DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX

This index is updated periodically by Skellenger Bender P.S. Users should be cautioned that Skellenger Bender does not represent that this index is a complete survey of all design professional LOL cases, nor that it is necessarily current as new cases are reported. Please contact Terry Scanlan at Skellenger Bender for any questions about using this index. Skellenger Bender would also appreciate receiving the citation to any new cases that are not included in the index. Please forward these to Terry Scanlan via the contact information below.

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Alaska	No	*City of Dillingham v. CH2M Hill Northwest, Inc.*, 873 P.2d 1271 (Alaska 1994). Alaska's anti-indemnity statute bars enforcement of LOL limiting liability to the greater of $50,000 or fee; legislative history indicates intent to prohibit not only indemnity clauses but also LOL clauses.	AS 45.45.900 (prohibiting indemnity clauses)	LOL void under AS 45.45.900 regardless of whether indemnification has been sought; term "indemnify" must be broadly construed to mean "exempt."
Arizona	Yes	*1800 Ocotillo v. WLB Group, Inc.*, 196 P.3d 222, 2008 Ariz. LEXIS 203 (Nov. 3. 2008). Breach of contract and negligence action for economic loss arising out of A/E failure to identify right-of-way in survey for developer. Held that LOL provisions by certain types of licensed professionals are not contrary to public policy. LOL does not operate as an "assumption of risk" as that term is used in the Arizona Constitution.	ARS § 32-1159 (prohibiting indemnity clauses) Arizona Constitution, Art. 18 § 5	LOL only caps amount of liability; it does not exempt promisee from liability. Legislative history does not reflect any consideration of LOL provisions. Absent public policy, parties are free to contract as they wish.

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Arkansas	Yes	*W. William Graham v. City of Cave City*, 709 S.W. 2d 94 (Ark. 1986). Breach of contract action against engineering firm that failed to meet deadline for preparing plans for wastewater treatment plant; late submittal resulted in reduced funding from government. LOL was narrowly drawn to apply to negligence, but not breach of contract. Court declined to rewrite contract to engraft onto contract a LOL for breach of contract claims.		LOL for negligent acts could not be enlarged to limit liability for breach of contract. Issue was *not* the enforceability of the LOL clause. "Clearly, if the clause limits liability, it is the duty of this Court to give effect to such clause." 709 S.W. 2d at 95.
California	Yes	*CAZA Drilling (California), Inc. v. TEG Oil & Gas U.S.A., Inc.*, 142 Cal. App. 4th 453 (Cal. Ct. App. 2006). LOL in drilling agreement enforced in negligence claim against contractor. LOL was valid limitation on liability rather than improper attempt to exempt contracting party from liability for violation of law within meaning of § 1688.	Cal. Civ. Code § 1668(codify-ing public policy against contracts that "exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law")	Parties had equal bargaining power. Party seeking exculpation did not provide service of practical necessity to members of public such that public interest was implicated. Contract required party to accept responsibility for damage to equipment, injury to employees and pollution. Thus, LOL did not adversely affect public or workers. LOL did not exempt party from all liability, but merely limited its responsibility with respect to economic damages.

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				Parties failed to identify specific law or regulation purportedly violated so as to trigger application of § 1688.
California	Yes, but not as to third parties who are joint tortfeasors in context of motion for approval of good faith settlement	*TSI Seismic Tenant Space, Inc. v. Superior Court,* 149 Cal.App.4th 159 (Cal. Ct. App. 2007). Court reversed order granting motion for good faith settlement where settlement would have given effect to LOL in contract between a geotechnical engineer and developer of a property. Held that settlement was not in good faith because the settlement amount - $50K - was grossly disproportional to the amount of damage caused by the engineer's negligence - approximately $3.4 million - despite an LOL clause limiting potential damages to $50K.	Cal. Code. Civ. P. § 877.6 (discharging tortfeasor who settles in good faith from liability to other tortfeasors)	Goal of § 877.6 is to encourage pretrial settlements. However, the equitable policy behind this section is to encourage settlement among all interested parties." That goal is not furthered when engineer's proportionate share of liability with other defendants is not considered.
California	Yes, except in cases of fraud or willful injury*	*450 North Brand v. McLarand,* 2002 WL 31590523, 2002 Cal. App. Unpub LEXIS 10621 (Cal. App. November 20, 2002). In action for fraud, contractual clause exculpating individual officers and shareholders of architectural design firm from liability violated state law prohibiting parties from contracting away liability for fraudulent acts.	Cal. Civ. Code § 1668	

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California	Yes, unless unconscionable or contrary to public policy *	*Viner v. Brockway,* 36 Cal.Rptr.2d 718 (Cal.App. 2 Dist. 1994) (ordered not published). Tort action by homeowners against engineering firm for negligence in performing slope stabilization project, where project was not adequate to prevent slope failure. Appellate court affirmed ruling that LOL clause in engineering services contract with unsophisticated homeowners is unconscionable, against public policy, and unenforceable, notwithstanding that the contract was negotiated by legal counsel.	Cal. Civ. Code § 2782.5	Whether the releasing party has really acquiesced voluntarily in the contractual shifting of the risk; and whether the releasing party has in fact received an adequate consideration for the transfer. Contract was for highly specialized services requiring technical expertise in area about which respondent had no knowledge.
California	Yes, unless ambiguous	*Olympus Group v. CM Engineering Assoc.,* Cal. Dist. Ct. App. No. GO1128 (Nov. 30, 1992). Ambiguous LOL in engineering contract unenforceable against contract claim.		
California	Yes	*Markborough California, Inc. v. Superior Court,* 227 Cal.App.3d 705, 277 Cal. Rptr. 919 (Cal. Ct. App. 1991). LOL in a construction contract limiting engineer's liability to developer for damages caused by the engineer's professional errors and omissions is valid if the parties had an opportunity to accept, reject or modify the provision. Such LOLs do not violate California anti-indemnity statute so long as they are not against public policy and are not unconscionable.	Cal. Civ. Code § 2782.5 (authorizing LOLs in construction contract)	Cal. Civ. Code § 2782.5 does not trump prohibition of § 1668. Legislative history showed that legislature did not intend to change common law that sanctioned use of LOLs so long as they were not against public policy and not unconscionable.

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Florida	Not enforceable against claims seeking to hold a design professional personally liable for professional malpractice	*Witt v. La Gorce Country Club, Inc.*, 35 So. 3d 1033; 2010 Fla. App. LEXIS 8160 (Fl. Dist. Ct. 3d. App. 2010). LOL provision was invalid and unenforceable as to professional geologist in his individual capacity because "[a] cause of action in negligence against an individual professional exists irrespective, and essentially, independent of a professional services agreement."		Florida law recognizes a cause of action against an individual professional geologist for professional negligence, irrespective of whether the geologist practices through a corporation. Contractual LOL provision does not trump statute and cannot as a matter of law limit individual liability for professional negligence.
Florida	Yes	*Florida Power & Light Co. v. Mid-Valley, Inc.*, 763 F.2d 1316 (11th Cir. 1985). LOL and indemnity clause in engineering firm's contract enforceable under Florida law where unequivocal terms of contract specifically identified "negligence" as one cause of damage covered by indemnity provision. LOL further limited liability for indemnity to insurance coverage limits. Contract provided means for owner to increase that insurance coverage at additional cost. Court referred to LOL as exculpatory clause.		Florida law allows limitation of liability clauses that exculpate engineer from own negligence and provide indemnification for the indemnitee's own negligence. Parent company was entitled to the benefit of the exculpatory (LOL) and indemnity provisions as an implied third party beneficiary of contract between the wholly-owned subsidiary and plaintiff.

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Georgia	No	*Lanier at McEver, L.P. v. Planners & Eng'rs Collaborative, Inc.*, 284 Ga. 204; 663 S.E. 2d 240 (2008). Economic loss claim by project owner against civil engineering firm for negligent design of storm water drainage system. Broad LOL clause purporting to limit liability to owner and any third party violates public policy.	Ga. Code Ann. § 13-8-2(b) (anti-indemnity statute)	Whether LOL operated as indemnity as to damages that potentially could be sustained by third parties, even though case involved no third-party claims. As members of a regulated profession, engineers must practice in a manner that is protective of public safety, health and welfare.
Georgia (4th Circuit)	Yes	*Potter-Shackelford Construction Co., Inc. v. Law Engineering, Inc.*, 104 F.3d 359, 1996 U.S. App. LEXIS 33368 (4th Cir. 1996). Applying Georgia law in breach of contract action. Scope of services subject to LOL in engineering contract included pre-contract engineering recommendation as well as subsequent implementation of recommendation action.		Contracting party could not divide engineer's work into two parts (recommendation and performance) and then argue that LOL covered only one of the parts. Circumstances surrounding contract formation indicate parties intended for all work to be part of single contract. Hence, LOL in that contract should apply.
Georgia (4th Circuit)	Yes *	*Gibbes, Inc. v. Law Engineering, Inc.*, No. 91-1048, 1992 U.S. App. LEXIS 7602 (4th Cir. April 20, 1992). LOL capping liability at $50,000 and disclaiming implied warranties was enforceable under Georgia law. Plaintiff automobile dealership was sophisticated entity. LOL applied to all claims advanced by plaintiff.		Plaintiff identified no Georgia statute that prohibits engineers from limiting their liability or disclaiming implied warranties. Existence of LOL clause was adequately called to attention of

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				plaintiff in contract.
Illiniois	Yes	*BB Syndication Services, Inc. v. LM Consultants, Inc.*, 09-CV-1268, 2011 WL 856646 (N.D. Ill. Mar. 7, 2011). LOL – also described as either a partial exculpatory clause or a stipulated damages clause -- that limited damages to the fees paid under the contract was enforceable under both Illinois and Wisconsin law.		Illinois law is similar to Wisconsin law: LOL clauses are not favored and are to be construed strictly against the party they benefit
Illinois	Yes *	*Illinois Power Co. v. Duke Eng'g and Serv.*, No. 99 C 5384, 2002 U.S. Dist. LEXIS 5497 (N.D. Ill. March 29, 2002). Action by owner against engineer after engineer missed deadline for completing project. Owner sought to recover fee paid to engineer and consequential damages that reflected owner's disappointed business expectations. LOL limited engineer's liability to fee paid.	740 ILL. COMP. STAT. ANN. 35/1 ("Illinois Construction Contract Indemnification for Negligence Act")	Because plaintiff sought damages only for economic loss, it could not proceed on negligence theory. Inability to state claim for negligence removed case from Act's sphere of influence because Act applies only to agreements that indemnify or hold harmless a person from person's own negligence. Breach of contract and breach of warranty claims do not sound in negligence. Anti-indemnity act is therefore not applicable to those claims.

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				LOL is not contrary to public policy. Purpose of statute is to protect public from regulated entity's exculpatory clause, not to protect the regulated entity. If exculpatory agreements were unenforceable, contractors would demand higher compensation before subjecting themselves to unlimited liability. No public policy prevents engineer from contractually limiting liability to another party to contract, and weight of authority from other jurisdictions suggests engineer can do so.
Illinois (7th Circuit)	Yes	*Pratt Central Park Ltd. Partnership v. Dames & Moore, Inc.*, 60 F.3d 350 (7th Cir. 1995). Upholding the dismissal of a diversity case for lack of jurisdiction because LOL in geotechnical engineering contract made it unlikely that plaintiff would recover more than $5000. Based on analysis of facts surrounding contract formation, it appeared that LOL clause would cap damages at less than the jurisdictional amount.		

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Indiana	Yes	*SAMS Hotel Group, LLC v. Environs, Inc.*, 1:09-CV-930-TWP-TAB, 2011 WL 809048 (S.D. Ind. Mar. 2, 2011). Unambiguous LOL in contract between architect and hotel developer was enforceable.		Degree of sophistication of contracting parties was a key factor, as was the fact that the parties had contracted with each other once before and both contracts contained an LOL provision limiting the architect's total liability for negligence, errors, omissions, strict liability, breach of contract or breach of warranty to the lump sum of the contract. "In the end, this is a construction defect case where the owner and architect unambiguously agreed to limit the architect's liability in connection with its provision of services. If SAMS wanted greater protection from a negligent design, it could have obtained such protection through different contractual terms or a performance bond. The terms of the contract are enforceable and limit Environs liability to the "total lump sum fee" it was paid."
Iowa	Yes	*Optimal Interiors, LLC v. HON Co.*, 3:09-CV-00177-JEG, 2011 WL 1207231 (S.D. Iowa Mar. 14, 2011). LOL clause enforceable; prohibition on the recovery of consequential damages necessarily precludes ability to recover any lost	Iowa Code § 554.2719	Under Iowa law, parties may contract to limit consequential damages. However, a contract provision that limits the recovery of consequential damages will not be

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		profits		enforced in two circumstances: (1) "[w]here circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter," or (2) where the limitation of liability clause is unconscionable.
Iowa	Yes	*Aetna Casualty & Surety Co. v. Leo A. Daly Co.*, 870 F. Supp. 925 (S.D. Iowa 1994). Trial on cross-claim by contractor against architect to determine comparative fault in action for breach of contract, breach of warranty, and negligence where fire sprinkler pipe at racehouse froze and burst. Engineer was responsible for reviewing and approving design substitutions during the construction phase. LOL in architect's and contractor's contracts with owner enforceable.		LOL did not violate public policy, as they ran only to the party in privity and did not in this case exempt the parties from liability for personal injury or death of a third party.
Louisiana	Yes	*City of Shreveport v. SGB Architects, L.L.P.*, 45,458 La. App. 2 Cir. 9/22/10, 47 So. 3d 1105, 1107. LOL in subcontract for soil testing was enforceable.		Party opposing enforcement of the LOL did not argue the provision was invalid, but rather alleged that it had never agreed to the liability limitation provision in the contract.

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Maine	Yes, if clear and unequivocal	*Burns & Roe, Inc. v. Central Maine Power Co.*, 659 F. Supp. 141 (D. Me. 1987). Declaratory judgment action seeking determination of rights in connection with attempt to use LOL as shield against third party claim for contribution. Held that previous payment by engineer exhausted its liability to owner but did not limit right of third party to seek contribution in the event that both engineer and third party are found to be joint tortfeasors.		Agreement to limit engineer's liability was not an agreement to indemnify engineer against liability imposed upon it in third-party actions. Court declined to read into LOL provision "an indemnification obligation that is nowhere hinted at by the terms of the contract."
Maine	Yes, against breach of contract claims	*Lincoln Pulp & Paper Co., Inc. v. Dravo Corp.*, 436 F. Supp. 262 (D. Me. 1977). Pennsylvania law applied pursuant to choice of law provision in contract. No authority indicates that substantive law of Pennsylvania differs from that of Maine, or that Pennsylvania law offends any Maine public policy. LOL clause protects engineer from liability for consequential damages, including loss of profits and products, arising from breach of contract or breach of warranty. However, LOL does not limit liability of engineering firm for consequential damages caused by its own negligence. At evidentiary hearing, expert testified that LOL clauses are customary in the trade. LOL clauses became standard in the industry by the late 1960s, resulting from both the rise in litigation and the inclusion of limiting clauses in the equipment contracts of suppliers.		Separate analyses were required to determine whether enforceability of LOL as to breach of contract and negligence claims. Stricter standard applies where party seeks to apply LOL as shield against negligence claim. Pennsylvania law requires "clear and unequivocal" expression of intent to limit liability for negligence. LOL relieved engineer of liability on breach of contract and breach of warranty claims where LOL was drafted by experienced counsel.

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Massachusetts	Yes	*Mistry Prabhudas Manji Eng. Pvt. Ltd. V. Raytheon Engineers & Constructors, Inc.*, 213 F.Supp.2d 20 (D. Mass. 2002). Liquidated damages provision in engineering services contract enforceable under Pennsylvania law. LOL provision was not an exculpatory clause; it capped damages at 10 percent of fee paid.		Although contracting party was small Indian company that precipitously entered contracts without adequate legal representation, these facts did not show that contracting party lacked meaningful choice or suffered unfair surprise where LOL was not hidden boilerplate. But "the one point which gives this Court pause is whether a ten percent cap creates an adequate incentive to perform." However, plaintiff did not demonstrate unconscionability as there was no indication that its profit margin was higher than 10 percent.
Massachusetts	Yes	*G. Conway, Inc. v. Tocci Bldg. Co.*, 18 Mass. L. Rep. 565; 2004 Mass. Super. LEXIS 589 (Mass. Sup. Ct. 2004). In action involving collapse of retaining wall, LOL in contract between geotechnical engineering subcontractor and construction manager was enforceable. Court rejected construction manager's argument that certificate of insurance provided by engineer governed the amount of engineer's liability.		Contracting party "agreed to accept the allocation of risk set forth in Contract and cannot now argue the unenforceability of the limitation of liability provision simply because it is unfavorable to [party's] position." Certificate of insurance does not modify or replace LOL in contract. It is customary for design firm to provide client with certificate of insurance; such certificate is merely an informational document

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				evidencing existence of insurance policy.
Massachusetts	Yes	*R-1 Associates, Inc. v. Goldberg-Zoino & Associates, 4 Mass. L. Rep. 219; 1995 Mass. Super. LEXIS 395* (Mass. Sup. Ct. 1995). Action by developer against environmental consultant for breach of contract and negligence where consultant's site assessment failed to identify presence of contamination at property. LOL in engineering contract enforceable in contract that arose out of a private, voluntary transaction in which one party, for consideration, agreed to shoulder a risk which the law would otherwise have placed upon the other party.		Developer that authorized design/build contractor to hire engineering firm could not argue that it did not authorize agent to bind principal to LOL clause in contract. The existence of an offer to negotiate the limits of liability in the preprinted contract was fatal to plaintiff's claim.
Michigan	Yes *	*Rogers v. Parish Corp.*, No. 5:92:CV:101, 1993 U.S. Dist. LEXIS 13162 (W.D. Mich. Aug. 30, 1993). Developer of Wal-Mart store contracted with geotechnical engineering firm to do soil boring and geotechnical report. Parties entered second contract for construction oversight services. Both contracts contained LOL and indemnification clauses. LOL clause contained option to increase liability cap for additional fee. LOL enforceable because it does not remove liability completely. LOLs could be aggregated since engineer performed work under separate contracts, each with its own	Mich. Comp. Laws § 691.991 (anti-indemnity statute for construction contracts)	Reasonableness is a primary consideration in determining whether to enforce a damage limitation clause. Potential problems with enforceability of indemnity clause in light of anti-indemnity statute do not alter the enforceability of LOL clause. LOLs do not limit liability for intentional representation or wanton

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		limitations clause.		misconduct.
Mississippi	Only if fairly and honestly negotiated and understood by both parties	*Lyndon Prop. Ins. Co. v. Duke Levy and Assoc.*, 475 F.3d 268 (5th Cir. 2007). Exculpatory clause in contract between owner and engineer was not enforceable because not sufficiently clear to act as limitation of liability under Mississippi law. Owner agreeing to exculpatory clause could not bargain away engineer's potential duty to surety that would step into owner's shoes under doctrine of equitable subrogation.		Court declined to apply economic loss doctrine to tort case involving duty shaped by contract. Mississippi case law did not appear to allow for application of economic loss doctrine outside realm of products liability.
Missouri	Yes, except in the case of gross negligence or intentional torts	*Util. Serv. & Maint., Inc. v. Noranda Aluminum, Inc.*, 163 S.W.3d 910 (Mo. 2005). Indemnity clause between sophisticated commercial entities in contract for technical and dangerous work will be enforced. Clause must be conspicuous but need not be set apart from other provisions or separately labeled as indemnity provision.		Fact that parties did not bargain for indemnity clause is irrelevant. A contract between sophisticated businesses that does not include indemnification would presumably carry a different price than a contract that does include such a provision.
Nebraska	No with respect to beneficiary's own negligence; yes as to all other causes	*Omaha Cold Storage Terminals, Inc. v. Hartford Ins. Co.*, No. 8:03 CV 445, 2006 U.S. Dist. LEXIS 14797 (D. Neb. Mar. 17, 2006). Engineering subcontractor assisted with foundation repair at cold storage warehouse.	Neb. Rev. Stat. § 25-21, 187(1)	LOL is construed as an indemnification provision because it "operates to insulate or limit" liability for negligence.

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	of action	After repairs had commenced, the main support structure of warehouse collapsed. Contract contained a broad LOL that limited liability from any cause or causes, "including but not limited to [engineer's] negligence, errors, omissions, strict liability, breach of contract, or breach of warranty." Held: clause "clearly contains language which operates to insulate or limit [engineer's] liability for its negligent acts, thus, under Neb. Rev. Stat. § 25-21, 187(1), that language violates public policy and is invalid. . . . However, this does not mean that the entire indemnification clause is rendered invalid and unenforceable. . . . [T]he contract's risk allocation clause is invalid with respect to any claims arising out of [engineer's] negligence, but remains enforceable in all other respects."		Severance. Under Nebraska law, only the portion prohibited by public policy is stricken from the contract. Thus, a party may limit its liability under causes of action other than negligence.
New Hampshire	No, if the LOL interferes with public welfare and safety*	*Town of Bow v. Provan & Lorber, Inc., et. al.*, New Hampshire Superior Court, Case No. 217-2009-CV-00190 (June 2011). LOL in engineering contract for construction of public project was unenforceable because it interfered with public welfare and safety.		Court held that the nature of the services provided by the contracting party is irrelevant. The individual circumstances of the project must be considered in determining whether an LOL clause is enforceable. For public projects, an LOL clause may discourage the level of care a design professional observes in the execution of its services. LOL clause in a contract for a public project is unenforceable

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				because it interferes with the public health and safety.
New Hampshire	Yes	*Senter Cove Development v. Costello, Lomasney & deNapoli,* New Hampshire District Court, Case No. C-89-1990/C-89-459 (Dec. 1992). LOL does not violate New Hampshire's anti-indemnity statute.		
New Hampshire	Yes, except in cases of wanton and willful conduct	*PK's Landscaping v. New Eng. Tel. & Tel. Co.*, 128 N.H. 753, 755 (N.H. 1986). Limitation of liability clause in contract between telephone company and landscaping company held valid.		
New Jersey	Yes, if clear and unambiguous	*Marbro, Inc. v. Borough of Tinton Falls*, 297 N.J.Super. 411, 688 A.2d 159 (N.J. Super. Law Div. 1996). LOL in engineering contract enforceable under New Jersey law. Anti-indemnity statute not relevant because statute applies only to indemnity and hold-harmless provisions, not to LOLs.	N.J. Stat. Ann. § 2A:40A-2 (anti-indemnity statute for architects and engineers)	LOL clause limiting liability to amount of fee was reasonable cap because it provided adequate incentive to perform. Reasonableness of LOL is not a jury question. Anti-indemnity statute does not express a blanket public policy against engineers contractually limiting their liability.

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				Adopted rationale of *Valhal Corp. v. Sullivan Assoc., Inc.*, 44 F.3d 195 (3d Cir. 1995).
New Mexico	Yes	*Fort Knox Self Storage, Inc. v. W. Techs., Inc.*, 140 N.M. 233; 142 P.3d 1 (N.M. Ct. App. 2006). Negligence and breach of contract action for involving geotechnical engineering services to evaluate subsurface condition of building site. LOL clause was enforceable because LOL is not the same as provision to indemnify or hold harmless and is not prohibited by New Mexico's anti-indemnity statute for construction contracts. LOL capping liability at $50K provided that engineer could be liable for damages 28 times higher than the contract amount of $1750. LOL is not an unenforceable liquidated damages clause because it pertains to actions resulting in damages, not default.	N.M. Stat. Ann. § 56-7-1 (anti-indemnity statute)	There is a significant difference between contracts that insulate a party from any and all liability and those that simply limit liability. Court relied on Third Circuit's analysis in *Valhal Corp. v. Sullivan Assocs., Inc.*, 44 F.3d 195 (3d Cir. 1995). Correct measure of whether LOL is so small as to render clause unenforceable is *not* the difference between the damages suffered and the cap. Rather, "[t]he relevant inquiry is whether the cap is so minimal compared to the expected compensation as to negate or drastically minimize concern for liability for one's own actions." 140 N.M. at 238; 142 P.3d at 6. Absence of additional terms inviting contracting party to negotiate LOL was immaterial.

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				Nothing in statute or *Valhal* precludes enforcement of LOL clauses in cases involving property damage.
New York	Yes, except in the case of gross negligence or intentional torts	*Fiorenza v. A & A Consulting Engineers, P.C.*, 77 A.D.3d 569, 909 N.Y.S.2d 356 (N.Y. App. Div. 2010). A limitation-of-liability clause is ordinarily enforced unless it expresses an intention to relieve a party of its own grossly negligent conduct. *Sear-Brown Group v. Jay Builders, Inc.*, 244 A.D.2d 966, 665 N.Y.S.2d 162 (N.Y. App. Div. 1997). Engineer sought to enforce LOL against counterclaim alleging negligence and gross negligence in performance of engineering services on residential development projects. LOL is not applicable to gross negligence and intentional tort claims under New York law.	N.Y. Gen. Oblig. Law §§ 5-322.1 and 5-324	Citing *Sommer v. Federal Signal Corp.*, 79 N.Y.2d 540, 554, 583 N.Y.S.2d 957, 593 N.E.2d 1365 (1992). LOL not void and unenforceable pursuant to N.Y. Gen. Oblig. Law §§ 5-322.1 and 5-324. These sections prohibit LOLs that seek to limit liability for personal injury or physical damage to property. Counterclaim sought damages only for economic loss. However, LOL clause could not insulate party from damages caused by negligent misrepresentation or gross negligence.
New York	Yes	*Bennett v. Bank of Montreal*, 161 A.D. 2d 158; 554 N.Y.S. 2d 869 (N.Y. App. Div. 1990). Cross-claim by engineer for contractual indemnification by client, following settlement of main action in personal injury case. LOL provided for indemnification from liability only	N.Y. Gen. Oblig. Law §§ 5-322.1 (anti-indemnity statute for bodily injury or property damage	Extent to which LOL is enforceable turns on allocation of liability between joint tortfeasors. Under anti-indemnity statute, LOL could not create right to indemnity from liability for party's own negligence.

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		"to the extent permitted by law."	from negligence) and § 5-324 (anti-indemnity statute for bodily injury or property damage from defects in plans, specs, maps)	However, statute did not prohibit indemnification from liability by reason of acts of others. To the extent that the LOL violates the anti-indemnity statute, it is unenforceable. However, the LOL is not rendered unenforceable in toto.
New York	Yes	*Long Island Lighting Co. v. IMO Delaval, Inc.*, 668 F. Supp. 237 (S.D.N.Y. 1987). LOL in engineering contract enforceable under New York law. LOL limited liability to proceeds from insurance. Court rejected argument that recovery was limited only as to claims that fell within the specific insurance coverage identified in the contract. Although contract did not specify coverage for malpractice or breach of warranty, LOL clause would nonetheless apply to these claims. The plain language of the limitations clause suggests that the parties intended to include malpractice among the risks for which recovery was limited.	N.Y. Gen. Oblig. Law § 5-323 (anti-indemnity statute for contractor negligence)	Exemptions from liability for economic losses are not rendered void or unenforceable under anti-indemnity statute. Statute prohibits exemptions from liability for injury to persons or property. LOL merely limits liability in this regard and thus is not an exemption.
New York	Yes	*Central Hudson Gas and Elec. Corp. v. Combustion Eng'g, Inc.*, No. 86 Civ. 3061, 1989 U.S. Dist. LEXIS 8509 (S.D. N.Y. July 26, 1989). Defendant entered into a series of service contracts to inspect and repair boiler components. Each contract contained an LOL		Where plaintiff claimed breach of two contracts with separate LOL clauses, plaintiff could recover up to limit under each contract.

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		clause. LOL clauses were clear and unequivocal and therefore enforceable.		
North Carolina	Yes	*Blaylock Grading Co. v. Smith,* 658 S.E.2d 680 (N.C. Ct. App. 2008). Action by grading company against engineering firm alleging breach of contract and negligence where engineer's surveying error caused grading company to incur excess costs. Appellate court reversed trial court's finding that LOL was unenforceable. Contract limiting damages to $50K did not elicit a profound sense of injustice. LOL was not unconscionable or contrary to public policy.	N.C.G.S. § 22B-1 (prohibiting construction indemnity agreements)	Distinguished engineers and surveyors from providers of public utilities. Although surveyors and engineers must be licensed, that fact alone does not automatically convert profession into public service. Where breach of contract involves only economic loss, public health and safety are not implicated. Anti-indemnity statute does not apply because LOL is materially different from indemnity provision. Unlike indemnity, LOL does not require another party to agree to be liable for negligence of another.
North Carolina	Yes *	*Mosteller Mansion LLC et al. v. Mactec Eng'g,* 2008 N.C. App. LEXIS 1011 (N.C. Ct. App. May 20, 2008). LOL in engineering contract was enforceable under both states' laws. LOL does not violate Georgia public policy because it only relieves engineer from liability for economic damages not personal injury or property damage		Choice of law – North Carolina law governs tort claim; Georgia law governs breach of contract claim. Construction anti-indemnity statutes of North Carolina and Georgia are "essentially identical."

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Pennsylvania	Yes, where limitation of liability is reasonable and gross negligence or intentional torts not involved	*Flatrock Ptnrs., L.P. v. Kasco-Chip Constr., J.V.*, 2007 Phila. Ct. Com. Pl. LEXIS 123 (Pa. C.P. 2007). Third-party action by general contractor against geotechnical engineering firm for breach of contract and negligent misrepresentation in performance of foundation construction monitoring services. LOL was valid enforceable as to breach of contract claim. LOL did not apply to negligent misrepresentation claim, however, because that claim was based on plaintiff's purported reliance on investigation engineer performed for another party under a different contract. Although that contract also contained an identical LOL clause that limited liability to the "client," plaintiff was not the client in that contract.		Court would not disregard LOL clause that was clear and unambiguous. LOL clause was subject of private contract between sophisticated business entities dealing at arm's length who were at liberty to fashion the terms of their bargain as they wish. LOL provision that limited liability to "client" did not operate to limit liability to any other party.
Pennsylvania	Yes	*Mistry Prabhudas Manji Eng. Pvt. Ltd. V. Raytheon Engineers & Constructors, Inc.*, 213 F.Supp.2d 20 (D. Mass. 2002). Liquidated damages provision in engineering services contract enforceable under Pennsylvania law. LOL provision was not an exculpatory clause; it capped damages at 10 percent of fee paid.		Although contracting party was small Indian company that precipitously entered contracts without adequate legal representation, these facts did not show that contracting party lacked meaningful choice or suffered unfair surprise where LOL was not hidden boilerplate. But "the one point which gives this Court pause is whether a ten percent cap creates an adequate incentive to perform."

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				However, plaintiff did not demonstrate unconscionability as there was no indication that its profit margin was higher than 10 percent.
Pennsylvania	Yes	*Lincoln Pulp & Paper Co., Inc. v. Dravo Corp.*, 436 F. Supp. 262 (D. Me. 1977). Pennsylvania law applied pursuant to choice of law provision in contract. No authority indicates that substantive law of Pennsylvania differs from that of Maine, or that Pennsylvania law offends any Maine public policy. LOL clause protects engineer from liability for consequential damages, including loss of profits and products, arising from breach of contract or breach of warranty. However, LOL does not limit liability of engineering firm for consequential damages caused by its own negligence. At evidentiary hearing, expert testified that LOL clauses are customary in the trade. LOL clauses became standard in the industry by the late 1960s, resulting from both the rise in litigation and the inclusion of limiting clauses in the equipment contracts of suppliers.		Separate analyses were required to determine whether enforceability of LOL as to breach of contract and negligence claims. Stricter standard applies where party seeks to apply LOL as shield against negligence claim. Pennsylvania law requires "clear and unequivocal" expression of intent to limit liability for negligence. LOL relieved engineer of liability on breach of contract and breach of warranty claims where LOL was drafted by experienced counsel.
Pennsylvania (3rd Circuit)	Yes	*Valhal Corp. v. Sullivan Associates, Inc.*, 44 F.3d 195 (3d Cir. 1995). LOL enforceable under Pennsylvania law in suit arising from architect's failure to apprise high-rise developer of height restriction on property in pre-	68 Pa. Stat. § 481 (anti-indemnity provision)	Anti-indemnity statute is strictly limited to indemnity and hold harmless agreements, which are distinct from LOL clauses.

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		purchase study for developer. Developer later purchased property in reliance upon architect's report. LOL does not shield architect from all potential liability. Although indemnity provisions are exculpatory and disfavored under Pennsylvania law, LOL clauses are subject to the same strict construction. LOL clauses are routinely upheld so long as reasonable and parties had equal bargaining power.		Anti-indemnity statute applies only to contracts between owners and architects. Developer did not own the property at the time it entered into the contract with architect. In determining reasonableness of LOL, appropriate inquiry is whether cap is so minimal compared with expected compensation that the concern for consequences of a breach is drastically minimized. Maximum recovery under any action was $50,000 by operation of LOL. Owner could not meet jurisdictional minimum of $75,000. Third Circuit remanded to district court with instructions to dismiss for lack of subject matter jurisdiction.
South Carolina	Yes	*Georgetown Steel Corp. v. Union Carbide Corp.*, 806 F. Supp. 74 (D.S.C. 1992), overruled on other grounds 7 F.3d 223 (4th Cir. 1993). LOL enforceable under South Carolina law. LOL was product of arm's length negotiations between two commercially sophisticated entities. LOL allowed parties to negotiate waiver of limitation for additional consideration. Engineer had no liability to		LOL enforceable based on evidence that owner was made aware of it during contract formation, even though LOL may not have been specifically or expressly negotiated. Clause provided a simplistic way for owner to shift full liability to engineer. If owner had wanted to negotiate that term differently,

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		another contractor on project where no contractual relationship existed; court denied cross-claim by other contractor claiming to be third-party beneficiary of contract between engineer and owner.		option to do so was provided right in the language of the limiting provision.
Tennessee	Yes	*Moore & Assocs. v. Jones & Carter, Inc.*, No. 3:05-0167 (M.D. Tenn. Dec. 13, 2005), *aff'd*, 217 Fed. Appx. 430 (6th Cir. 2007). General contractor sought indemnification from civil engineering firm for damages in connection with construction of hotel in Texas. Hotel filed arbitration proceeding against general contractor in Texas. Contract provided that Texas law would govern. LOL valid and enforceable.		Indemnity clause in contract did not require engineering firm to defend claim; clause was narrowly drawn to require indemnification against from damage, liability or cost to the extent caused by negligence of engineering firm, which negligence had yet to be determined. Contract was to be read as a whole. Focusing only on indemnity clause would make LOL superfluous. General contractor was charged a lower fee in exchange for agreeing to limit engineer's total aggregate liability to fee paid for services.
Texas	Yes	*See Moore & Assocs. v. Jones & Carter, Inc.*, No. 3:05-0167 (M.D. Tenn. Dec. 13, 2005), *aff'd*, 217 Fed. Appx. 430 (6th Cir. 2007). Applying Texas law pursuant to choice of law provision in contract. See above entry.		

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Texas	Yes	*CBI NA-CON, Inc. v. UOP, Inc.*, 961 S.W.2d 336 (Tex. Ct. App. 1997). LOL limits remedies of plaintiff in third-party contribution action against engineering firm. Owner entered into separate contracts with engineering firm and product manufacturer. Contract with engineer contained LOL clause limiting liability to reperformance of the work. Owner sued manufacturer after product failed. Manufacturer brought third-party claim against engineer for contribution. Held: LOL in engineer's contract applied to derivative claim.	Tex. Civ. Code § 33.015(a) (contribution)	A contribution claim is derivative of plaintiff's right to recover from joint defendant against whom contribution is sought. Any claim owner could have against engineer would be for economic loss arising out of negligent performance of contract. Accordingly, such claim would be for breach of contract, not negligence. A breach of contract claim is not a basis for contribution under Texas law. If plaintiff could bring a negligence action against engineer, its recovery would be limited to reperformance of the negligent work pursuant to LOL; plaintiff could not sue for damages. In light of the derivative nature of third-party plaintiff's claim, third-party plaintiff's remedy is limited to that of plaintiff.
Texas	Yes	*AGIP Petroleum Co., Inc. v. Gulf Island Fabrication, Inc.*, 920 F. Supp. 1330 (S.D.Tex 1996 *aff'd*, 56 F. Supp. 2d 776 (S.D. Tex. 1999). LOL that specifically excluded liability for consequential damages was enforceable under Louisiana and maritime law. Plaintiff was barred from recovering under either a contract or breach of warranty theory.		Subcontractor was indemnitee under contractor's LOL agreement with owner. Thus, as third-party beneficiary, subcontractor was entitled to assert LOL against plaintiff's claims.

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		However, direct damages were recoverable because not within scope of LOL.		
Washington	Yes *	*REI v. GeoEngineers, Inc.*, Washington State Superior Court, King County, No. 95-2-30163-1SEA (1996). LOL in geotechnical engineering contract enforceable under Washington law.		
Washington	Yes *	*O'Keefe Development Co. v. Hart Crowser, Inc.*, Washington State Superior Court, King County, No. 91-2-13519-3 (1995). LOL in geotechnical engineering contract enforceable under Washington law.		
Washington	Yes *	*Coventry Assoc. v. Golder Assoc., Inc.*, Washington State Superior Court, King County, No. 93-2-27092-5. LOL in geotech contract enforceable under Washington law.		
Washington	Yes *	*Lear Capital, LLC, et al. v. Albany Insurance Company, et al.*, Washington State Superior Court, King County, No. 99-2-03743-0SEA. Trial court finds LOL enforceable as to engineering firm but not firm's individual employees.		

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Washington	Yes *	*Les Schwab Tire Centers of Oregon v. GeoTech Consultants, Inc.*, Washington State Superior Court, King County, No. 95-2-16358-1 (Mar. 1996). LOL in geotechnical contract enforceable under Washington law.		
Washington	Yes	*McCain Foods USA v. CH2M Hill, Inc., et al.*, USDC Eastern District at Spokane, No. CS-99-084-RHW. Factual issue regarding whether LOL was incorporated into subsequent amendments to contract precludes summary judgment.		
Washington	Yes	*Stokes v. Bally's Pacwest, Inc.*, 113 Wn. App. 442, 54 P.3d 161 (2002). LOL clause enforced in contract between health care club and patron.		The general rule in Washington is that such exculpatory clauses are enforceable unless (1) they violate public policy, (2) the negligent act falls greatly below the standard established by law for protection of others, or (3) they are inconspicuous.
Washington (9th Circuit)	Yes*	*Charles L. Kelly, Jr. et al. v. AGRA Earth & Environmental, Inc., et al.*, 16 Fed. Appx. 695, 2001 WL 873828 (9th Cir. 2001). LOL in geotech contract enforceable under Washington law.	RCW 4.24.115 (anti-indemnity statute)	Anti-indemnity statute could not be extended to void limitations of liability. Economic loss doctrine bars gross negligence claim. Disclaimer of warranties in LOL bars breach of implied warranty claim.

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Wisconsin	Yes	*Wausau Paper Mills Co. v. Charles T. Main, Inc.*, 789 F. Supp. 968 (W.D. Wis. 1992). Action for economic loss under negligence and breach of warranty causes of action. LOL clause in contract for design engineering services prohibiting recovery of consequential damages was enforceable under breach of warranty claim. LOL was immaterial under negligence claim.		"No economic loss" doctrine barred owner's claim against engineer for professional negligence. LOL clause therefore had no effect on that claim. However, action was allowed to proceed under breach of warranty claim based on same factual allegations. Recovery was allowed to extent of LOL provision.

* Designates unpublished case with limited precedential effect. Rules may limit citation to unpublished opinions.

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