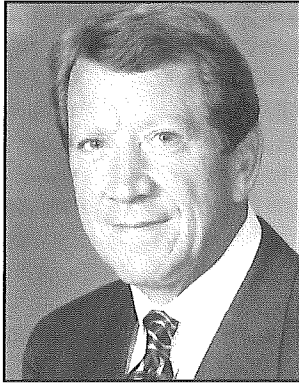
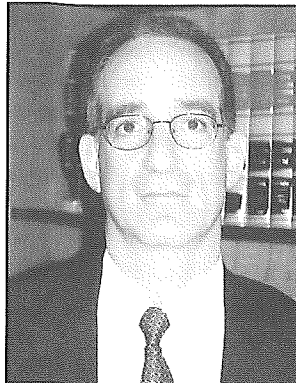


Fifty-State Survey of Anti-Indemnity Statutes and Related Case Law

Allen Holt Gwyn and Paul E. Davis



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The April 1992 issue of *The Construction Lawyer* surveyed a number of states on anti-indemnity statutes affecting the construction industry. Those authors¹ discussed measures that state legislatures had enacted to curb what was perceived as a disturbing trend—parties that controlled the work requiring their weaker contracting partners to indemnify them, despite the latter's own negligence. That article focused on statutory restrictions for such indemnification. This article updates it.

Since 1992, a handful of states have come on board, and others have further restricted the ability of the parties to various construction contracts from requiring other parties to indemnify them for their own negligence. We also have added discussions of common law limitations on the right to be indemnified against one's own negligence, whether workers' compensation statutes bar such indemnification, and whether a contractual requirement to name the indemnitee as an additional insured circumvents an anti-indemnity statute.

It is quite common in construction contracts for the parties to include broad indemnity provisions requiring one party to indemnify the other for certain losses and expenses incurred on the project.² Courts closely scrutinize indemnity provisions, and generally will enforce them only if the obligation to indemnify the at-fault indemnitee is clear and unequivocal.³ Further restricting the ability of parties to agree contractually to indemnify one another are statutes in

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thirty-eight states. These anti-indemnity laws can be placed into three different categories.⁴ The scope of the statutes in these thirty-eight states is discussed below and summarized in the chart that follows.⁵

Type I: Statutes Barring Indemnity for Indemnitee's Sole Negligence

The first form of anti-indemnity statute voids provisions for losses or damages arising from the indemnitee's sole negligence. This is the most common type of legislation, present in eighteen states,⁶ and the Michigan statute is typical:

A covenant, promise, agreement or understanding in, or in connection with or collateral to, a contract or agreement relative to the construction, alteration, repair or maintenance of a building, structure, appurtenance and appliance, including moving, demolition and excavating connected therewith, purporting to indemnify the promisee against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee or indemnitee, his agents or employees, is against public policy and is void and unenforceable.⁷

The question sometimes arises as to the scope of the prohibition—whether an indemnity agreement may be interpreted to bar only a part of the obligation. In *Ford v. Clark Equip. Co.*,⁸ the court upheld a clause despite the application of the anti-indemnity statute and the presence of an obligation to protect the indemnitee for its sole negligence. In this case, the provision⁹ contained two promises: one for the buyer's sole negligence and the second if the injury was caused in part by the negligence of the buyer. The court struck down only the initial promise. The latter part extended only to shared responsibility and therefore survived.

Several Type I anti-indemnity statutes also bar indemnification for the indemnitee's willful misconduct. Such states include Alaska, California, Hawaii, and Indiana.

Type II: Statutes Barring Indemnity for Indemnitee's Negligence

The second version of anti-indemnity statute voids provisions for losses or damages arising from the indemnitee's negligence, whether sole or concurrent. At least sixteen states have enacted such legislation;¹⁰ Illinois is typical:

With respect to contracts or agreements, either public or private, for the construction, alteration, repair or maintenance of a building, structure, highway bridge, viaducts or other work dealing with construction, or for any moving, demolition or excavation connected therewith, every covenant, promise or agreement to indemnify or hold harmless another person from that person's own negligence is void as against public policy and wholly unenforceable.¹¹

The Illinois Supreme Court has not interpreted this statute broadly. In *Liccardi v. Stolt Terminals, Inc.*,¹² the

lower courts found that an indemnity provision was void under the statute because it covered damages caused by the contractor's own negligence. The Illinois Supreme Court disagreed, holding that the parties at the time of contracting were presumed to know of the statute's prohibitions and that they understood the indemnity provision to apply only if the losses were the proximate result of the indemnitee's wrongful acts or omissions. Thus, the court enforced the obligation provision based on the parties' imputed understanding of what acts were to be covered, not the exact language of the clause itself.

Type III: Statutes Barring Indemnity of Design Professional

The third kind of statute voids provisions that purport to indemnify a design professional from liability arising from its services. This category actually is comprised of three types of statutory schemes. The first concerns those four states that void only this type of indemnification and lack a broader, general anti-indemnification statute.¹³ The next group of three states involves a general anti-indemnification statute applicable to others on the construction project and a separate law for design professionals.¹⁴ The final group is comprised of twelve states that have a general anti-indemnification statute and expressly include the design professional within its scope.¹⁵

New York typifies the first and second groups:

Agreements by owners, contractors, subcontractors or suppliers to indemnify architects, engineers and surveyors from liability caused by or arising out of defects in maps, plans, designs and specifications void and unenforceable. Every covenant, agreement or understanding in, or in connection with any contract or agreement made and entered into by owners, contractors, subcontractors or suppliers whereby an architect, engineer, surveyor or their agents, servants or employees are indemnified for damages arising from liability for bodily injury to persons or damage to property caused by or arising out of defects in maps, plans, designs or specifications, prepared, acquired or used by such architect, engineer, surveyor or their agents, servants or employees shall be deemed void as against public policy and wholly unenforceable.¹⁶

North Carolina exemplifies the third group:

Any promise or agreement in, or in connection with, a contract or agreement relative to the design, planning, construction, alteration, repair or maintenance of a building, structure, highway, road, appurtenance or appliance, including moving, demolition and excavating connected therewith, purporting to indemnify or hold harmless the promisee, the promisee's independent contractors, agents, employees, or indemnitees against liability for damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence, in whole or in part, of the promisee, its independent contractors, agents, employees, or indemnitees, is against public policy and is void and unenforceable. Nothing contained in this section shall prevent or prohibit a contract, promise or agreement whereby a promisor shall indemnify or hold harmless any promisee or the promisee's independent contractors, agents, employees or indemnitees against liability for damages resulting from the sole negligence of the promisor, its agents or employees. This section shall not affect an insurance contract, workers' compensation, or any other agreement issued by an insurer, nor shall this section apply to promises or agreements under which a public utility as defined in G.S. 62-3(23) including a railroad corporation as an indemnitee.¹⁷

These types of statutes bar indemnification of the designer for liability arising from its professional services. Whether the architect or engineer will be indemnified depends not on the allegations made by the plaintiff, but rather on the court's determination of responsibility.

In *Estate of Nasser v. Port Auth. of New York & New Jersey*,¹⁸ the court addressed the scope of the New York statute. A jury had found that the contractor, subcontractor, owner, and realtor were negligent, but the project architect was not. The architect sought indemnity from the contractor, who argued that because the plaintiffs had alleged that the architect had been negligent, the contractual indemnity provision violated N.Y. Gen. Oblig. Law section 5-324. The court rejected the contractor's interpretation of the statute, finding that it did not exclude indemnification based on unproven allegations of negligence.

Effect of Workers' Compensation Statutes on Indemnification Rights

There is an interesting interplay between the exclusive remedy of workers' compensation statutes and contractual indemnification obligations. A question that often arises is whether a contractor may seek indemnification from a subcontractor if an employee of the subcontractor (who cannot pursue the subcontractor) sues the contractor directly.

The majority of the states directly addressing this issue have held that indemnification is not affected by any workers' compensation immunity the indemnitor may otherwise possess.¹⁹ California has gone even further. Its Labor Code has been interpreted as specifically permitting an indemnitee to enforce a contractual indemnity provision against the employer/indemnitor.²⁰

Requirement to Name Indemnitee as Additional Insured

Does a contractual requirement to name another party to the contract (or a third party) as an additional insured constitute an allowable circumvention of an anti-indemnity statute? Many state statutes are silent on this issue, and most states have no decision directly addressing it.

A few notable exceptions exist. Missouri's anti-indemnity statute expressly validates additional insured agreements:


An agreement containing a party's promise to indemnify, defend or hold harmless another person, if the agreement also requires the party to obtain specified limits of insurance to insure the indemnity obligation and the party had the opportunity to recover the cost of the required insurance in its contract price; provided, however, that in such case the party's liability under the indemnity obligation shall be limited to the coverage and limits of the required insurance.²¹

In Michigan, the anti-indemnity statute was silent on this issue, but a reviewing court found a public policy rationale for voiding a contractual obligation to procure an insurance policy that included coverage for the indemnitor's (insured's) sole negligence.²² In *Peeples v. Detroit*, the court held that the Michigan legislature had declared it to be contrary to public policy in Michigan for anyone in the construction industry to make any agreement that would

absolve him from liability for his sole negligence, and a stipulation that a subcontractor must procure insurance that includes coverage for the general contractor's sole negligence contravenes the statute.

In a subsequent Michigan case,²³ the issue before the court was brought by the carrier—whether the policy, once procured, was enforceable. The court enforced the insurance policy. It could not see how the question of who should pay the premium, or the public policy surrounding that question, was of any concern to the carrier, especially after the insurer had collected its premium. The carrier's attempt to avoid coverage because the wrong party paid for the policy was without merit.

Conclusion

In most states, public policy for some time has recognized that lower-tier construction participants generally cannot effectively bargain away broad indemnity agreements.²⁴ Anti-indemnity statutes afford protection to those parties. Whether one believes that such laws, especially Type I statutes, are really needed, or that these enactments unfairly limit the ability of parties to allocate risks of loss, one thing is certain: states are not retreating from this policy. For now, broad indemnification against one's own negligence generally will not be enforced. 

Fifty-State Survey of Anti-Indemnity Statutes and Case Law ²⁵						
State	Statute Barring Indemnity for Indemnitee's Sole Negligence	Statute Barring Indemnity for Indemnitee's Negligence	Common Law Indemnification Restrictions	Statute Barring Indemnity of Design Professionals	Does Workers' Compensation Act Bar Indemnification?	Does Requirement to Name Indemnitee as Additional Insured Violate Anti-Indemnity Statute?
Alabama (Alexander Moseley)			Cases allow indemnification except for intentional misconduct		No	No
Alaska (Robert Dickson)	Alaska Stat. § 45.45.900 Includes willful misconduct				No	No
Arizona (Stephen Richman)	Ariz. Rev. Stat. § 32-1159	Ariz. Rev. Stat. § 34-226 (local governments); Ariz. Rev. Stat. § 41-2586 (state government)		Ariz. Rev. Stat. § 32-1159 expressly bars indemnification of DP due to DP's sole negligence		
Arkansas (Stephen Niswanger)			Cases allow indemnification		Cases allow indemnification	
California (Carina Enbada)	Cal. Civ. Code § 2782 Includes willful misconduct			Cal. Civ. Code § 2782 bars most indemnifications of DP due to DP's sole negligence	Cal. Labor Code § 3864 allows indemnification	No
Colorado (Linwood Holt)		Colo. Rev. Stat. § 13-50.5-102(8) (limited to indemnification of public entities)			No	No
Connecticut (Wendy Venoit)		Conn. Gen. Stat. § 52-572k			No	No

Fifty-State Survey of Anti-Indemnity Statutes and Case Law²⁵

State	Statute Barring Indemnity for Indemnitor's Sole Negligence	Statute Barring Indemnity for Indemnitor's Negligence	Common Law Indemnification Restrictions	Statute Barring Indemnity of Design Professionals	Does Workers' Compensation Act Bar Indemnification?	Does Requirement to Name Indemnitor As Additional Insured Violate Anti-Indemnity Statute?
Delaware (Richard Forsten)		Del. Code Ann. tit. 6, § 2704		Del. Code Ann. tit. 6, § 2704 expressly bars indemnification of DP	No	No
District of Columbia (Joseph West)			Cases allow indemnification			
Florida (George Meyer)		Fla. Stat. Ann. § 725.06 includes gross negligence, and willful, wanton, and intentional misconduct		Fla. Stat. Ann. § 725.06 expressly bars indemnification of DP Fla. Stat. Ann. § 725.08 limits indemnification by DP on public projects	No	No
Georgia (James Butler)	Ga. Code Ann. § 13-8-2				No	No
Hawaii (Kenneth Kupchak)	Haw. Rev. Stat. § 431:10-222 includes willful misconduct				No	No
Idaho (Geoffrey McConnell)	Idaho Code § 29-114				No	No case law
Illinois (Ty Laurie)		740 Ill. Comp. Stat. 35/1			No	No
Indiana (Terrence Brookie)	Ind. Code Ann. § 26-2-5-1 includes willful misconduct			Ind. Code Ann. § 26-2-5-1 expressly bars indemnification of DP for DP's sole negligence & willful misconduct	No	No
Iowa (Benjamin Ullem)			Cases allow indemnification where intent is clear & unequivocal		No	
Kansas (Mark Hinderks)			Cases allow indemnification where intent is clear & unequivocal		No	

Fifty-State Survey of Anti-Indemnity Statutes and Case Law²⁵

State	Statute Barring Indemnity for Indemnitor's Negligence	Statute Barring Indemnity for Indemnitor's Negligence	Common Law Indemnification Restrictions	Statute Barring Indemnity of Design Professionals	Does Workers' Compensation Act Bar Indemnification?	Does Requirement to Name Indemnitor As Additional Insured Violate Anti-Indemnity Statute?
Kentucky (Buckner Hinkle)			Cases allow indemnification where intent is clear & unequivocal		No	No
Louisiana (Danny Shaw)		La. Rev. Stat. Ann. § 38:2216(G) (public projects)		La. Rev. Stat. Ann. § 38:2216(G) expressly bars indemnification of DP on public projects	No	
Maine (Rebecca Farnum)			Cases allow indemnification where intent is clear & unequivocal		No	
Maryland (Paul Sugar)	Md. Code Ann. Cts. & Jud. Proc. § 5-401				No	No
Massachusetts (Christopher Noble)		Mass. Gen. Laws Ann. ch. 149, § 29C (applies only to indemnity by subcontractors)				
Michigan (James Case)	Mich. Comp. Laws Ann. § 691.991				No	Yes
Minnesota (Dean Thompson)		Minn. Stat. Ann. § 337.02				Minn. Stat. Ann. § 337.05 expressly validates additional insured agreements
Mississippi (Robert Wise)		Miss. Code Ann. § 31-5-41			No	No
Missouri (Denise Farris)		Mo. Ann. Stat. § 434.100 (barred unless indemnitor is allowed to procure insurance to cover the obligation and the cost of the insurance is included in the contract price)		Mo. Ann. Stat. § 434.100 expressly bars indemnification of DP	No	Mo. Ann. Stat. § 434.100 expressly validates additional insured agreements
Montana (Neil Westesen)			Cases allow indemnification where intent is clear & unequivocal		Yes	

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Nebraska (David Hecker)		Neb. Rev. Stat. Ann. § 25-21,187(1)			No	No case law
Nevada (Leon Mead)						
New Hampshire (Kelly Gagliuso)			Cases allow indemnification	N.H. Rev. Stat. Ann. § 338-A:1 bars indemnification only of DP	No	
New Jersey (Roger Sauer)	N.J. Stat. Ann. § 2A:40A-1			N.J. Stat. Ann. § 2A:40A-2 bars indemnification of DP resulting from sole negligence of DP	No	No case law
New Mexico (Sean Calvert)		N.M. Stat. Ann. § 56-7-1		N.M. Stat. Ann. § 56-7-1 bars indemnification of DP	No	No published cases
New York (Dana Wordes)		N.Y. Gen. Oblig. Law § 5-322.1		N.Y. Gen. Oblig. Law § 5-324 bars indemnification of DP	Limits implied indemnity	No
North Carolina (David Senter)		N.C. Gen. Stat. § 22B-1		N.C. Gen. Stat. § 22B-1 bars indemnification of DP	No	No
North Dakota (Patricia Monson)				N.D. Cent. Code § 9-08-02.1		
Ohio (Michael Tarullo)		Ohio Rev. Code Ann. § 2305.31		Ohio Rev. Code Ann. § 2305.31 bars indemnification of DP	No	Courts are split
Oklahoma (Larry Lippe)			Cases allow indemnification where intent is clear & unequivocal		No	
Oregon (George Mead)	Or. Rev. Stat. § 30.140				Yes, but may be waived by contract	Or. Rev. Stat. § 30.140(2) expressly validates additional insured agreements

Fifty-State Survey of Anti-Indemnity Statutes and Case Law²⁵

State	Statute Barring Indemnity for Indemnitor's Sole Negligence	Statute Barring Indemnity for Indemnitor's Negligence	Common Law Indemnification Restrictions	Statute Barring Indemnity of Design Professionals	Does Workers' Compensation Act Bar Indemnification?	Does Requirement to Name Indemnitor As Additional Insured Violate Anti-Indemnity Statute?
Pennsylvania (Richard Lowe)			Cases allow indemnification where intent is clear & unequivocal	Pa. Stat. Ann. tit. 68, § 491 bars indemnification only of DP	Yes, but may be waived by explicit waiver	No
Rhode Island (Christopher Whitney)		R.I. Gen. Laws § 6-34-1		R.I. Gen. Laws § 6-34-1 bars indemnification of DP	No	No
South Carolina (Franklin Elmore)	S.C. Code Ann. § 32-2-10			S.C. Code Ann. § 32-2-10 bars indemnification of DP	No	No
South Dakota (David Nadolski)	S.D. Codified Laws § 56-3-18			S.D. Codified Laws § 56-3-16 bars indemnification of DP		
Tennessee (Gerald Kirksey)	Tenn. Code Ann. § 62-6-123				No	No
Texas (Fred Wilshusen)			Cases allow indemnification where intent is clear & unequivocal	Tex. Civ. Prac. & Rem. Code Ann. § 130.002 bars indemnification of DP	No	
Utah (Robert Babcock)	Utah Code Ann. § 13-8-1					
Vermont (William Fead)			Cases allow indemnification where intent is clear & unequivocal		No	
Virginia (Richard Smith)	Va. Code Ann. § 11-4.1			Va. Code Ann. § 11-4.4 bars indemnification of DP	No	No
Washington (Douglas Oles)	Wash. Rev. Code § 4.24.115				Yes, unless expressly waived by contract	
West Virginia (Johnson Gabhart)	W.Va. Code § 55-8-14				No	No

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State	Statute Barring Indemnity for Indemnitee's Sole Negligence	Statute Barring Indemnity for Indemnitee's Negligence	Common Law Indemnification Restrictions	Statute Barring Indemnity of Design Professionals	Does Workers' Compensation Act Bar Indemnification?	Does Requirement to Name Indemnitee As Additional Insured Violate Anti-Indemnity Statute?
Wisconsin (Kimberly Hutardo)			Cases allow indemnification where intent is clear & unequivocal		Some restrictions on indemnification	
Wyoming (Boyd McMaster)						

Endnotes

1. Zela G. Claiborne and Elizabeth C. Smith, edited by Allen Holt Gwyn.

2. P. BRUNER & P. O'CONNOR, BRUNER & O'CONNOR ON CONSTRUCTION LAW § 10:1, at 732 (2002).

3. See, e.g., McNally & Nimergood v. Neumann-Kiewit Constructors, Inc., 648 N.W.2d 564 (Iowa 2002); Noble Steel, Inc. v. Williams Bros. Concrete Constr. Co., 49 P.3d 766 (Okla. App. 2002).

4. Although we have attempted to categorize the statutes in this article and make some generalizations, each statute is unique in some respect, some more than others. An indemnity provision that is valid and enforceable in the jurisdiction where the contract was drafted may be void in the jurisdiction where a lawsuit is brought. Judicial interpretation of the same or similar statutory language may be vastly different from jurisdiction to jurisdiction.

5. At the end of this article is a chart that summarizes these topics. As with any survey, many nuances of a particular state's statute or case law cannot be explained adequately within the confines of this short text or chart. We advise all readers to use this article as a starting point. We know no readers would simply rely on this article as the last word on this topic, but we issue this warning to allow us to be equitably indemnified by readers from claims against us arising from misplaced reliance on statements made herein.

6. The eighteen states with their statutes are Alaska, ALASKA STAT. § 45.45.900 (Michie); Arizona, ARIZ. REV. STAT. § 32-1159; California, CAL. CIV. CODE § 2782 (West); Georgia, GA. CODE ANN. § 13-8-2; Hawaii, HAW. REV. STAT. § 431:10-222; Idaho, IDAHO CODE § 29-114 (Michie); Indiana, IND. CODE ANN. § 26-2-5-1 (Michie); Maryland, MD. CODE ANN. CTS. & JUD. PROC. § 5-401; Michigan, MICH. COMP. LAWS ANN. § 691.991 (West); New Jersey, N.J. STAT. ANN. § 2A:40A-1 (West); Oregon, OR. REV. STAT. § 30.140; South Carolina, S.C. CODE ANN. § 32-2-10 (Law. Co-op.); South Dakota, S.D. CODIFIED LAWS § 56-3-18 (Michie); Tennessee, TENN. CODE ANN. § 62-6-123; Utah, UTAH CODE ANN. § 13-8-1; Virginia, VA. CODE ANN. § 11-4.1 (Michie); Washington, WASH. REV. CODE § 4.24.115; and West Virginia, W.VA. CODE § 55-8-14.

7. MICH. COMP. LAWS § 691.991.

8. 274 N.W.2d 33 (Mich. App. 1978).

9. "It is understood and agreed that the seller will indemnify and save harmless the buyer from and against any and all claims for injury or death to persons or damage to property (including costs of litigation and attorneys' fees) in any manner caused by, arising from, incident to, connected with or growing out of the work to be performed under this contract, regardless of whether such claim is alleged to be caused, in whole or in part, by negligence or otherwise, on the part of buyer or its employees. Seller will promptly notify buyer in writing of any such claim, setting forth all details thereof known to seller."

10. The sixteen states with their statutes are Colorado, COLO. REV. STAT. § 13-50.5-102(8); Connecticut, CONN. GEN. STAT. § 52-572k;

Delaware, DEL. CODE ANN. tit. 6, § 2704; Florida, FLA. STAT. ANN. § 725.06 (West); Illinois, 740 ILL. COMP. STAT. 35/1; Louisiana, LA. REV. STAT. ANN. § 38:2216(G) (West); Massachusetts, MASS. GEN. LAWS ANN. ch. 149, § 29C (West); Minnesota, MINN. STAT. ANN. § 337.02 (West); Mississippi, MISS. CODE ANN. § 31-5-41; Missouri, MO. ANN. STAT. § 434.100 (West); Nebraska, NEB. REV. STAT. ANN. § 25-21,187(1) (Michie); New Mexico, N.M. STAT. ANN. § 56-7-1 (Michie); New York, N.Y. GEN. OBLIG. LAW § 5-322.1 (McKinney); North Carolina, N.C. GEN. STAT. § 22B-1; Ohio, OHIO REV. CODE ANN. § 2305.31 (West); and Rhode Island, R.I. GEN. LAWS § 6-34-1.

11. 740 ILL. COMP. STAT. 35/1.

12. 178 Ill. 2d 540, 687 N.E.2d 968 (1997).

13. New Hampshire, N.H. REV. STAT. ANN. § 338-A:1; North Dakota, N.D. CENT. CODE § 9-08-02.1; Pennsylvania, PA. STAT. ANN. tit. 68, § 491 (West); and Texas, TEX. CIV. PRAC. & REM. CODE ANN. § 130.002 (Vernon).

14. New Jersey, N.J. STAT. ANN. § 2A:40A-2 (West); New York, N.Y. GEN. OBLIG. LAW § 5-324 (McKinney); and South Dakota, S.D. CODIFIED LAWS § 56-3-16 (Michie).

15. The twelve states are Arizona, California, Delaware, Florida, Indiana, Louisiana, Missouri, New Mexico, North Carolina, Ohio, Rhode Island, and South Carolina.

16. N.Y. GEN. OBLIG. LAW § 5-324.

17. N.C. GEN. STAT. § 22B-1.

18. 155 A.D.2d 250, 546 N.Y.S.2d 626 (1st Dep't 1989).

19. See, e.g., Manson-Osberg Co. v. State, 552 P.2d 654 (Alaska 1976); Camp, Dresser & McKee, Inc. v. Paul N. Howard, 721 So. 2d 1255 (Fla. App. 1998). But see Roberts v. Gray's Crane & Rigging, 697 P.2d 985 (Or. App. 1985) (indemnity agreement whereby subcontractor agreed to indemnify lessor of crane for all claims, including those brought by subcontractor's employees, was voided by workers' compensation statutes).

20. Gonzales v. R.J. Novick Constr. Co., 575 P.2d 1190 (Cal. 1978) (interpreting CAL. LABOR CODE § 3864 (West)).

21. MO. ANN. STAT. § 434.100.2(8) (West).

22. Peoples v. Detroit, 297 N.W.2d 839 (Mich. App. 1980).

23. Sentry Insurance Co. v. National Steel Corp., 382 N.W.2d 753 (Mich. App. 1985).

24. See BRUNER & O'CONNOR, *supra* note 2, at § 10:90.

25. The author furnishing the information for each state is listed beneath the state name in the table.