



WELCOME TO

HALL & COMPANY
Serving Architects, Engineers and Environmental Consultants

AE RESOURCES WEBINAR

Introduction and closing by
ASHLEY HURD, CRM, CIC



www.hallandcompany.com

The slide features a background image of a hand holding a pen over architectural blueprints. The text is centered and uses a mix of serif and sans-serif fonts. The company name 'HALL & COMPANY' is prominently displayed in a large serif font, with the tagline 'Serving Architects, Engineers and Environmental Consultants' in a smaller sans-serif font below it. The webinar title 'AE RESOURCES WEBINAR' is in a bold sans-serif font. The speaker's name and credentials are listed in a red serif font. A small portrait of Ashley Hurd is positioned to the left of the text. The website URL is at the bottom center.

A DESIGN PROFESSIONAL'S LAW CLINIC

by MICHAEL J. CORSO, Esquire

Board Certified Civil Trial Lawyer
Board Certified Business Litigation Lawyer
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 Henderson|Franklin
ATTORNEYS AT LAW



The Legal System

- State Court/Federal Court
- Venue
- Jury or Non-Jury
- Causes of Action
- Tort and Contract Law
- Complaint
- Service of Process
- Responsive Pleadings
- Dispositive Pleadings



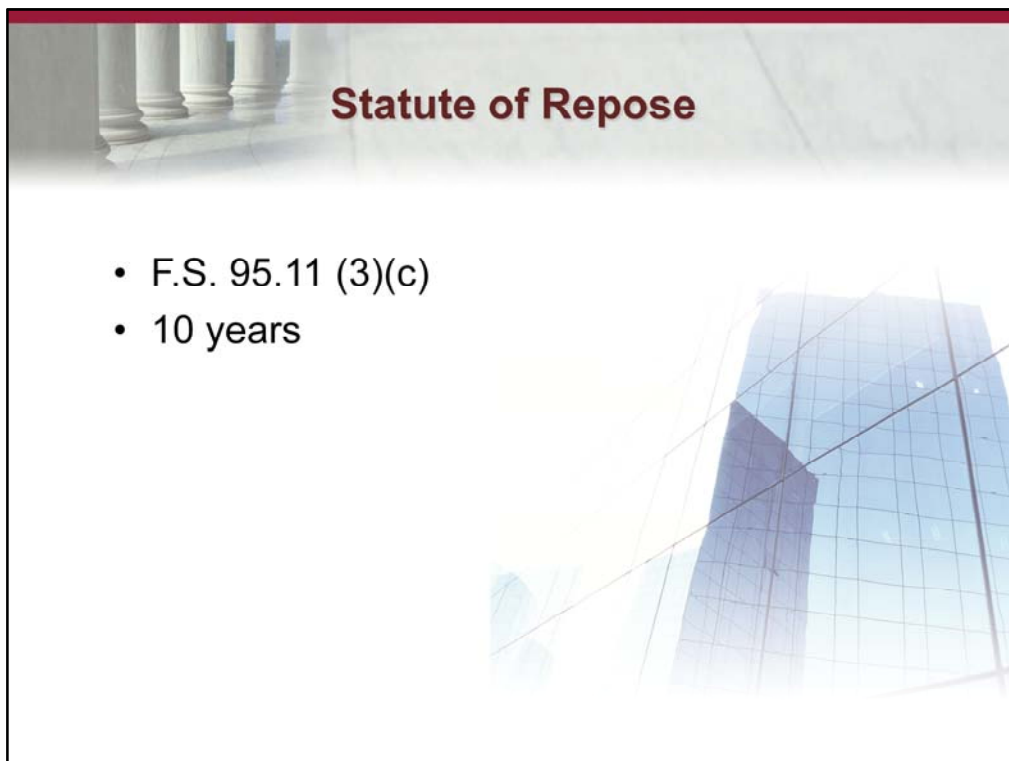
Design Professional – Who Can Be Sued?

- Chapter 471 (Engineering)
- 471.023
- Chapter 472 (Land Surveying and Mapping)
- Chapter 481 (Architecture, Interior Design, and Landscape Architecture)
- Moransais case

Statutes of Limitations and of Repose

- All states have statutes of limitation that impose time limits on how long after an injury a person may file suit or to be forever barred
- Privity
- F.S. 95.11
- 2 Year / 4 Year
- Latent Defect



A presentation slide with a dark red header bar. The background features a blurred image of classical columns on the left and a modern glass skyscraper on the right. The title "Statute of Repose" is centered in the header bar in a dark red font. Below the header, a bulleted list contains two items: "F.S. 95.11 (3)(c)" and "10 years".

Statute of Repose

- F.S. 95.11 (3)(c)
- 10 years



Tort Law and Contract Law

- **Tort Law**
 - Basic Protection of Negligence Standard
 - Legal Framework of Protection
 - Based on Standard of Care
- **Contract Law**
 - Freedom to Assume Contractual Obligations
 - Changing or Creating Rights
 - Exceeding Normal Legal Liability

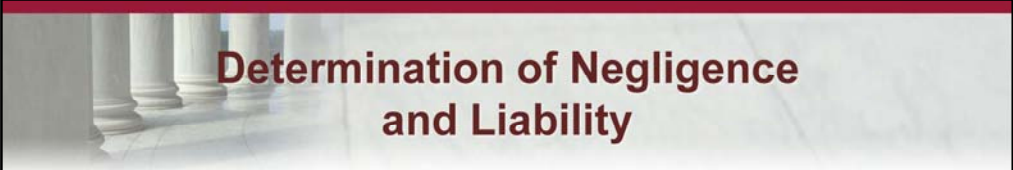


Elements of Tort Liability

- **Based on Negligence**
 - Duty
 - Breach
 - Causation
 - Damage


How Duties are Established

- Legal Requirements
 - Codes and Standards
 - Registration Laws
 - Other Laws, Rules, Regulations
- Contractual Obligations
- Actions Creating Intended or Unintended Duties



Determination of Negligence and Liability

- **Negligence**
 - Was there a breach of a duty?
 - What duty existed?
 - Was the Standard of Care met?
- **Liability**
 - If there was a breach of duty, did it cause damage?
 - Can the damage be traced to the breach?
 - Could such damage have been expected?



The Standard of Care

- **Negligence** is the failure to use reasonable care. Reasonable care is that degree of care which a reasonably careful person would use under like circumstances. Negligence may consist either in doing something that a reasonably careful person would not do under like circumstances or in failing to do something that a reasonably careful person would do under like circumstances.
- **Reasonable** care on the part of a design professional is that degree of care which a reasonably careful design professional would use under like circumstances. Negligence may consist either in doing something that a reasonably careful design professional would not do under like circumstances or in failing to do something that a reasonably careful design professional would do under like circumstances.




The Standard of Care

- **Established by Expert Witness Testimony**

Since the issue in negligence cases is what other design professionals would have done under the same circumstances, expert testimony is normally required to allow the judge or jury to determine whether negligence occurred.

Expert Witness Testimony



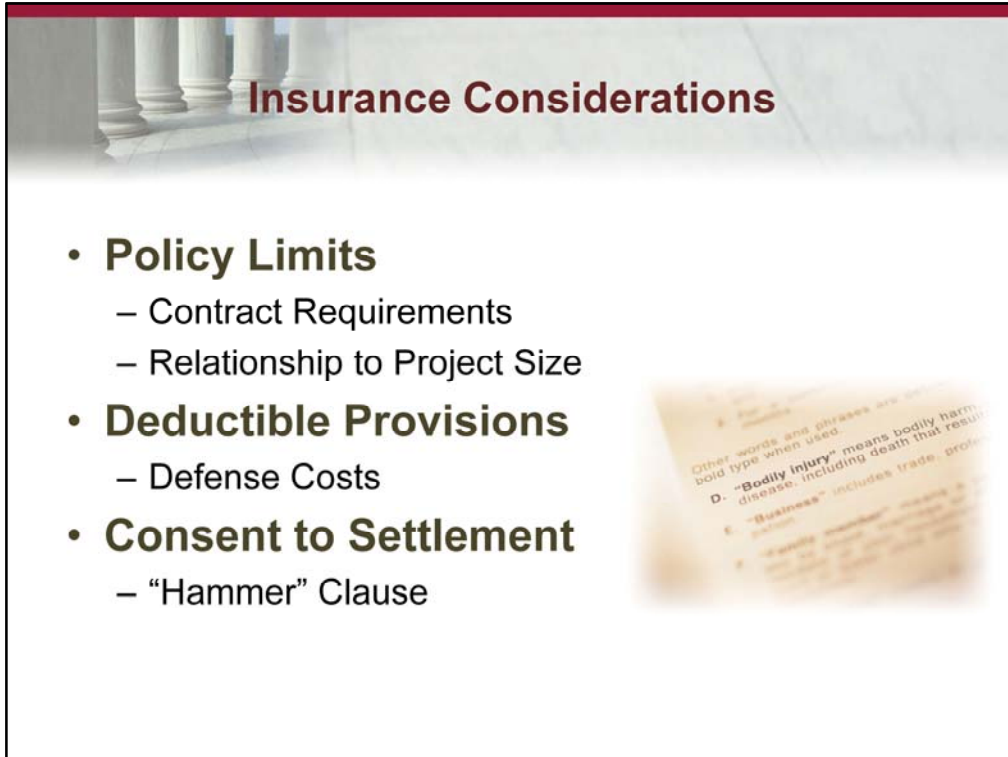
- Must be objective to show standard – not to show negligence
- Testimony as to reasonableness of service provided by professional
 - At the time the service occurred
 - In the same locality
 - By the same discipline
 - Based on the facts then known
- Not what “expert” would have done now

Depositions

- Question and answer session between a witness and attorneys for the parties
- In the presence of a court reporter
- Sworn testimony
- Informal setting but formal event
- Do's and Don'ts

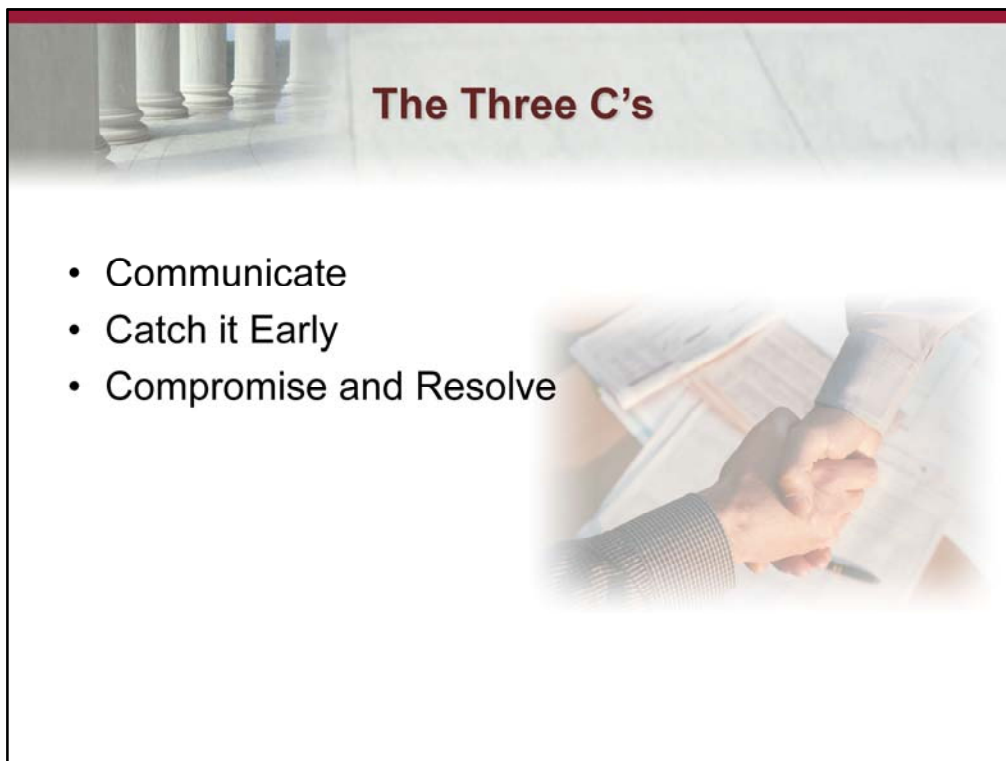
Mediation

- Pre-Suit/in-suit
- Selection of mediator (neutral)
- Settlement conference resulting in a discussion of the dispute by the parties
- Mediator makes no decisions but facilitates discussion
- Confidentiality
- Different from arbitration




Insurance Considerations

- **Policy Limits**
 - Contract Requirements
 - Relationship to Project Size
- **Deductible Provisions**
 - Defense Costs
- **Consent to Settlement**
 - “Hammer” Clause



The Three C's

- Communicate
- Catch it Early
- Compromise and Resolve





How to Minimize Your Exposure to a Lawsuit

- **Contract and Strategic Considerations**
 - Things to Avoid
- **Contract Considerations**
 - Follow Carrier's Guidelines
 - Don't Guarantee Anything
- **Architects and Engineers are not Guarantors of Performance**
 - The Standard is Negligence

Contract and Strategic Considerations



- Contractually Bargained for Limitations of Liability
 - Reduce Fee in Exchange for Aggregate Limit on Liability
 - Indemnification Clauses
 - Witt v. La Gorce case
- Arbitration
- Mediation



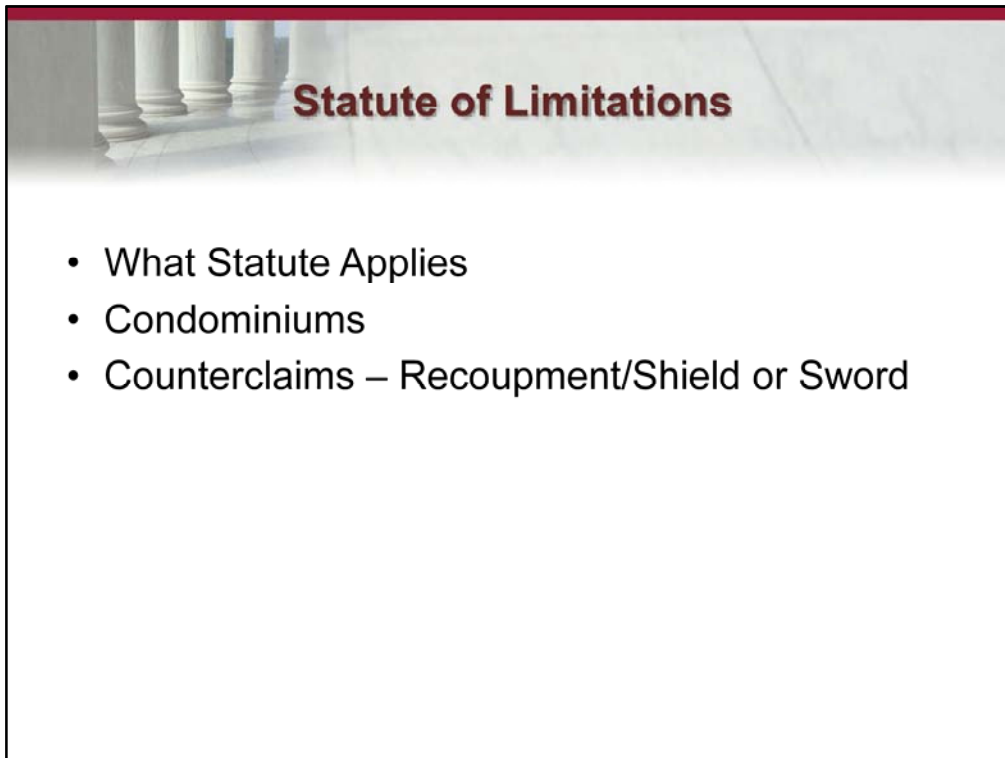
Limitation of Liability, Sample Clause

To the fullest extent permitted by law, and notwithstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's officers, directors, partners, employees and sub consultants, and any of them, to the Client and anyone claiming by or through the Client, for any and all claims, losses, costs or damages, including attorneys' fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Consultant under this Agreement, or the total amount of \$_____, whichever is greater. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise permitted by law.

Project Documents and Administration



- Specifications – an area of concern
 - Treat them lightly at your peril
 - Design v. Performance Spec
- Shop Drawings
- Construction Administration
 - What does the Owner expect
 - RFI's
- Experts and Attorneys

A presentation slide with a dark red header bar. The background features a blurred image of classical columns. The title "Statute of Limitations" is written in a bold, dark red font. Below the title is a bulleted list of three items: "What Statute Applies", "Condominiums", and "Counterclaims – Recoupment/Shield or Sword".

Statute of Limitations

- What Statute Applies
- Condominiums
- Counterclaims – Recoupment/Shield or Sword

The Florida Building Code

- Statutory Liability – F.S. §553.84



Thank you for your time and attention.

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THANK YOU

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