive damages begins to accrue from the earlier of the date judgment is rendered or filed with the court clerk. [57]

G. Punitive Damages. Punitive damages are damages imposed to punish a defendant. At the very least, punitive damages are not allowed unless there is clear and convincing evidence the defendant recklessly disregarded the rights of others. "Reckless disregard" is beyond mere negligence and "clear and convincing evidence" is beyond a preponderance of the evidence, i.e., evidence which provides higher proof than more likely than not. Punitive damages, if awarded, fall into one of three categories. Category I involves "reckless disregard, and damages are limited to the greater of $100,000 or the amount of actual damages awarded. Category II damages involve intentional and malicious actions, and damages cannot exceed the greater of $500,000, twice the amount of actual damages awarded, or the increased financial benefit derived by the defendant as a direct result of the conduct. Category III involves intentional, malicious and life-threatening actions, and has no limitation on the amount of punitive damages.[58] Generally, punitive damages are not allowed in a breach of contract action.[59]

H. Liquidated Damages. Under Oklahoma law, penalties imposed by contract for nonperformance are void; however, a stipulation or condition in a contract providing for the payment of an amount which shall be presumed to be the amount of damage sustained by a breach of such contract are valid when, form the nature of the case, it would be impracticable or extremely difficult to fix the actual damages.[60] Thus, if liquidated damages agreed upon in a contract are such as to be in effect a penalty, then they are void. Oklahoma looks at the following three criteria to distinguish a valid liquidated damages clause from a penalty: (1) the injury caused by the breach must be difficult or impossible to estimate accurately, (2) the parties must intend to provide for damages rather than a penalty, and (3) the sum stipulated must be a reasonable pre-breach estimate of the probable loss.[61] However, a party to a contract cannot recover liquidated damages for a breach for which he himself is responsible or to which he has contributed. Also, there can be no apportionment of liquidated damages where both parties are at fault.[62]

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[1] *H.E. Leonhardt Lumber Co. v. Ed Wamble Distributing Co.,* 378 P.2d 771, 774 (Okla. 1963).
[2] *Okla. Stat*. tit. 42, § 142.6.
[3] *Okla. Stat*. tit. 42, §§ 149, 172.
[4] *Okla. Stat*. tit. 42, § 175 (Priority of mechanic's and materialmen's liens is fact specific and rather complicated; thus, priority of such is beyond the scope of this summary).
[5] *Okla. Stat.* tit. 42, § 173.
[6] *Okla. Stat.* tit. 42, § 176.
[7] *Okla. Stat.* tit. 42, §§ 143.3, 143.4.

[8] *Okla. Stat.* tit. 61, § 102.
[9] *Okla. Stat.* tit. 61, § 103.
[10] *Okla. Stat.* tit. 61, § 103.
[11] *Okla. Stat.* tit. 61, § 104.
[12] *Okla. Stat.* tit. 61, § 105.
[13] *Okla. Stat.* tit. 61, § 107.
[14] *Okla. Stat.* tit. 61, §§ 108, 138.
[15] *Okla. Stat.* tit. 61, § 118.
[16] *Okla. Stat.* tit. 61, § 109.
[17] *Okla. Stat.* tit. 61, § 110.
[18] *Okla. Stat.* tit. 61, § 111.
[19] *Okla. Stat.* tit. 61, § 113.
[20] *Okla. Stat.* tit. 61, § 117.
[21] *Okla. Stat.* tit. 61, § 120.
[22] *Okla. Stat.* tit. 61, § 131.
[23] *Okla. Stat.* tit. 61, § 122.
[24] *Okla. Stat.* tit. 61, § 137.
[25] *Okla. Stat.* tit. 61, §§ 123, 124.
[26] *Jaworsky v. Frolich*, 850 P.2d 1052, 1054 (Okla. 1992); *Okla. Stat*. tit. 12, § 95.
[27] *Frolich*, 850 P.2d at 1054.
[28] *Okla. Stat*. tit. 12, § 109; *Frolich*, 850 P.2d at 1054.
[29] *Frolich*, 850 P.2d at 1055.
[30] *Okla. Stat.* tit. 15, § 765.6(B).
[31] *Okla. Stat*. tit. 15, § 765.6(B).
[32] *Harbour v. Mid-Continent Cas. Co.*, 752 P.2d 258 (Okla. Civ. App. 1987).
[33] *State ex rel. Crawford v. Indem. Underwriters Ins. Co.*, 943 P.2d 1099 (Okla. Civ. App. 1997).
[34] *Id.*
[35] *U.S. Fid. & Guar. Co. v. Federated Rural Elec. Ins. Corp.*, 37 P.3d 828, 831-33 (Okla. 2001).
[36] *Id.*
[37] *Republic Underwriters Ins. Co. v. Fire Ins. Exch.*, 655 P.2d 544, 547 (Okla. 1982).
[38] *United Servs. Auto. Ass'n v. State Farm Fire & Cas. Co.*, 110 P.3d 570, 573 (Okla. Civ. App. 2005).
[39] *Okla. Stat*. tit. 15, § 221(B).
[40] *Okla. Stat*. tit. 15, § 221(C).
[41] *MidAmerica Constr. Mgmt., Inc. v. MasTec N. Am., Inc.*, 436 F.3d 1257, 1260-62 (10th Cir. 2006); *see also* 9 *Okla. Practice, Construction Law* § 2.7 (2014 ed.).
[42] *MidAmerica Constr. Mgmt.*, 436 F.3d at 1260-61.
[43] *Okla. Stat.* tit. 15, §§ 110, 151; *see also Okla. Stat.* tit. 61, § 19; *State ex rel. Oklahoma Bar Ass'n v. Flaniken*, 85 P.3d 824, 827 (Okla. 2004).
[44] *Swanda Bros., Inc. v. Chasco Constructors, Ltd., LLP*, No. CIV-08-199-D, 2010 WL 476639 (W.D. Okla. Feb. 4, 2010) (enforcing "pay-if-paid" provision under Okla. law); *Byler v. Great Am. Ins. Co.*, 395 F.2d 273 (10th Cir. 1968) (recognizing payment risk from owner could have been transferred from the contractor to the subcontractor if the parties had expressed such transfer in unequivocal terms).

[45] *Environmental, Safety & Health, Inc. v. Integrated Pro Svcs, LLC*, No. CIV-08-1215-A, 2011 WL 5412807 (W.D. Okla. Nov. 8, 2011) (refusing to enforce clause as "pay-if-paid" provision because it did not unambiguously shift the risk of the owner's payment to the subcontractor).
[46] *Okla. Stat.* tit. 23, §§ 21, 61.
[47] *Okla. Stat*. tit. 42, § 176.
[48] *Okla. Stat*. tit. 12, § 939; *Okla. Stat*. tit. 12, § 936.
[49] *See, e.g.*, *Kay v. Venezuelan Sun Oil Co.*, 806 P.2d 648, 650 (Okla. 1991).
[50] "For the breach of an obligation arising from contract, the measure of damages, . . ., is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom. No damages can be recovered for a breach of contract, which are not clearly ascertainable in both their nature and origin." *Okla. Stat*. tit. 23, § 21.
[51] *Ralph D. Nelson Co., Inc. v. Beil,* 671 P.2d 85 (Okla. Civ. App. 1983).
[52] *United Golf, LLC v. Westlake Chem. Corp.*, No. 05-CV-0495-CVE-PJC, 2006 WL 2807342, at *3 (N.D. Okla. Aug. 15, 2006).
[53] *Okla. Stat*. tit. 23, § 22.
[54] *Okla. Stat*. tit. 12, §§ 727.1(E), (K).
[55] *Okla. Stat*. tit. 12, §§ 727.1(A)(1), (C).
[56] Notice re: Interest on Judgments, http://www.oscn.net/applications/oscn/DeliverDocument.asp?CiteID=477388
[57] *Okla. Stat.* tit. 12, §§ 727.1(D), (G).
[58] *Okla. Stat*. tit. 23, § 9.1.
[59] *Wilspec Techs., Inc. v. DunAn Holding Grp., Co.*, 204 P.3d 69, 74 (Okla. 2009).
[60] *Okla. Stat.* tit. 15, §§ 213, 215(A).
[61] *Sun Ridge Inv'rs, Ltd. v. Parker*, 956 P.2d 876, 878 (Okla. 1998).
[62] *Flour Mills of Am., Inc. v. Am. Steel Bldg. Co.*, 449 P.2d 861, 874 (Okla. 1968).