Monticello

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A Non-Profit Organization for Architect-Lawyers

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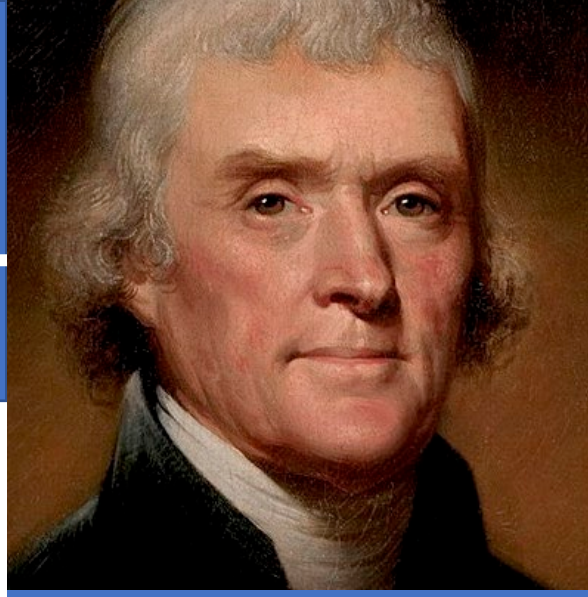

PRESIDENT'S MESSAGE
By Donna Hunt and Laura Jo Lieffers

[Editor's Note: As guest authors, Past-President Donna Hunt and President-Elect Laura Jo Lieffers, have written this issue's President's Message].

Greetings Members!

As the 2022-23 TJS year comes to a close, we look back over the past few years and can see that our pack of architect-lawyers has come a long way, but still has much to do to keep members informed, engaged and interested. We are very excited to start the 2023-2024 TJS year off with the upcoming Annual Meeting in San Francisco, where we hope to see you!

As we look forward to the upcoming year, we want to get back to basics. Our most important initiative is to retain and bring value to the current Membership and, ideally, grow the Membership. In order to retain, we need to reinvigorate the current Membership and we need your help! Our plan for the 2023-2024 year is to present educational and social opportunities to benefit the members. If this sounds interesting to you, let us know! Send us your ideas! What does TJS mean to you? Help TJS grow and thrive as a group. To achieve this, the TJS board will further the initiatives already in place and will focus on new initiatives being launched as of this newsletter. For TJS to further its initiative stated in the bylaws, Members are encouraged to participate in one or more of the existing, proposed or new committees and programs currently available set out below:

AIA CES Provider. TJS is an approved AIA CES provider. The program is available for TJS Members to use to give seminar participants AIA credits. This year, TJS would like to extend the opportunity to Members to present seminars virtually to your clients (and our Members) or to submit a seminar that can be submitted to the AIA for approved credit to add to the TJS AIA CES library. If you are interested in presenting a seminar or submitting a seminar for use under the AIA CES Subscription, Please contact Laura Lieffers or Chuck Heuer (laura.lieffers@perkinswill.com or cheuer@heuerlaw.com) and they will assist you by registering the seminar. When a seminar is presented, a Certificate of Completion will be awarded to all who complete the seminar. If you are an AIA Member, TJS will report completion of the seminar directly to the AIA. This could be a great networking and marketing opportunity for you!

(continued on p. 2)

Know of Another Architect-Lawyer Who Has Not Yet Joined The Jefferson Society, Inc.?

Send his or her name to TJS President-Elect Laura Jo Lieffers at: Laura.Lieffers@perkinswill.com and we will reach out to them. Candidates must have dual degrees in architecture and law.

Inside This Issue:

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Monticello. The *Monticello* newsletter has been the one constant since the beginning of TJS. Bill Quatman has unfailingly prepared *Monticello* from cover to back page for the past 10 plus years and for that we are so grateful. Thank you Bill! Please accept this writing as a call for Articles for an upcoming issue of *Monticello*. Most of us have written an article here and there, but we encourage you to share your vast knowledge and experience with the TJS Membership. Bill is currently managing *Monticello* and will be passing the baton at the end of this year. Michael Bell has graciously agreed to step in as Editor and asks the Membership for an additional member or two to volunteer to gather articles focusing on law. Donna Hunt has also agreed to participate in soliciting articles and assisting Michael. Become a published author now – send us your articles!

Supreme Court of the United States Admission. To all Members who are not members of the U.S. Supreme Court Bar, think about joining the admissions group when we have a date. All 26 members who were admitted in 2019 were happy they did so and were surprised at how special the process and day turned out. We are waiting to hear back from SCOTUS for the next available Admissions date and we expect to hear back in September, so stay tuned.

Activities - Trip to Monticello and Other Venues and Activities. Many members have talked about making a trip to Monticello in Charlottesville, Virginia. Let's do it! Why not? Would you be interested in a planned trip at a random time of the year or, would you be interested in having an annual meeting at Monticello? Let us know! In addition to visiting Monticello there are other activities that Members may want to do as a small local group or a Membership-wide group. The activity could be specific to a local area for instance; taking a duck boat tour of Boston; cruising on the Circle Line in New York; taking the Architectural Boat Tour in Chicago; or doing a historic tour of Charleston. If you have an idea for an event, please contact the TJS President-Elect Laura Jo Lieffers.

Engagement of new Members on the Board and in Officers Roles. Let's face it, we all get older each year. Many of the founding Members are on their way to, or are, enjoying retirement. Many of our current Board members have been on the Board for multiple terms and while they (we) would like to continue, we encourage those who have not been on the Board to have the opportunity to enjoy that experience. If you are interested, please contact the TJS President-Elect Laura Jo Lieffers.

In closing, the writers can attest that participation with other TJS Members on committees, the *Monticello* newsletter, and the Board is a very pleasant and fulfilling experience - and the time involved is minimal. It is an excellent way to build new friendships and enjoy each other's company socially, as well as professionally. We hope all Members can find a way to actively participate in The Jefferson Society and enjoy a similar experience.

Sincerely,

Donna and Laura Jo

MEMBERS IN THE NEWS!

Robyn Baker, Esq., LEED AP has started a new position as Acting General Counsel and Associate Principal at CallisonRTKL. Congratulations, Robyn (formerly Senior Associate Vice President and Associate General Counsel at CallisonRTKL). Robyn has her J.D. from Southwestern Law School and her B.Arch. from California State Polytechnic Univ. – Pomona. You can still reach her at: robyn.baker@crtkl.com

Jessyca Henderson, Esq., AIA, CPHC is now a Principal and Assistant General Counsel at HKS. Jessyca will remain in the Washington, DC area in her new role. Jessyca has her M.Arch. from Tulane Univ. and her J.D. from Concord Law School at Purdue Univ. Global. She was formerly Associate General Counsel for the AIA. Her new work email address is jhenderson@hksinc.com

Bill Quatman, FAIA, Esq. has been named as a 2023 ICON Award Recipient by Missouri Lawyers Media. These awards recognize 25 men and women attorneys and judges age 60 and older for their exemplary careers and longstanding commitment to the Missouri legal community. Bill and the 24 other honorees will be recognized at the Missouri Lawyers Media annual ICON Awards luncheon on June 15th.

Do You have a new job or award to share? Email the editor at: bill@quatmanadr.com

THOMAS JEFFERSON AND HIS VIOLIN.

Did you know that Thomas Jefferson played the violin? Yes, the third President of our nation was not only a lawyer and an architect, but he was also an accomplished violinist! A true American "Renaissance man," Jefferson learned to read music and to play the violin, and by age fourteen he was capable of writing down his favorite fiddle tunes. At the age of 20, Jefferson wrote to his friend and classmate John Page of his intention to make a grand tour of Europe and, while, in Italy, "buy me a good fiddle." At a certain point after graduating from the College of William and Mary and while studying law, he took lessons from Francis Alberti, an Italian émigré living in Williamsburg. Soon after we find him participating in musical evenings at the palace of Francis Fauquier, the royal governor of Virginia.

Thomas Jefferson bought a "pocket fiddle" that accompanied him wherever he went. Jefferson scholars catalogued the musical repertoire he had in his possession around 1783, when he was 40 years old. This included works by Pugnani, Corelli, Boccherini, and more. Jefferson had also said himself that he had practiced a minimum of 3 hours a day for over a dozen years. 3 hours a day – every day! Proof that he was an extraordinary violinist is found in his possession of at least 3 violins. One of Jefferson's violins was acquired in 1768 for five pounds from a druggist in Williamsburg. When the Jefferson family home, Shadwell, burned down in 1770, the violin was one of the few possessions to be saved. Legend has it that Jefferson asked about the fate of his books and violin before he asked about his mother!

Many wonder just "how good" Jefferson really was on the violin. Nobody really knows, but he was known for writing some of the most difficult violin pieces of our time. Through bits of clues and recorded history, we can take an educated guess at his extraordinary violin proficiency. On May 25, 1768, Thomas Jefferson may have acquired a violin made in made in Cremona, Italy in the 17th century. (Cremona, Italy, being the "royal capital" of violin making, the home of Stradivari and the Amati and Guarneri families). This violin remained with him until his death in 1826.

According to some sources, this was an "Amati violin," made by Nicolo Amati (1596-1684). *(Amati violins are almost never played in public. Most of them are kept in museums or private collections and a Nicolo Amati is worth around $600,000).*

While he was in Paris during the 1780s, Jefferson may have purchased a bow by François Tourte (pronounced "*toort*"), which represented a significant change in the mechanics of bow design and has remained the accepted standard ever since. The inverted bend in the stick makes possible an even pressure between bow-hair and string through the whole stroke, which made it easier to play the long lyrical melodies and intricate, wide-ranging allegros of the music of Corelli and Haydn. Thomas Jefferson's younger brother, Randolph, who as a youth also studied the violin, was more inclined toward the vernacular idiom. According to Isaac, a family slave, Randolph "used to come out among the black people, play the fiddle and dance half the night."

Fiddling Around with Mr. Jefferson!

Jefferson is known to have amassed an extensive collection of published music, primarily for violin. Jefferson's manuscript catalog of the library he collected after he lost his first to fire was dated March 6, 1783. Chapters 35-37 enumerate music he owned. The "Monticello Music Collection" is the music of the Jefferson family that survives today and represents not only a few items from Jefferson's 1783 catalog, but also the music collected by his daughter and grandchildren. One of Thomas Jefferson's favorite compositions was the Sonata for Violin and Continuo, Opus 5, written by the famous Italian composer, Archangelo Corelli (1653-1713) in 1700. Jefferson fractured his right wrist in a fall, in Paris in 1786. But the well-thumbed and copiously annotated copy of the music in his library suggests that, at least prior to his wrist injury, Jefferson was capable of performing the difficult bowings required in many of the twenty elaborate variations of the simple theme.

Before Thomas Jefferson sold his personal library of 6,487 volumes to the government in 1815 to "recommence" the function of the Congressional Library, the holdings of which had been burned by British forces during their occupation of Washington the previous year, the Library's music collections consisted of only a small number of musical compositions. The music-related works included in Jefferson's collection—to which the Library's Music Division traces its origins—consisted of 13 books about music literature, pedagogy and theory. Among these titles is an annotated copy of Francesco Geminiani's "The Art of Playing on the Violin" (1751). Jefferson made careful annotations to his copy of Geminiani's book. His music collection was bequeathed to his heirs and was subsequently acquired by the University of Virginia. But his annotated copy of Geminiani's seminal treatise remains a treasure of the Library of Congress.

The Cousin's Violin.

His 2nd violin originally belonged to Jefferson's cousin, John Randolph, the attorney general of Virginia. Through correspondence letters, historians know that Jefferson and Randolph made an agreement in 1771, in which Jefferson would get the violin upon Randolph's death. And if Jefferson were to die first, Randolph would get 100 pounds worth of Jefferson's books. However, in 1775, Randolph dissolved the agreement, and delivered his violin to Jefferson. Historians do not know the value of this violin, or where it was made. But from the letters we see it was most likely worth quite a lot! Mr. Jefferson was known for being a scholar, and he was willing to deliver 100 pounds worth of his books upon his death, seen as equal value to the violin.

The Pocket Violin and His Courtship with Martha.

The third known violin of Jefferson's was purchased in Paris in 1786. It was not a full-sized violin, but a "pocket viol." *(See photo, right).* This was an instrument small enough to fit neatly into a coat pocket. It probably had the same fingerboard, bridge, and pegs of a full-size violin, but the body was much smaller. He was known to take his kit along on his travels so that he could practice when he was away. Even after Jefferson damaged his right wrist in 1785, historians were able to infer that he continued to replace the strings, and rehair the bows. Which is something that violinists must do to preserve the integrity and value of violins. Another behavior that lets us know how valuable these instruments were to Jefferson.

Jefferson brought this "pocket viol" along with him attached to his saddle while traveling on horseback, the more easily to play the folk tunes he loved so much for friends at gatherings of Virginia gentry. The small violin apparently played a key role in his courtship of his future wife, Martha Wayles Skelton. She played the fortepiano. He played the violin. Together they spent long hours playing and laughing and talking together. Music was a part of their life. Martha was young, beautiful, and recently widowed. The story is told that Jefferson was riding past her home when he heard her singing and accompanying herself on the harpsichord. He jumped off his horse, took his pocket viol (also called a "kit") and introduced himself to Martha. Soon the two were singing and playing a duet. The rest of the story is as follows: *"Two of Mr. Jefferson's rivals happened to meet on Mrs. Skelton's door-stone. They were shown into a room from which they heard her harpsichord and voice, accompanied by Mr. Jefferson's violin and voice, in the passages of a touching song. They listened for a stanza or two. Whether something in the words, or in the tones of the singers appeared suggestive to them, tradition does not say, but it does aver that they took their hats and retired, to return no more on the same errand."* Jefferson called music "a favorite passion of my soul." When his young wife Martha died, Thomas Jefferson cried uncontrollably for weeks. He never married again.

(Above) A "pocket viol" similar to the one owned by Thomas Jefferson.

The Disappearance of The Jefferson Violins.

Where are Mr. Jefferson's violins today? Upon his death on July 4, 1826, many of Jefferson's possessions were to be auctioned off, including the violins. Two violins were sent to Boston to be inspected by a professional violinist. Then in 1828, both violins were shipped to England. To this day, nobody knows for sure what happened to all of his violins, or

where they are. But…in 2014, a violin reportedly owned by Thomas Jefferson was donated to the Colorado Masonic Library and Museum in Colorado Springs. The donor, a real estate investor from Colorado Springs, said that he bought the violin at an auction in Colorado Springs. The local news reported that the seller: "put it up for auction shortly after buying it from the J.W. Forrester family, which had owned the violin for more than 125 years and eventually settled in Pueblo [Colorado]. Jefferson had given the violin to a slave named Ben, and it ended up with the Forresters shortly after the slave's death." Is it the real deal? Who knows for sure?

The Value of Thomas Jefferson's Violins.

It's difficult to put a number value to these instruments, but Amati violins are already worth $600,000. No matter where Jefferson's violins are, we can only hope that they are in really good care, since violins kept in good condition can survive hundreds of years. Some of the oldest violins that are still kept in great condition are also the Amati violins like one Jefferson owned.

ALABAMA. ARBITRATION PANEL'S DECISION TO EXCLUDE CERTAIN CONSTRUCTION PHOTOS NOT FUNDAMENTALLY UNFAIR.

A condominium homeowner's association ("HOA") moved to vacate an arbitration award in favor of a general contractor and a subcontractor in a suit the HOA filed against them and the project's architect over alleged construction and design defects. The trial court denied that motion and the HOA appealed. The case wound up in the Alabama Supreme Court. After construction of the condo was substantially complete, the developer sold the units and transferred ownership and management of the common areas to the HOA. The HOA sued the contractor, a sub and the architect for alleged construction and design defects, specifically, "stucco blistering and water intrusion." The HOA's claims against the contractor and sub proceeded to arbitration, pursuant to the Federal Arbitration Act ("the FAA"), but the HOA's claims against the architect remained pending in the trial court. Following a hearing, a panel of three arbitrators issued a final award in favor of the contractor and sub concluding, in relevant part, that the defects to the condominium building were the result of a design defect and not a construction defect.

The HOA filed an appeal, but the trial court entered a judgment on the arbitration award. The HOA thereafter filed a motion to vacate that judgment, which the trial court denied. The HOA appealed yet again.

Section 10(a)(3) of the FAA authorizes a court to vacate an arbitration award when "the arbitrators were guilty of misconduct ... in refusing to hear evidence pertinent and material to the controversy." The HOA claimed that the arbitration panel engaged in just such misconduct by refusing to consider certain construction progress photos of balconies which deprived it of a "fundamentally fair hearing." The Court noted that "judicial review of an arbitration award is extremely limited and that an arbitration award should be vacated only in very unusual circumstances." The Court found that the photographs were excluded from evidence because they were not introduced at the arbitration hearing and the HOA attempted to introduce them after the close of evidence. The Court ruled that the arbitration panel's decision did not rise to the level of "misconduct" described in Section 10(a)(3) of the FAA, "nor did it yield a fundamentally unfair hearing under the FAA." The trial court's order denying the HOA's motion to vacate and entering judgment on the arbitration award was affirmed. *Escapes! To the Shores Condo. Ass'n, Inc. v. Hoar Constr., LLC*, 2023 WL 2053895 (Ala. 2023).

AIA ISSUES NEW STATEMENT OF POLICIES.

In January 2023, the American Institute of Architects released its new Directory of Public Policies and Position Statements. The Public Policies and Position Statements included in the 2023 Directory have all been approved by the AIA Board of Directors and are in effect until rescinded by the Board. Public Policies are AIA statements of belief to policy-makers, the public, and the construction industry on issues of public policy affecting the membership, the profession of architecture, or the AIA. Position Statements elaborate on Public Policies or apply them to specific conditions or events. Commentaries are white papers or other analyses that amplify AIA doctrine by presenting rationale and facts to support adherence to a specific Public Policy or Position Statement. Two new Supporting Position Statements are included in the 2023 Directory:

- Building Codes and Standards (approved Jan. 2023)
- Building Permits and Process (approved Jan. 2023)

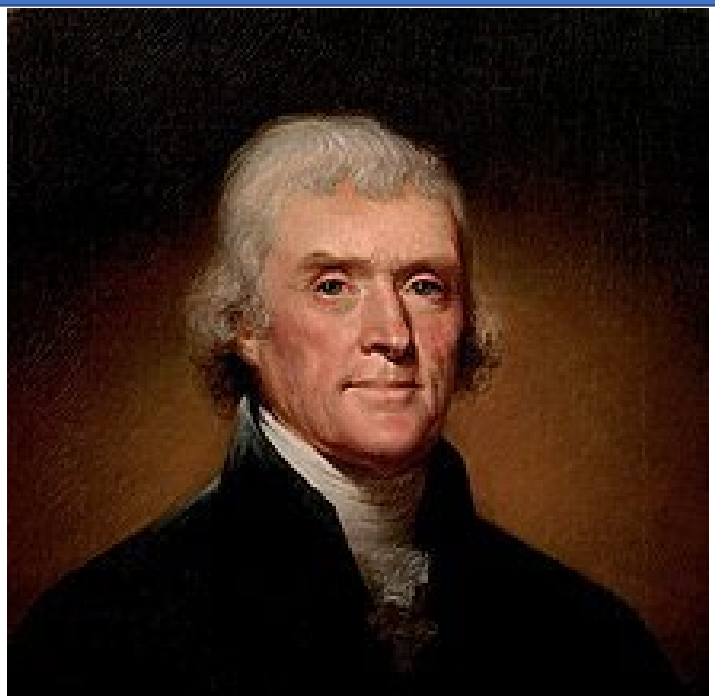
The 2023 directory is available at this AIA link: https://content.aia.org/sites/default/files/2023-02/AIA_Public_Policy_Directory_rev_Jan_2023_v2.pdf

Join Us in San Francisco for the TJS 11th Annual Meeting for Members (and Guests).

TJS members and their guests are invited to join us for the 11th Annual Meeting and dinner. Here are the details:
Date: Wednesday, June 7, 2023.
Time: 6:00 - 9:00 p.m. (PST)
Where: McCormick & Kuleto's Seafood & Steaks (in San Francisco's historic Ghirardelli Square)
Address: 900 North Point St, San Francisco, CA 94109
Cost: $125/person (see link, below)
Register Online here:
https://thejeffersonsociety.org/annual-meeting/annual-meeting
Paid guests of TJS Members are always welcome to attend!

MONTICELLO'S FOUNDER'S DAY CELEBRATES 280 YEARS OF THOMAS JEFFERSON

[Editor's Note: Thomas Jefferson was born on April 13, 1743]
CHARLOTTESVILLE, Va. - The sound of celebration was drummed in at Monticello Thursday, April 13 to ring in Thomas Jefferson's birthday. Every year Monticello hosts "Founder's Day" to honor Jefferson, his accomplishments, and those who carry on his legacy. Several Thomas Jefferson Foundation Medals are awarded to people who maintain traits that would make Jefferson proud. A committee selects recipients in the categories of Architecture, Citizen Leadership, Citizen Service, Law, and Global Innovation.
The recipient of this year's Citizen Leadership Thomas Jefferson Medal, and the keynote speaker of the event is an award-winning journalist for the Washington Post. He's a first generation American with Iranian origin. He says he was held hostage while reporting abroad solely because of his citizenship. "Jason Rezaian, who was held in Iranian prison for 544 days gave an inspiring talk. The architectural medalist, Andrew Freear, has done great work with the Rural Studio, so they bring special emphasis every year to their areas of expertise," Thomas Jefferson Foundation Interim President Gardiner Hallock said. This is only the second year a "Citizen Service" medal was added to the list. Angilee Shah accepted the award on behalf of Charlottesville Tomorrow. "We picked Charlottesville Tomorrow, not just because of their great services of community, but also the ties to journalism," Hallock said.



To celebrate Mr. Jefferson's 280th birthday, the foundation is highlighting the freedom of the press, which Jefferson championed as being foundational for our democracy. "Receiving this award today at Monticello feels like a continuing celebration of democracy and the important role that we all play in it," Shah said.

LIMITED COST RELIEF FOR DEFENSE CONTRACTORS FACING INFLATION!

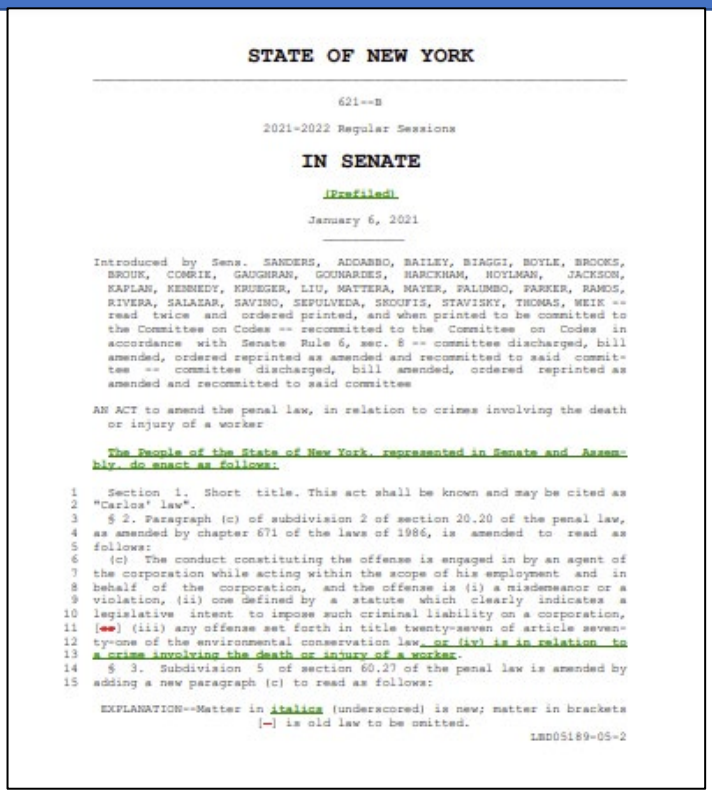
As part of the FY23 National Defense Authorization Act ("NDAA") passed in December 2022, Congress granted the Dept. of Defense ("DoD") new authority to modify existing fixed-price contracts to compensate defense contractors for increased costs arising from inflation. Section 822 of the NDAA, entitled "Modification of Contracts to Provide Extraordinary Relief Due to Inflation Impacts," permits DoD contractors to apply for contract adjustments while also giving the DoD wide discretion to grant or deny such requests.
Congress also instructed the DoD to issue guidance for implementing this new authority within 90 days after Congress appropriates related funds. The amount of financial relief that may be authorized without approval by an official at the secretarial level was increased from $50,000 to $500,000; while the amount that may be authorized without prior notice to Congress was increased from $25 million to a whopping $150 million. It is important to note that this new statutory relief is limited to contracts within the DoD.

NEW YORK. NEWLY-ENACTED "CARLOS' LAW" INCREASES PENALTIES FOR CRIMINAL ACTS RESULTING IN INJURY OR DEATH OF CONSTRUCTION WORKERS.

Contractors in the state of New York need to be aware of this new law, signed by Governor Kathy Hochul late last year. In light of the newly-signed "Carlos' Law," contractors' liability for the death or injury of employees could be up to $500,000. The law, passed by the New York state senate (60-3) in June 2022 and signed in late December, increases the penalty by 50 times (at a minimum) the judge can levy on an employer as a result of a worker's death or injury. S.621B/A.4947B *(see right, as originally filed)* amends the New York State Penal Law to increase the penalties for criminal corporate liability for the death or serious physical injury of an employee, a felony or misdemeanor, by a fine of up to $500,000. In addition to a fine, "the court may order restitution or reparation." The $10,000 fine for a felony has increased to a minimum of $500,000 and a maximum of $1 million, and the $5,000 fine for a misdemeanor has increased to a minimum of $300,000 and a maximum of $500,000. The legislation also expands the definition of employees to include subcontractors and day laborers. Under the new legislation, a contractor is guilty of criminal corporate liability for the death or injury of a worker when it negligently, recklessly, intentionally or knowingly causes the death or serious physical injury of its employees while they are on the job.

"Construction workers … deserve strong protections under the law," Governor Hochul said via press release. "This legislation will add a new layer of accountability for safety protocols and will establish important protections for the individuals who do this vital, difficult, and often dangerous work. I thank the bill sponsors for their partnership in getting this done."

The new law is named after Carlos Moncayo, a 22-year-old construction worker who died at a New York City construction site in 2015. Carlos was a resident of Queens and an Ecuadorean immigrant. He was killed in a trench collapse "due to his employers ignoring repeated warnings of dangerous conditions," said State Senator James Sanders. Following the collapse, a police officer with a construction background noticed that the trench had not been properly reinforced. Justice Kirke Bartley Jr. of the State Supreme Court in Manhattan found New York City general contractor, Harco



STATE OF NEW YORK

621--B

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sens. SANDERS, ADDABBO, BAILEY, BIAGGI, BOYLE, BROOKS, BROUK, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, HOYLMAN, JACKSON, KAPLAN, KENNEDY, KRUEGER, LIU, MATTERA, MAYER, PALUMBO, PARKER, RAMOS, RIVERA, SALAZAR, SAVINO, SEPULVEDA, SKOUFIS, STAVISKY, THOMAS, WEIK -- read twice and ordered printed, and when printed to be committed to the Committee on Codes -- recommitted to the Committee on Codes in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the penal law, in relation to crimes involving the death or injury of a worker

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as "Carlos' law".

§ 2. Paragraph (c) of subdivision 2 of section 20.20 of the penal law, as amended by chapter 671 of the laws of 1986, is amended to read as follows:

(c) The conduct constituting the offense is engaged in by an agent of the corporation while acting within the scope of his employment and in behalf of the corporation, and the offense is (i) a misdemeanor or a violation, (ii) one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on a corporation, [or] (iii) any offense set forth in title twenty-seven of article seventy-one of the environmental conservation law, or (iv) is in relation to a crime involving the death or injury of a worker.

§ 3. Subdivision 5 of section 60.27 of the penal law is amended by adding a new paragraph (c) to read as follows:

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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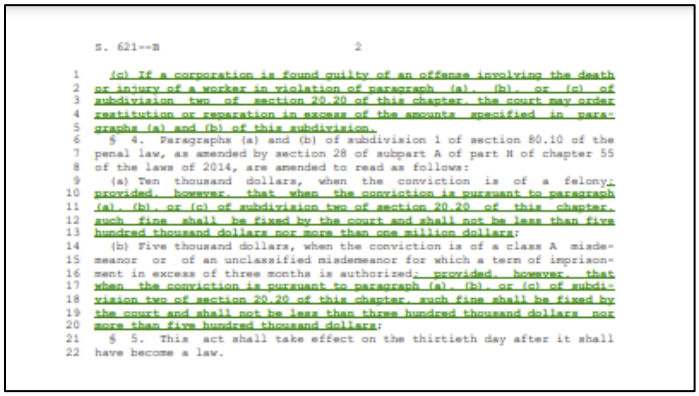


S. 621--B 2

(c) If a corporation is found guilty of an offense involving the death or injury of a worker in violation of paragraph (a), (b), or (c) of subdivision two of section 20.20 of this chapter, the court may order restitution or reparation in excess of the amounts specified in paragraphs (a) and (b) of this subdivision.

§ 4. Paragraphs (a) and (b) of subdivision 1 of section 80.10 of the penal law, as amended by section 28 of subpart A of part H of chapter 55 of the laws of 2014, are amended to read as follows:

(a) Ten thousand dollars, when the conviction is of a felony; provided, however, that when the conviction is pursuant to paragraph (a), (b), or (c) of subdivision two of section 20.20 of this chapter, such fine shall be fixed by the court and shall not be less than five hundred thousand dollars nor more than one million dollars;

(b) Five thousand dollars, when the conviction is of a class A misdemeanor or of an unclassified misdemeanor for which a term of imprisonment in excess of three months is authorized; provided, however, that when the conviction is pursuant to paragraph (a), (b), or (c) of subdivision two of section 20.20 of this chapter, such fine shall be fixed by the court and shall not be less than three hundred thousand dollars nor more than five hundred thousand dollars;

§ 5. This act shall take effect on the thirtieth day after it shall have become a law.

Construction, guilty of second-degree manslaughter, criminally negligent homicide and reckless endangerment. Harco was fined $10,000, which Cyrus R. Vance Jr., then-district attorney, referred to as "Monopoly money." The low penalty caused an outcry among workers' advocates groups.

Mike Elmendorf, president and CEO of Associated General Contractors' New York State chapter, said the employer group shares the goal of the bill, which is "making sure truly bad actors are punished." An agreed-upon amendment changed the wording to apply to an injury of an "employee" rather than "worker," Elmendorf said. That change will likely limit the interpretation of the bill, so each employer and subcontractor is responsible for their own employees, as opposed to the liability falling solely on the GC for every worker on the jobsite.

A SINGLE JEFFERSON-OWNED BOTTLE OF WINE ONCE SOLD FOR RECORD $157,500!

One of the most expensive bottles of wine in the world, a 1787 Chateau Lafitte claret, was sold at an auction in 1985 for a record $157,500 because it had the initials "Th.J." It was four times the previous record for a bottle of wine! Yes, this lost bottle of wine belonged to Thomas Jefferson, and is now considered an American presidential relic. The 1787 Chateau Lafitte claret--inscribed with the wine's vintage and the initials, "Th.J."--was bought by Forbes of New York at Christie's auction house in London. Applause broke out in the packed salesroom when the gavel came down. "It's nice to know that some of Mr. Jefferson's wine is finally coming home," commented Christopher Forbes, who said the wine would be added to the family's collection of American presidential relics. "It's more fun than the opera glasses Lincoln was holding when he was shot--and we have those, too," said Forbes, third son of the magazine's founder, Malcolm Forbes. Asked if anyone would drink the wine, Forbes said, "The current owners certainly won't."

Jefferson, who was ambassador to the French Revolutionary government and a specialist on the country's vineyards, ordered the Bordeaux wine from the Chateau Lafitte cellars, but the wine was never delivered to him. It was found in 1985 among more than a dozen bottles of Bordeaux behind a cellar wall in an old house in Paris, said the seller of the wine.

NOTICE OF ANNUAL MEETING

The 11th Annual Meeting of The Jefferson Society, Inc., will be held on the evening of Wednesday, June 7, 2023, at McCormick & Kuleto's Seafood & Steaks, located in San Francisco's historic Ghirardelli Square.

[Note: The TJS Annual Business Meeting and Elections will be held at a date yet to be set, via Zoom online format. Watch for an email notice from the Society's Secretary for the date, time and log-in information]

TEXAS. SECOND TIME AROUND: ARCHITECTURAL COPYRIGHT CASE EXAMINES VARIOUS CLAIMS/DEFENSES.

This is one of two Texas copyright cases in this issue of *Monticello*. We first reported on this case one year ago, in the April 2022 issue. Now, a new order has been issued resolving several motions for summary judgment in this copyright dispute over residential plans used to build 138 houses in the San Antonio area. The plaintiff ("KFA") was an architectural firm and the owner of the copyrights in certain house plans known as the "KFA 1529 design." The architect sued two real estate developers, plus another architectural firm ("KTGY") over a real estate development. In January 2016, the plaintiff and one of the developers ("AHV") executed a licensing agreement for the use of the KFA's copyrighted works in the Austin, Texas market (not in San Antonio). KFA then provided copies of its architectural plans to AHV who hired two third-parties to generate stylized floorplan drawings and three-dimensional renderings. Both of those third-parties executed limited use licensing agreements with KFA, and KFA provided copies of the works to them. In 2017, developer SFR engaged AHV as the development manager for the "Pradera Project" in the San Antonio area. AHV contacted KFA and advised KFA that it wanted to use the previously licensed works for the Pradera Project. KFA sent SFR a copy of its contract terms. But, the parties never reached an agreement regarding the use of KFA's residential designs. KFA warned AHV that there was not any executed agreement for the use of the copyrighted works at Pradera and sent AHV a proposed license agreement, which AHV declined to sign, claiming that AHV "ended up hiring a different architect that is designing different plans for Pradera." Developers SFR and AHV hired another architectural firm, KTGY, to design residences for the Pradera Project. But, KFA alleged that SFR and AHV distributed copies of KFA's architectural works to KTGY and others, and also that AHV asked KTGY to create "similar layouts" to the KFA architectural works for use in the Pradera Project. KFA further alleged that KTGY developed the "Bluebonnet" style homes for construction, which are "copies" or "derivatives" of the "KFA 1529 design," which share the overall look and feel of the works and the same selection and arrangement of the constituent parts of the works. A total of 138 "Bluebonnet" houses were constructed at Pradera which KFA claimed violated its copyrights in the KFA Plan 1529.

The Court began by stating to establish a *prima facie* copyright infringement claim, a plaintiff must satisfy three elements: "(1) ownership of a valid copyright; (2) factual copying; and (3) substantial similarity." The "substantial similarity" test requires that a plaintiff "demonstrate that the copying is legally actionable by showing that the allegedly infringing work is substantially similar to *protectable* elements of the infringed work." The plaintiff bears a burden of "identifying the protectable elements of its Architectural Drawings and presenting evidence that Defendant's Architectural Drawings are substantially similar to those elements." The Fifth Circuit uses the "ordinary observer" test for determining substantial similarity, i.e. "a layman must detect piracy without any aid or suggestion or critical analysis by others." A side-by-side comparison must be made between the original and the copy to determine whether a layman would view the two works as "substantially similar."

Independent creation. A corporate representative for defendant KTGY, stated that "[KTGY] did not create copies of those instruments for service," and that KTGY "did not use, reuse, or use the works of KFA as [KTGY's] works. We created works for our client *independently* of KFA's works, and they are KTGY's original works." An expert witness for defendant SFR also provided in his report an overview of ways in which the KFA and KTGY models differed from one another, which the Court felt "clearly leaves a question of fact for the jury." As a result, Plaintiff's motion for partial summary judgment against Defendant KTGY on the issue of independent creation was denied.

Ownership. As to plaintiff's motion on the issue of plaintiff's ownership of valid copyrights in the works, the Court ruled that, "a party must show that (1) he owns a valid copyright and (2) the defendant copied constituent elements of the plaintiff's work that are original." Defendants argued that KFA's architectural works "lack sufficient originality and that at least a genuine and material fact issue has been created." The Court agreed and denied summary judgment, finding that defendants provided enough evidence to create a genuine issue of material fact regarding the second element of challenging the originality of copyrighted material. "Originality for copyright purposes does not require that the work be novel or express a meaningful underlying idea, only 'that the work was independently created by the author (as opposed to cop-

ied from other works), and that it possesses at least some minimal degree of creativity.' " Here, the Court found "sufficient evidence" to support a theory challenging the originality of the copyrighted works in part based upon an expert's opinion that: "the KFA design indicates that it is made up of standard features with no elements that have not been utilized in preexisting works," and that the "KFA design is consistent with many single-family home designs existing in the industry."

Implied License. On the issue of "implied license," an affirmative defense, the Court said that, "An implied license typically arises when: "(1) a person (the licensee) requests the creation of a work, (2) the creator (the licensor) makes the particular work and delivers it to the licensee who requested it, and (3) the licensor intends that the licensee-requestor copy and distribute his work." "Whether an implied license exists turns on the copyright holder's intent, which is question of fact." The Court granted plaintiff summary judgment regarding the license defense, finding that there was no convincing evidence that an implied license existed. In fact, the evidence on this issue was "so one-sided" that the Court found that plaintiff "must prevail as a matter of law" on that issue.

Fair Use. As to the affirmative defense of "fair use," the Court ruled that a genuine issue existed as to whether infringement had even occurred, therefore, summary judgment on the affirmative defense of fair use was denied.

Estoppel. As to "estoppel as an affirmative defense," a defendant must establish the following four elements: "(1) the plaintiff knew the facts of the defendant's infringing conduct; (2) the plaintiff intended that its conduct would be acted on or acted such that the defendant had a right to believe that plaintiff intended its conduct would be acted on; (3) the defendant was ignorant of the true facts; and (4) the defendant relied on the plaintiff's conduct to its injury." Defendant AHV advanced evidence on only one of these three elements; another defendant failed to support the fourth element of estoppel. Therefore, plaintiff's motion for partial summary judgment on the affirmative defense of estoppel was granted.

Misuse. Next, the Court took up the equity-based defense of "copyright misuse," (which prevents a plaintiff from prevailing in an action for the infringement of a "misused copyright" where an exclusive right or limited monopoly would be contrary to public policy). Defendant AHV argued that plaintiff's "anti-competitive and abusive motives are clear — KFA hopes to establish a monopoly on architectural designs for a particular style of housing" by "seek[ing] to prevent other architects from taking on projects and independently designing architectural works or fearing of crossing KFA's artificially-expanded bounds of copyright." The Court struck that affirmative defense since it was based upon "mere conclusory allegations" and "unsubstantiated assertions."

Uniqueness of Design. Next was a challenge to the validity of the claimed copyright where "works are entirely comprised of stock features or other standard arrangements of spaces dictated by consumer preference and external constraints." The Court found that there were genuine disputed issues of material fact about whether the copyrighted works in question are sufficiently original to merit protection and denied plaintiff's motion on the affirmative defense of invalidity.

Unprotectable Material. The Court ruled that the determination of what elements are protectable is central to the "substantial similarity" inquiry. Therefore, summary judgment on this defense was improper at this time.

Public Domain. Next was a question whether plaintiff's design was already in the public domain. The Court held that a genuine issue existed whether copyright infringement had occurred, therefore, plaintiff's motion for partial summary judgment on the affirmative defense of public domain was denied.

Scènes à Faire. Next was a motion to challenge a unique defense known as "Scènes à Faire," i.e. that copyright protections do not extend to materials such as "facts, information in the public domain, [or] *scènes à faire, i.e.*, expressions that are standard, stock, or common to a particular subject matter or are dictated by external factors." Here, the Court found that there were sufficient facts which could cause a factfinder to reasonably believe that plaintiff's design was "standard, stock, or common or dictated by external factors." Therefore, the motion to strike that defense was denied.

Merger. Next, the Court held that the merger doctrine is based on the statutory prohibition against copyright protection "for ideas." Here, expert testimony raised a question of fact regarding whether there were "only so many ways to arrange the layouts in these drawings and floorplans," and a factfinder could reasonably conclude that copyright infringement had not occurred and external constraints and consumer preferences dictated the design choices featured in the Bluebonnet homes.

Therefore, plaintiff's motion for partial summary judgment on the affirmative defense of merger was denied.

Calculation of Damages. Next, one defendant moved for partial summary judgment against plaintiff on two issues: 1) that KFA cannot recover damages based on a fair market value theory; and, 2) that KFA cannot recover damages based on a net present value theory. The Court split on this motion, finding that the plaintiff could not recover damages based on a fair market value theory, but it was premature to rule on the issue of utilizing a damages calculation of net present value "until all evidence has been presented and heard. Should the jury find copyright infringement has occurred, the Court will consider instructions on future profits."

Joint & Several Liability. Last, as to plaintiff's attempt to impose joint and several liability on the defendants, the Court said that theory only applies when a plaintiff can establish that the defendants acted jointly as partners or "practical partners." Here, the Court found that plaintiff did not assert any claims of vicarious liability, nor that KTGY was a partner of either defendants SFR or AHV. Therefore, summary judgment was granted in part on whether plaintiff could recover profits under a joint and several liability theory. *Kipp Flores Architects, LLC v. Pradera SFR, LLC*, 2023 WL 28723 (W.D. Tex. 2023).

INDIANA. DESIGN NEGLIGENCE CLAIM FAILS FOR LACK OF EXPERT TESTIMONY.

Plaintiffs filed suit after the wife, a physician, sustained a head injury in a swimming pool designed and constructed by two companies, Spear and Panzica, the latter of which was owned and operated Beacon Health and Fitness. Beacon contracted with Panzica to design and build a health and fitness center in Granger, Indiana. Panzica served as the project's designer-builder. The trial court granted summary judgment to both Spear, and Panzica and partial summary judgment to Beacon, and the plaintiffs appealed. We will focus only on the issue of negligent design for this analysis.

Panzica created project plans and then subcontracted with Spear to create drawings and designs for the multipurpose pool to be used for lap swimming and water aerobics. The plaintiffs argued that the design failures include, but are not limited to: (a) a flawed design process; (b) swimming lanes that are narrower than applicable standards; (c) a wing wall design and structure that creates an unreasonable risk of serious injury; (d) a wing wall design that permits the wing wall to be submerged in violation of applicable regulations and building standards; and (e) failing to include adequate guidance and safety measures.

The Court noted that, "Absent a special agreement, an architect does not imply or guarantee a perfect plan," and that "an architect is not a warrantor of his plans and specifications. The result may show a mistake or defect, although he may have exercised the reasonable skill required."

In light of the designated expert testimony that professional architectural standards had not been breached with the design of the pool, which was uncontroverted by expert testimony of a breach, the trial court granted summary judgment to Spear and Panzica on the design negligence claim. The trial court determined that a single conclusion could be drawn as to negligence in design; that is, "the architect-designers did not breach professional standards in the inclusion of features of the pool." The trial court left open, however, a claim against Beason for negligence in operational decisions.

The Court of Appeals found that design-builder Panzica acted as "chief architect" and received design input from Spear in relation to the pool. The Court said that the standard of care for design professionals in Indiana is "similar to that of a lawyer or physician *** When he possesses the requisite skill and knowledge, and in the exercise thereof has used his best judgment, he has done all the law requires." Thus, the key question in determining whether an architect has been negligent is not whether error occurred, but whether the architect breached a duty to exercise "the degree of competence ordinarily exercised in like circumstances by reputable members of the profession." The Court noted that, "Absent a special agreement, an architect does not imply or guarantee a perfect plan," and that "an architect is not a warrantor of his plans and specifications. The result may show a mistake or defect, although he may have exercised the reasonable skill required."

An expert for the plaintiffs was struck because he was not a licensed architect or a licensed professional engineer, and he had not designed a pool in the State of Indiana or anywhere else in the U.S. As such, the witness was not shown to have

"sufficient skill, knowledge or experience in that area so that the opinion will aid the trier of fact." But the plaintiffs did not show that the trial court abused its discretion by excluding deposition testimony that the defendants were negligent because they produced an unsafe design, when their expert had no training, background, experience, or expertise in development of a pool design. Finding that, "a trial court's order on summary judgment is cloaked with a presumption of validity," the Court of Appeals affirmed summary judgment on design negligence.

By contrast, defendant's expert testified in his deposition that the pool was reasonably safe for its intended use and was compliant with the Indiana Administrative Code, and that the pool had passed the inspection required for a public facility.

Pennington v. Mem'l Hosp. of S. Bend, Inc., 2023 WL 2591517 (Ind. Ct. App. 2023).

IDAHO. STATUTE OF LIMITATIONS BARS CONTRACTOR CLAIM AGAINST ARCHITECT (AND ITS EMPLOYEES, PERSONALLY).

This case concerns a residence in the Boise foothills that was damaged by a landslide in 2016, which ultimately prevented the builder from obtaining a certificate of occupancy. The general contractor sued multiple parties, including the architectural firm, the principal architect, and the architect's project manager for professional negligence. The defendants successfully moved for summary judgment on the basis that the 2-year statute of limitations in Idaho Code section 5-219(4) barred the claim. Two years after the trial court granted that summary judgment, however, the contractor moved for reconsideration, citing new evidence and arguments. The trial court denied the motion for reconsideration, concluding it was "untimely, lacking in diligence, and improper." The contractor appealed that ruling and challenged the original decision on summary judgment. The Idaho Supreme Court affirmed the trial court's decision granting summary judgment against the plaintiff contractor.

The homeowners here contracted separately with an architect and a contractor. There was no contract between the architect and contractor and neither of them knew that a portion of the subdivision where the Property was located was constructed on a pre-existing landslide. However, a civil and geotechnical engineer hired by the contractor reported prior to completion that the landslide had reactivated and began moving beneath a portion of the Subdivision where the Property was located. The contractor finished work up to the final inspections, despite its awareness of the landslide's reactivation. Final building inspections were conducted in and around February and March of 2016 and the home passed. But the city declined to issue a certificate of occupancy after "a landslide scarp," indicating earth movement, became visible on the Property. Highway district, fire department, and utility services to the Property were terminated due to the landslide. In early April 2016, the landslide necessitated the relocation of certain utilities. The contractor was never able to secure a certificate of occupancy for the home and claimed increased costs based on the demands of the city for the certification of occupancy.

In December 2016, the contractor sued several engineers and engineering firms that were involved with the construction of the subdivision where the Property is located, but it did not sue the architects until September 2018. In July 2018, the Property had incurred additional structural damage to the residence due to the landslide. The additional damage was "in the form of cracks in the concrete driveway and front porch stoop, cracks and separation in the stucco, cracks in the foundation, and nail heads that had popped out of the drywall." Shortly after learning of this additional damage, the contractor added the architect defendants to its claim for professional negligence. The architect defendants moved for summary judgment arguing that: (1) the claim was barred by the statute of limitations for a claim of professional negligence in Idaho Code section 5-219(4); (2) by the economic loss rule; and (3) the defendants did not owe the contractor a duty of care. The trial court agreed and granted the defendants' motion for summary judgment on all three grounds.

In denying the contractor's new motion for reconsideration, the trial court said, in part, that if granted, "it would in effect be allowing a party to respond to a summary judgment motion beyond the time limits — in this case, two years beyond." At oral argument, the contractor's counsel affirmed there was nothing in the new declarations that was "unavailable" two years ago. As to whether the plaintiff could sue the project architect and project manager personally, the Court said, "Similar to an attorney signing a pleading, architects shall have a seal, the impression of which must contain the name and Idaho architect license number of the architect and the words 'lic-

ensed architect' and 'state of Idaho,' with which he shall seal all technical submissions issued from his office." I.C. § 54-304(1). But since the claim against the architect was barred by the statute of limitations, so would be any attributable alleged professional malpractice by an employee of his firm under his supervision and control. Therefore, the ruling of the trial court was affirmed as to all architect defendants. Since the Court affirmed that the statute of limitations barred the claim, it did not address the issue of the economic loss rule or the duty of care. *BrunoBuilt, Inc. v. Erstad Architects, PA*, 2023 WL 2577558 (Idaho 2023).

UTAH. (APPLYING PENNSYLVANIA LAW) DID ENGINEER'S CGL POLICY COVER INDEMNITY FOR SETTLEMENT OF UNDERLYING PERSONAL INJURY SUIT? OR DID PROFESSIONAL SERVICES EXCLUSION APPLY? QUESTIONS REMAIN.

This is an insurance dispute over whether a CGL policy's Professional Services Exclusion applied to an engineering firm's work on a highway project. In April 2017, the engineer, ("MBI"), entered into a Professional Services Agreement with a design-build contractor to provide engineering and other design services in connection with the construction of four interchanges on a highway in Utah. In January, 2018, a driver and her son were injured in an accident on the highway when a speeding motorist struck her vehicle. They sued the engineer and several other defendants responsible for the construction of the interchange in a single cause of action for negligence. The suit did not attribute specific acts to any individual defendant, but rather characterized all tortious conduct as the defendants' collective responsibility.

At the time of the crash, the engineer held a Commercial General Liability ("CGL") policy from Liberty Mutual, which contained two "Professional Services Exclusions." The exclusions applied to "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render "any professional service." MBI's contract for the highway project required it to obtain "Professional Errors and Omission Liability Insurance," which would "cover the negligent acts, errors, and omissions of the insured that provides professional services" for the project. MBI contracted with a Lloyd's Syndicate to obtain the required E&O coverage, subject to a $2.5 million self-insured retention ("SIR"). When the engineer, MBI, tendered defense of the suit to Liberty, the insurer agreed to defend subject to a reservation of rights.

MBI developed "serious reservations" about Liberty's assigned attorney's loyalty and effectiveness, claiming that Liberty's denial of any duty to indemnify MBI created a conflict of interest necessitating independent counsel. Additionally, MBI worried that defense counsel had never tried a similarly serious case involving severe injuries to a child. MBI hired separate counsel to lead its defense. In July of 2020, MBI reached a settlement agreement with the plaintiffs for an amount in excess of the Liberty CGL policy limit. MBI informed Liberty of the settlement negotiations but Liberty declined to provide settlement authority - but it did not explicitly object to the settlement. Liberty refused to contribute any amount to the settlement and argued that MBI's scope was to redesign and rebuild the intersection of the highway, which did not require it to perform any physical work at the intersection. Rather, MBI was the project's lead designer and had responsibility for creating the traffic control plan, thus triggering the Professional Services Exclusions.

MBI sought declaratory judgment that Liberty had to provide indemnification for losses MBI incurred due to its settlement of underlying personal injury litigation. MBI and Liberty disputed the coverage rights and each filed summary judgment motions. MBI maintained that: 1) when insurance coverage depends on facts that were at issue in an underlying case that has been settled, the court in the coverage case may not look beyond the facts of the underlying complaint to find that indemnification is not warranted; and, 2) if this principle is applied, the court must grant summary judgment in MBI's favor because the underlying suit alleged that MBI negligently performed tasks that fall outside the scope of Liberty's Professional Services Exclusions.

The Court noted that the SIR in the Lloyd's E&O policy functions much like a deductible in that MBI is responsible for covering the first $2.5 million of any loss related to professional liability, after which Lloyd's reimburses MBI for its expenses. On the other hand, MBI's CGL policy with Liberty is capped at $2.0 million subject to a $250,000 deductible. Accordingly, if MBI were to prevail in this coverage litigation, it would pay $750,000 of the settlement, Liberty would pay $1.75 million limits and Lloyd's would pay the rest. If Liberty were to prevail,

however, MBI would pay $2.5 million and Lloyd's would pay the rest – with Liberty paying nothing.

First, the Court examined whether it may look outside the four corners of the underlying lawsuit and decided that it may. Next, the Court had to determine if there was a genuine dispute of material fact over whether MBI acted outside the scope of the Professional Services Exclusions. The Court held that there was such a dispute of fact, thus barring summary judgment.

Although a Utah court, Pennsylvania law applied to the CGL policy. The Court noted that under Pennsylvania law, it is well established that an insurer's "obligations to defend [its insured] are wider than [its] obligations to indemnify." While an insurer takes on a duty to defend solely based on the words of the complaint in the underlying lawsuit against its insured client, "the duty to indemnify cannot be determined merely on the basis of whether the factual allegations of the complaint potentially state a claim against the insured." Instead, "an insurer is entitled to an opportunity to introduce evidence that goes beyond the four-corners of the underlying tort complaint to prove the applicability of a subject policy exclusion in the coverage action." Though the duty to indemnify does not inevitably follow the duty to defend, in certain instances Pennsylvania courts have ruled that it must. Specifically, "where the underlying tort case has been settled, an insurer may seek resolution of only the factual disputes that would not have been resolved had the underlying tort suit been tried." This means that "where the coverage suit raises factual disputes about coverage that would have also been addressed in the settled underlying litigation, such disputes cannot be resolved in the coverage action. *** In such a situation, Pennsylvania law provides that the duty to defend itself triggers the duty to indemnify." Pennsylvania has adopted this rule in order to avoid "a perverse scenario" where an insurer defends an insured, settles the case by agreeing to an unreasonably large settlement payout, and then refuses to pay the settlement it negotiated.

"[T]he duty to indemnify cannot be determined merely on the basis of whether the factual allegations of the complaint potentially state a claim against the insured." Instead, "an insurer is entitled to an opportunity to introduce evidence that goes beyond the four-corners of the underlying tort complaint to prove the applicability of a subject policy exclusion in the coverage action." – Indiana Ct. App.

While the "indemnity follows defense" may seem expansive at first glance, the Court said that the theory is not a blanket rule that applies to all cases in which an underlying dispute is settled. Rather, Pennsylvania courts have developed two prerequisites that a dispute must meet before they will exclude evidence beyond the underlying complaint: "(1) that the nature of the case is one with multiple parties, multiple theories of liability, and settlement, making liability among competing parties impossible to determine and (2) there must be a concern that an insurer could foreclose indemnification by its conduct relative to the underlying lawsuit." Pennsylvania law, thus, compelled the Court to ask two questions. First, did Liberty have a duty to defend MBI in the underlying suit? And second, does this coverage dispute meet the two prerequisites required for indemnity to follow defense? Examining these issues in order, the Court held that Liberty "Liberty undoubtedly had a duty to defend," but then found that MBI did not satisfy the two prerequisites to trigger the indemnity follows defense rule. Consequently, the Court concluded that it may look beyond the four corners of the complaint to determine whether the Professional Services Exclusions applied here.

There was, however, there was a dispute over the meaning of the Professional Services Exclusions – which was ambiguous. Under Pennsylvania law, as in most states, where an insurance policy exclusion is ambiguous, it is to be strictly construed "in favor of the insured and against the insurer." But finding a "genuine dispute of material fact over whether Liberty's Professional Services Exclusions applied to MBI's tortious acts," the Court denied MBI's motion for summary judgment. See, *Liberty Mutual Fire Ins. v. Michael Baker International, Inc., et al.*, 2023 WL 2529212 (D. Utah 2023).

U.S.S.CT. SELLERS OF HOUSE CANNOT DISCHARGE DEBT IN BANKRUPTCY FOR WITHHOLDING KNOWLEDGE OF DEFECTS.

The Supreme Court rarely takes on cases dealing with design and construction defects. But, this year, it did – *sort of* - in a lawsuit over whether a spouse/business co-owner of a busin-

ess is liable for fraud committed by their spouse/business co-owner. In this case, the couple (acting as business partners) decided to flip a house for profit. In 2005, Kate and her then-boyfriend, David, jointly purchased a house in San Francisco. Acting as business partners, the pair decided to remodel the house and sell it at a profit. David took charge of the project. He hired an architect, a structural engineer, a designer, and a general contractor; he monitored their work, reviewed invoices, and signed checks. Kate, on the other hand, was "largely uninvolved." They sold the home to a buyer after attesting that they had disclosed all material facts relating to the property. The buyer later discovered several defects that the sellers had not divulged: a leaky roof, defective windows, a missing fire escape, and permit problems. Alleging that he had overpaid in reliance on the sellers' misrepresentations, so he sued them in California state court. The jury found in plaintiff's favor on his claims for breach of contract, negligence, and nondisclosure of material facts, holding the sellers jointly responsible for more than $200,000 in damages.

The sellers were unable to pay the judgment and they filed for Chapter 7 bankruptcy. But not all debts are automatically dischargeable in bankruptcy. The Bankruptcy Code makes several exceptions to the general rule, including the one at issue in this case: Section 523(a)(2)(A) bars the discharge of "any debt ... for money ... to the extent obtained by ... false pretenses, a false representation, or actual fraud." After a 2-day bench trial, the Bankruptcy Court decided that neither David nor Kate could discharge their debt to the seller. That court found that David knowingly concealed the house's defects, and the court imputed David's fraudulent intent to Kate because the two had formed a legal partnership to execute the renovation and resale project. The Ninth Circuit's Bankruptcy Appellate Panel agreed as to David's fraudulent intent but disagreed as to Kate's. As the Appellate Panel saw it, § 523(a)(2)(A) barred her from discharging the debt only if she knew or had reason to know of David's fraud. It instructed the Bankruptcy Court to apply that standard on remand, and, after a second bench trial, the court concluded that Kate lacked the requisite knowledge of David's fraud and could therefore discharge her liability to Buckley. This time, the Bankruptcy Appellate Panel affirmed the judgment. The Ninth Circuit reversed in relevant part. The U.S. Supreme Court granted certiorari.

In a unanimous opinion, the Supreme Court, Justice Barrett, held that that the "passive voice" of section 523(a)(2)(A) of the Bankruptcy Code "pulls the actor off the stage." In other words, "[t]he debt must result from someone's fraud, but Congress was agnostic about who committed it." Thus, the Court found that the debt was nondischargeable as to Kate (the wife). Justice Sotomayor filed a concurring opinion in which Justice Jackson joined.

The Supreme Court held that, "Ordinarily, a faultless individual is responsible for another's debt only when the two have a special relationship, and even then, defenses to liability are available." But here, § 523(a)(2)(A) bars discharge of that debt. While Justice Barrett said that, "we are sensitive to the hardship she faces," Kate could not discharge the debt in bankruptcy. See, *Bartenwerfer v. Buckley*, 143 S. Ct. 665 (2023).

[Editor's note: Let me get this straight. For a $200,000 dispute, the parties had two trials, several appeals, and took this case all the way to the U.S. Supreme Court? Did they ever attempt to mediate? Seems like a lot of money was spent here that might have gone into a settlement]

HAWAII. CRIMINAL CHARGES FILED OVER TERMINATION OF ARCHITECT FROM HER FIRM AND ATTEMPED INTIMIATION AND RETAILIATION FOR HER LAWSUIT.

This is a rare criminal case against an architectural firm in which the defendants were alleged to have conspired to commit "honest services fraud and federal program bribery" under 18 U.S.C. § 371 and conspired against the rights of an architect-employee in violation of 18 U.S.C. § 241. It was also alleged that some of the defendants tried to retaliate against and intimidate the former employee by, among other things, bribing the then-prosecuting attorney to prosecute the architect-employee on fraudulent theft offenses. The alleged conspiracy concerned the "alleged sham prosecution" of the employee, resulting from bribery and efforts to retaliate against her, including campaign contributions given to the prosecutor "in exchange for official action to open an investigation and prosecute" the employee.

The alleged victim in this case was hired as a project architect at the firm. In November 2011, after voicing her disagreement with claims a coworker made about her, the company termin-

ated her employment and then contested her request for unemployment benefits. In August 2012, the fired architect filed a lawsuit against the firm alleging claims under Title VII of the Civil Rights Act of 1964 and the Age Discrimination in Employment Act of 1967. In October 2012, two company employees met with the prosecuting attorney to persuade him to investigate and prosecute the employee for theft against the firm. One defendant allegedly also filed a complaint with the Tax Division of the Hawaii Attorney General's Office, alleging that the employee had committed tax fraud. Over the next few years, the defendants contributed approximately $45,000 to the prosecuting attorney's re-election campaigns.

In December 2014, the employee was arrested and arraigned on felony charges, which were later dismissed in September 2017 by a judge, finding a lack of probable cause for the charges and "significant irregularities" in the prosecutor's investigation and prosecution of the employee, including the "one-sided nature of the investigation" and that the prosecutor "was little more than acting as the recipient of, and a conduit for, [the firm's] submissions." While we found this case of interest to architect-lawyers, the published opinion dealt only with motions to strike certain allegations. See, *U.S. v. Kaneshiro*, 2023 WL 2349594 (D. Haw. 2023).

HAWAII. DESIGNERS AND CONTRACTOR SUED UNDER FAIR HOUSING ACT.

Yes, another case from Hawaii! Here, the U.S. government sued a general contractor and certain design professionals over failing to make several residential projects accessible under the Fair Housing Act ("FHA"), 42 U.S.C. § 3604(f)(1), (f)(2), and (f)(3)(C), and 24 C.F.R. §§ 100.202(a) and (b), and 100.205(c). The U.S. sought a declaratory judgment that the defendants violated the FHA; plus an injunction against the defendants to stop violating the FHA; and, monetary damages. At issue were four residential projects. The first project ("Napili") was a multifamily housing project on Maui, that consisted of 26 buildings without elevators. It has 184 dwelling units, 80 of which are ground-floor units. The second project ("Napilihau") was a multifamily housing project on Maui that consisted of 9 buildings without elevators. It has 76 dwelling units, 36 of which are ground-floor units. The third project ("Palehua") was a multifamily housing project on Oahu, that consisted of seven buildings without elevators. It has 84 dwelling units, 42 of which are ground floor units. The fourth project ("Wailea") was a multifamily housing project on Maui that consisted of 23 buildings without elevators. It has 118 dwelling units, 46 of which are ground-floor units. It was alleged that the contractor and the design professional defendants all "participated in the design and/or construction of the ground-floor units" at the projects.

The Court held that, "When a group of entities enters into the design and construction of a covered dwelling, all participants in the process as a whole are bound to follow the FHA.... In essence, any entity who contributes to a violation of the FHA would be liable."

Several of the defendants claimed that they could not be held liable for purported violations of the FHA based on – as they deemed it – "exterior" work performed at the projects. The Court held that, "When a group of entities enters into the design and construction of a covered dwelling, all participants in the process as a whole are bound to follow the FHA.... In essence, any entity who contributes to a violation of the FHA would be liable." But, claims under the FHA require a showing that the defendants were the "proximate cause" of the injury at issue. While the movants attempted to delineate between "exterior" and "interior" work, the Court said, "The FHA does not make such a distinction. What matters under the FHA is whether the Moving Defendants failed to design and construct covered multifamily dwellings with common use and public use areas that 'are readily accessible to and usable by' persons with disabilities." The design professional defendants claimed that their scope of work included "developing a site plan, floor plans, building plans, roof plans, exterior elevations, and preparing sketches of the total proposed project concept." The fee proposal also stated that they would perform construction administration, which included "review and approval of all subcontractor submittals and shop drawings, issuing change orders and field clarifications, maintaining logs, and answering any questions which may arise during the course of construction of the project." Although a civil engineer was to "provide the grading, drainage and utilities engineering plans, as well as submit and obtain the necessary agency approvals for this work," the design professional defendants were to "provide support as required by [the civil engineer] during this process." Due to a genuine dispute of material fact as to liability under the FHA, summary judgment was denied as to that issue. *U.S. v. Albert C. Kobayashi, Inc.*, 2023 WL 2163678 (D. Haw. 2023).

ALASKA. COPYRIGHT CLAIM DISMISSED OVER A PRAIRIE STYLE HOUSE!

In the spring of 2020, an owner contacted a builder about the possibility of building a house. The owner selected a design known as "the Sanford," and the builder then provided ideas for changes he would like to make to the plan, with a final modified plan being completed on April 11, 2020. Both the original "Sanford" plan and the modified "Sanford" plan were copyrighted by the builder. Sometime in late April/early May of 2020, difficulties with the financial arrangements arose, and the owner did not move forward with the project. Instead, his realtor set him up with another builder, co-defendants in the lawsuit. The owner gave the new builder a copy of the modified "Sanford" plan, saying it was "kind of the generic layout that we were looking for." The new builder reportedly said it "would not build someone else's plan out of legal considerations of course, but also out of respect for that builder." The parties concluded that they needed to change the existing plan by 25% in order to make it acceptable to use (although there is no basis in the law to a 25% alteration). The original builder became aware of the new plan for the house in April 2020, after seeing a copy of the plan on the desk of a lumber salesman (and immediately recognized it as its own). The original builder filed suit against the owner and the second builder in three counts for: 1) copyright infringement, 2) trade secret misappropriation, and 3) breach of an implied-in-fact contract. The owner moved for summary judgment on all of plaintiff's claims asserted against him.

In copyright cases, the plaintiff "can establish copying by showing (1) that the defendant had access to the plaintiff's work and (2) that the two works are substantially similar." Summary judgment is "not highly favored" on questions of substantial similarity, but it is appropriate if the court can conclude that "no reasonable juror could find substantial similarity of ideas and expression."

Here, there was no dispute that the owner had access to the modified "Sanford" plan, and he may have even had a "high degree of access." Courts in the Ninth Circuit "use a two-part test to determine whether the defendant's work is substantially similar to the plaintiff's copyrighted work." This two-part test has "extrinsic and intrinsic components." The extrinsic test requires a three-step analysis: (1) the plaintiff identifies similarities between the copyrighted work and the accused work; (2) of those similarities, the court disregards any that are based on unprotectable material or authorized use; and (3) the court must determine the scope of protection ("thick" or "thin") to which the remainder is entitled "as a whole." The plaintiff identified the several similarities between the modified Sanford plan and the allegedly infringing house plan. But, not all aspects of an architectural design are protected by copyright law. "Under the merger doctrine, courts will not protect a copyrighted work from infringement if the idea underlying the copyrighted work can be expressed in only one way, lest there be a monopoly on the underlying idea. *** In such an instance, it is said that the work's idea and expression 'merge.' " Courts have applied the doctrine of merger to architectural plans, saying that "any design elements attributable to building codes, topography, structures that already exist on the construction site, or engineering necessity should ... get no protection."

Also, under the related doctrine of Scènes à Faire, courts will not protect a copyrighted work from infringement if the expression embodied in the work necessarily flows from "a commonplace idea." Courts have found that there are Scènes-à-Faire in architecture. For example, the Court said, "Neoclassical government buildings, colonial houses, and modern high-rise office buildings are all recognized styles from which architects draw. Elements taken from these styles should get no protection. Likewise, there are certain market expectations for homes or commercial buildings. Design features used by all architects, because of consumer demand, also get no protection." The owner offered expert testimony of an architect who said that the modified "Sanford" plan is a "modern prairie-style" and that style has many Scenes-a-Faire.

The Court noted that, "[W]hile individual standard features and architectural elements classifiable as ideas are not themselves copyrightable, an architect's original combination or arrangement of such features may be." The Court found that the expert's testimony that the modified "Sanford" plan contained no protectable elements was "unrebutted, and no reasonable jury could conclude that there were protectable elements in the modified plan." Even if there was direct evidence of copying, the owner would not be liable for infringement because whatever was copied from the modified "Sanford" plan was not protected! Plaintiff's claims against the owner were dismissed. *Sumner Co. v. Jordan,* 2023 WL 2162062 (D. Alaska 2023).

MEMBER PROFILE: BARRY J. MILLER

Benesch Friedlander Coplan & Aronoff LLP
Cleveland, Ohio

TJS member Barry J. Miller was the first of his siblings to attend college. Although Barry grew up in Rochester, NY, he went to college in Ohio – where he now lives. To study architecture, he chose Miami Univ. in Oxford, Ohio, where the program "was more tailored to design theory and composition rather than professional practice," he said. There was also a nice financial aid package, and the campus was attractive. "I enjoyed my four years at Miami and graduated with a Bachelors of Environmental Design degree. I then attended Kent State University in their Masters program," Barry told us. In addition to his graduate studies at Kent State, he was also a "TA" (teaching assistant) and had the opportunity to teach professional responsibility to the fifth-year students. "This was my introduction to legal liability, AIA contracts and Sweet on Construction Law. I found the interplay between the AIA contract provisions and the changing legal liability to be fascinating. I enjoyed all aspects of that experience and I graduated with a Masters of Architecture degree."

With an interest in law already, Barry chose Case Western Reserve School of Law in Cleveland for law school. He had relocated to Cleveland after marrying Sue (his wife of 45 years) "and she was soon supporting us as I changed careers. I had been practicing architecture at a local firm. While the projects were varied, my daily tasks were not. This was back in the time when production drawings were created with maylines and triangles, so repeating wall sections and details was a time-consuming process. I was uninspired and I thought my talents were underutilized. I knew that I needed to expand my future opportunities and in exploring my options, I considered a career in either business or law. I chose law because it also provided me with the option of transitioning to a business position if I did not like the practice of law," Barry said. He always intended to combine architecture with either option, especially after spending six years obtaining his two architectural degrees! "My law school did not have any courses on construction law, so it was difficult to project how I could combine my architectural background with the practice of law. I, however, knew that the construction industry was very contentious and relied heavily on written agreements.

The closest I came to combining the two studies in law school was to reschedule my first semester, first year law finals so I could sit for my architectural license exam." Thinking back Barry said that task was "not all that easy to accomplish," but he passed and got his Ohio architectural license. Now onto a legal career. Barry was hired as an associate with the firm of Arter & Hadden in its Cleveland office, spending his 2L summer there. The firm liked what they saw and offered him a job in the Cleveland office, where they had no construction lawyers. "Ultimately, if the dispute had something to do with construction, it found its way to my desk. I had a number of excellent mentors, who gave me every opportunity to grow and excel. Also, since I knew something about the AIA documents, I soon found myself negotiating sophisticated architectural and construction agreements."

Today, Barry's practice is split 40% transactional and 60% dispute resolution. "I have always represented a broad spectrum of the construction industry – owners, design professionals, contractors, design-builders, subs, suppliers, manufacturers and insurers/sureties. This representation has provided me with a unique perspective of the varying competing interests in this industry that informed both my contract drafting and dispute strategy. There is rarely a day which goes by that I do not rely upon some element of my architectural education or experience."

What is the best part of his job? "There are too many to describe. I enjoy being able to help my clients achieve their goals. I feel a great responsibility to my clients and always try to give my all to their issues. Usually, that results in a successful representation. I also enjoy the intellectual rigor that this profession requires. Whether it is the creation and execution of a successful case strategy or an effective negotiation approach. In addition, I enjoy going toe-to-toe with construction experts as it brings my architectural experience into play. Also, there are few more satisfying aspects of my role than mentoring and shaping the next generation of lawyers. I have been blessed to work with a number of very smart and accomplished associates over the years. While not all have ultimately focused their practice on construction law, they have all gone on to be first rate and successful lawyers."

Barry and Sue have been together since they met in undergraduate school. "I know my life would be far worse if she was not by my side through the ups and downs over the past 5 decades." They have two lovely and attentive daughters, Jessica and Lauren, who live nearby, and two adorable grandchildren, Leni and Brody "that Sue and I dote over." (See photo, right). Outside of work, Barry enjoys an occasional round of golf during the season and he loves photography. "I find the entire process, from image capture through editing to be relaxing, intellectually challenging and it satisfies my underutilized creative side." He is also active on the boards of numerous legal, civic and religious organizations including the Regional Red Cross Chapter.

Barry is rated AV Preeminent by Martindale-Hubbell and he has been recognized from the inception of Chambers (2003-2023), Best Lawyers (2005-2023) and Super Lawyers (2003-2023). This recognition included being recognized as the Best Lawyers, Cleveland Construction Attorney of the Year on six separate occasions. "I attribute these recognitions not just to my legal skills but also as a reflection of how I interact with my fellow construction lawyers," he said.

As to Cleveland, aka "the Land," Barry admits that the city has been the subject of national jokes for decades. "It is a rust belt city that has struggled. at times, in its transition from a heavy industrial to a service economy. Cleveland is a very diverse city, steeped in cultural institutions and traditions. But, it has more established attractions than cities of much

(Above) Sue and Barry with grandchildren Leni and Brody.

larger size, like museums, orchestras, sports teams, universities, world-class hospitals, a vibrant theater district and Lake Erie. However, my tolerance for Cleveland's gray winters is tested yearly. The other seasons are spectacular, and we do not have hurricanes, tornadoes, forest fires, droughts, or intolerable rush hour traffic. In short, it's a great place to raise a family."

Barry is a big fan of Frank Lloyd Wright, among others. "Falling Water is one of the finest examples of the integration between the built environment and nature. However, I would have enjoyed the interior better if I was only 5' 5" tall!" His advice for a young architect thinking about law school? "If you do not love to read, write and publicly speak, you should rethink law school. But the analytical problem-solving skills that architects develop, as well as the work ethic and drive that it took to survive architectural school, will help you in law school. I always treated law school in the same fashion as I did architectural school. I would advise, however, that one should explore all areas of legal practice and not focus on simply becoming a construction lawyer. Who knows, unlike me, you may ultimately want to be a tax lawyer!"

AIA RELEASES 9 NEW DOCUMENTS FOR MAINTENANCE WORK.

The AIA Contract Documents Committee has released nine new forms in 2023, which form the new Facility Management family of documents. The new forms distinguish between two types of maintenance work: "As-Needed Services" and "Ongoing Services." The new forms are only available as part of a 1-Year subscription. *(See sample on p. 23, below).* The new forms include:

F101 – Master Maintenance Agreement. A master maintenance agreement between a client and a maintenance contractor to perform as-needed or ongoing maintenance work. It is intended for use when the scope of the maintenance work will be defined through one or more work orders. F101 provides only the common terms and conditions that will be applicable to each work order. Use of the F101 plus a Work Order creates a contract that includes both the terms and the scope of the maintenance work. F101 is coordinated for use with AIA Doc. No. F201, Work Order for As Needed Maintenance Work or AIA Doc. No. F202, Work Order for Ongoing Maintenance Work.

F102 – Maintenance Agreement for As-Needed Maintenance Work. This is a maintenance agreement between a client and a maintenance contractor intended for use when the parties wish to include both the terms and the scope in a standalone agreement. "As-needed maintenance work" includes work associated with building repair, or simple building improvements (e.g., roof repairs, façade painting, parking lot striping, HVAC repairs, small building upgrades, or tenant improvements). The F102 prompts the parties to include both the terms and the scope of the work.

F103 – Maintenance Agreement for Ongoing Maintenance Work. This is a maintenance agreement between a client and a maintenance contractor to perform ongoing maintenance work, for use when the parties wish to include both the terms and the scope in a standalone agreement. "Ongoing maintenance work" includes work associated with repetitive maintenance needs regularly performed as part of a building's upkeep (e.g., HVAC maintenance, cleaning, lawn care, and snow removal).

F201 – Work Order for As-Needed Maintenance Work. A work order document which must be used with AIA Contract Document F101, Master Maintenance Agreement to form a contract between the client and contractor form as-needed maintenance work. F201 prompts the parties to include the scope of the maintenance work.

F202 – Work Order for Ongoing Maintenance Work. This is a work order document which must be used with AIA Doc. No. F101, Master Maintenance Agreement to form the contract between the client and contractor to perform ongoing maintenance work. Ongoing maintenance work includes work associated with repetitive maintenance needs regularly performed as part of a building's upkeep (e.g., HVAC maintenance, cleaning services, lawn care, and snow removal). F202 prompts the parties to include the scope of the maintenance work.

F701- Amendment to a Maintenance Agreement or Work Order Contract. This is an amendment form to be used when a maintenance contractor or their client intend to amend a maintenance agreement or a work order contract. F701 requires the parties to specifically identify the maintenance agreement or work order contract that is being amended and to describe the nature of the amendment. F701 also has prompts for the parties to insert adjustments to the contractor's compensation and schedule due to the agreed upon amendments.

F702- Invoice for Maintenance Work. This invoice form requires the Contractor to identify the maintenance agreement or work order contract under which it is requesting payment. There is a chart where the Contractor can describe portions of maintenance work for which it is requesting payment and the corresponding amounts.

F703 – Request for Certificate of Insurance. This is a form to request a certificate or certificates of insurance from a contractor. It can also be used to request certificates of insurance from subs or consultants.

F704 – Status Report for Maintenance Work. This is a standard form for reporting the status of maintenance work to a client, to be used when a Contractor intends to provide a report to a client on the status of maintenance work performed over a period of time. F704 requires the Contractor to identify the maintenance agreement or work order contract under which the maintenance work was performed. It also has prompts for the contractor to describe the maintenance work that it performed and to describe any complaints and incidents related to it.

MINUTES OF THE JAN. 19, 2023 TJS BOARD MEETING.

The Winter Board Meeting of The Jefferson Society, Inc., a Virginia non-profit corporation (the "Society"), was held via electronic meeting, beginning at 3:00 p.m. Eastern Daylight Time on January 19, 2023. In attendance were: President: Josh Flowers, Treasurer: Mark Ryan, Secretary: Michael Bell, Vice President/President-Elect: Laura Jo Lieffers, Treasurer-Elect: Alex van Gaalen; Past President: Donna Hunt; Directors: Joyce Raspa and Jessyca Henderson; Founders: Chuck Heuer, Tim Twomey, and Bill Quatman; Absent: Peggy Landry. President Josh Flowers opened the meeting, determined that a quorum of the Board of Directors was present, and called the meeting to order. Michael Bell served as secretary of the meeting.

Continuing Business:

Minutes: The minutes of the last Board meeting, which took place on May 17, 2022, will be submitted for approval at the next Board meeting.

Treasurer's Report: Mark Ryan reported that we have a balance of $17,975.48 in our bank account. We have made a payment of $1,175.00 to the AIA so that we may be an approved provider of AIA continuing education. Payments are due annually. Our other largest expense is the annual dinner. We have 122 "active" members. However, only 50 have paid dues for 2022. This is attributed to a rough two years due to the pandemic. We have one new member this year. Mark would like to address dues forgiveness. Laura Jo Lieffers noted that the by-laws provide that after 180 days of delinquency, the Board may vote to expel the member. Mark suggests that if a new member pays in the last quarter, then the dues would be applied to the following calendar year. He questioned whether we should expand to include non-accredited degrees, or having achieved licenses in both architecture and law, no matter what the path. These suggestions were not resolved in the meeting.

Web Site and Other Technology: Alex Van Gaalen reported that he has made all known updates to the directory.

Membership Committee: Bill Quatman reported for the membership committee, which includes Craig Williams and Donna Hunt. Bill believes that the pool of possible new members is tapped out. Bill said that he regularly contacts about 30 individuals who qualify for membership, and he doesn't hear from them. The committee is looking for volunteers from the next generation of leaders. He thinks that he should hand over the list to the new leadership and that they should look for new candidates. Laura Jo and Jessyca Henderson volunteered to work on membership. Donna will continue to help. Laura Jo suggested that our focus should include member retention, since we appear to be losing members and we are not readily gaining new ones. Michael suggested that board members could send personal emails to those members who are not current, urging them to keep up their membership. Board members could review the list of non-current members and volunteer to contact those with whom they have a personal connection. Donna offered to craft correspondence to be used in this way. Alex will update the website to allow for overdue payments.

TJS as AIA Continuing Education Provider: Laura Jo suggested publicizing to members that we have an AIA Continuing Education Service (CES) provider account so that they know that they may use this benefit to our members. We should encourage members to submit proposals and tell them that we may help them get their program approved. Laura Jo reminded us that we have canned presentations that members may present. Bill inquired about CLE for TJS members. Chuck said that he could help advance this.

2023 Annual Business Meeting and Annual Dinner: Josh reported that our splitting up of the annual business meeting and the annual dinner was well-received. Accordingly, this year's annual business meeting will again be virtual, a few weeks ahead of the annual dinner. The dinner will be held in San Francisco on Wednesday, June 7 in connection with the AIA Annual Conference. We need members to help plan the dinner. Two of our members reside in the San Francisco area: Richard Shapiro and Clark Thiel. Joyce Raspa said that she would help begin the planning of the dinner by contacting those two members. Josh reported that Jackie Pons' firm in the Los Angeles area was scheduled to sponsor the last annual meeting. It was agreed that it would be appropriate to give her firm the opportunity to sponsor this year. Josh will give her a deadline to let us know if her firm wishes to be the sole sponsor.

January Issue of Monticello: Josh noted that Bill has written and created the *Monticello* for its entire history.

It was agreed that it is time for others to participate, and that it would be better to spread the work between at least two members. Michael Bell has offered to take on part of this role. He would need one of our practicing attorneys to take on the legal reporting of cases, statutes, etc. The transition would take place in the second half of 2023, with the goal of having Bill completely retired by the beginning of 2024. We still need a volunteer to handle the legal side of the *Monticello*. Bill noted that when he asks an attorney for permission to re-publish an article they wrote, they are usually eager to say yes. Joyce Raspa offered her editing services. Chuck Heuer said that he will write an article for the *Monticello* regarding the founding, in 1825, of "The Jefferson Society" as a student organization at UVA. Bill said that he will send out the January *Monticello* after he receives the President's Report.

SCOTUS Admission Date: Donna said that she would contact SCOTUS to determine whether they have resumed the swearing-in ceremonies. It was agreed that she should ask for 20 spots. We had 28 participants last time.

Nominating Committee Report: Josh reported that the nominating committee will start the process of coming up with a slate of nominees prior to the next board meeting. Executive Committee and Director positions to fill at Annual meeting are: Secretary (1 year term); Director (3 year term). Suggestions are welcome.

New Business:

Calendar: Laura Jo shared a draft of an annual calendar she has created. She welcomes edits or additions.

Leadership Transitions: Donna said that she has seen our officers help transition their successors into their new roles and would like to see that continue. She is happy to help with this.

Motion to Adjourn: Motion was made and seconded to adjourn. Adjourned at 3:05 p.m. EST.

Next Board Meeting: May 2023.

Respectfully submitted,

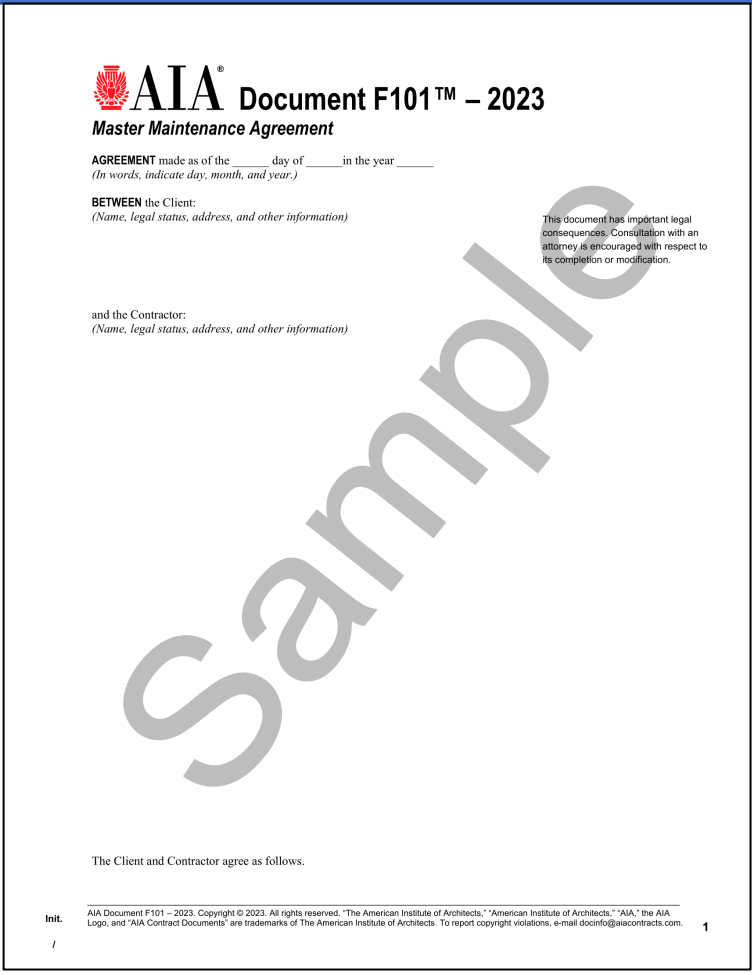
Michael J. Bell, Secretary

Our Mission

The Jefferson Society, Inc. is a non-profit corporation, founded on July 4, 2012 for the advancement of its members' mutual interests in Architecture and Law. The Society intends to accomplish these purposes by enhancing collegiality among its members and by facilitating dialogue between architects and lawyers.

POPLAR FOREST CELBRATES THOMAS JEFFERSON'S BIRTHDAY

A celebration of Thomas Jefferson took place the week of April 10-14 at Poplar Forest to honor Mr. Jefferson's 280th birthday on April 13th. Poplar Forest was Jefferson's retreat home and plantation in Lynchburg, Virginia that was built beginning in 1806. The property hosted tours, and hands-on-activities like making birthday cards and participating in period games. Thomas Jefferson acquired the 4,800-acre plantation at Poplar Forest through his marriage to Martha Wayles Skelton in 1773. During the Revolution when the British drove him from Monticello in June 1781, he escaped with his family to Poplar Forest. Jefferson began construction of his retreat at Poplar Forest in 1806. It is called the purest of his Neoclassical architectural masterpieces. He visited the house in the foothills of the Blue Ridge Mountains as often as four times a year, frequently staying for an entire month. Its elegant geometrical design and unusual, somewhat impractical plan embodied the abstract forms that architects of the Neoclassical loved. Here, Mr. Jefferson found rest and leisure and enjoyed private time with his family. The villas of Renaissance architect, Andrea Palladio, influenced the design, with the mounds replacing pavilions. In 1812, Jefferson proudly declared, "When finished, it will be the best dwelling house in the state, except that of Monticello." *[Editor's Note: Poplar Forest is located on Rte. 661 (Bateman Bridge Rd.) at 1548 Bateman Bridge Rd. southwest of Lynchburg, VA. It has been designated a National Historic Landmark.]*



AIA® Document F101™ – 2023

Master Maintenance Agreement

AGREEMENT made as of the _____ day of _____in the year _____
(In words, indicate day, month, and year.)

BETWEEN the Client:
(Name, legal status, address, and other information)

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

and the Contractor:
(Name, legal status, address, and other information)

Sample

The Client and Contractor agree as follows.

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(Above) Example of one of the AIA's new forms intended specially for maintenance work. See article on page 20, above.

AIA SUPPORTS END TO NCARB'S "ROLLING CLOCK" LICENSE POLICY.

In February 2023, the American Institute of Architects announced its support for the January 2023 decision by the Board of Directors of the National Council of Architectural Registration Boards ("NCARB") for retiring the "rolling clock" to architecture licensure, which placed a five-year expiration date on passed divisions of the Architect Registration Examination (ARE®). On April 30, 2023, the five-year policy will be replaced with a new score validity policy, which bases the validity of passed ARE divisions on exam versions (such as ARE 4.0 or ARE 5.0) rather than a set time frame. **NCARB will reinstate previously expired divisions of ARE 4.0** for candidates who are seeking licensure in jurisdictions that do not have a rolling clock-type requirement. According to the AIA's statement, "Extenuating life circumstances—from financial pressures to pay student loans to family care obligations of many first-generation college graduates, coupled with lived experiences—has led to the ARE® five-year rolling clock becoming a barrier for some along the pathway to architecture licensure. NCARB analysis reveals this has had disproportionate effects on women and people from racially and ethnically diverse backgrounds. AIA supports stopping the rolling clock to advance a more inclusive future for the architecture profession."

The Jefferson Society, Inc.
c/o 2170 Lonicera Way
Charlottesville, VA 22911