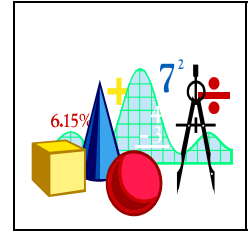


CONSTRUCTION LAWLETTER

For Industry Professionals, Managers, Trades & Suppliers



J. NORMAN STARK, ATTORNEY and REGISTERED ARCHITECT

JURIS DOCTOR, B. ARCHITECTURE, B.F.A.

The Stark Building • 1310 East 49th Street • Cleveland, Ohio 44114-3803

Tel.: (216) 426-8400 • Fax: (216) 426-8411 • E-Mail:

www.Normstark@aol.com

In Florida • 6500 Midnight Pass Rd. #105 • Sarasota, FL

34242 • (941) 349-2061•

Homepage: www.Jnormanstark.com

Vol. 2004-10

October, 2004

LIABILITY FOR JOBSITE SAFETY, ADMINISTRATION

(PART 2 – CONT'D. FROM PREVIOUS ISSUE)

The opinion of the Court, in pertinent part, continued:

"If we apply here by analogy the cases concerning a general contractor's duty to a subcontractor's employees, then an architect or engineer generally has no duty to the employees of independent subcontractors, unless the architect or engineer actually participates in subcontractors' work or explicitly contracts for safety responsibilities.

This rule is consistent with Ohio law concerning design professionals' liability for third parties' economic damages. Specifically, absent direct contractual privity between a design professional and an injured third party, the design professional sued for professional negligence generally is not liable for a third party's economic damages. *Floor Craft Floor Covering, Inc. v. Parma Community Gen. Hosp. Assn.* (1990), 54 Ohio St.3d 19 560 N.E.2d 206. Despite the lack of privity, however, a design professional's significant participation in a contractor's work may create a nexus that substitutes for contractual privity. *Clevecon, Inc. v. Northeast Ohio Regional Sewer Dist* (1993), [90 Ohio App.3d 215](#), 220, 628 N.E.2d 143, 146. **Thus, a design professional is not liable for third party economic damages when he or she does not participate in the project or interact [Page 806] with the contractor and signs a standard contract providing the design professional no role in construction means, methods, techniques or procedures; but a design professional who exercises "excessive control over the contractor" through the power to stop the work and give orders about the project is liable for such economic damages. Id. at 220-221, 628 N.E.2d at 146-147.**" (Emphasis supplied.)

Nicholson v. Turner/Cargile (1995), 107 Ohio App.3d 797. * * *

GREAT LITERARY TAUNTS

"I feel so miserable without you, it's almost like having you here." --- Stephen Bishop

"A modest little person, with much to be modest about." -- Winston Churchill (about Clement Atlee)

"I've just learned about his illness. Let's hope it's nothing trivial." --- Irvin S. Cobb

"I have never killed a man, but I have read many obituaries with great pleasure." --- Clarence Darrow

"He has never been known to use a word that might send a reader to the dictionary. --- William Faulkner (about Ernest Hemingway)

"He is not only dull himself, he is the cause of dullness in others." --- Samuel Johnson (would love to know the target of this one!)

"He had delusions of adequacy." --- Walter Kerr

"I've had a perfectly wonderful evening. But this wasn't it." --- Groucho Marx

"They never open their mouths without subtracting from the sum of human knowledge." --- Thomas Brackett Reed

"Sound is like water. If you drill one hole in the wall the sound will leak right through."
JAY BRAUN

Author: **J. NORMAN STARK** is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Interior Architectural Designer, Planner and Senior Appraiser (ASA). He is admitted to practice law before the Bar of Ohio, the US District Courts, Ohio and Illinois (Central Dist.), the US Court of Appeals, and the U.S. Supreme Court. A former Member of the Ohio Board of Building Standards, he has

professional experience in Business, Construction, Real Property, Mechanics' Liens, Litigation, Collections, and Construction-Legal Management.
