

Index

AASHTO (AMERICAN ASSOCIATION OF STATE HIGHWAY OFFICIALS)

Standard forms, § 5:4

ABANDONMENT

Changes and Extras Clauses (this index)

ABNORMALLY DANGEROUS ACTIVITIES

Design professionals, liability of, § 17:35

Risk management, § 7:21

Safety precautions and program, AIA standard forms, § 5:200

ABSOLUTE POLLUTION EXCLUSION

CGL coverage, § 11:116, 11:117

ACCELERATION CLAIM

Generally, § 15:89-§ 15:100

Abnormal acceleration, § 15:91

Completion of project risks, § 7:298

Constructive Acceleration (this index)

Conversion of compensable acceleration to noncompensable acceleration, § 15:93

Crowding, § 7:298

Delay distinguished, § 15:90

Directed acceleration, compensable, § 15:92

Disruption distinguished, § 15:90, 15:104

No pay for acceleration clause, § 15:93

Normal acceleration, § 15:91

Trade stacking, § 7:298

Voluntary acceleration, noncompensable, § 15:101

ACCEPTANCE

Binding effect, § 2:4

Contract formation, § 2:4

Counteroffer, acceptance by contractor constituting, § 7:131

Work, of. **Acceptance of Work** (this index)

ACCEPTANCE OF WORK

Generally, § 13:53 *et seq.*

Allocating responsibility where both contractor and government are at fault, § 13:65

Cause in fact, § 13:65

Consequences of, § 13:54

Damages, necessity of linking defect to, § 13:66

Design defects, latent, § 13:67

Economic waste doctrine, § 13:64

Estoppel. Waiver and estoppel, below

Express acceptance as form of waiver, § 13:53, 13:54

Federal Acquisition Regulations.

Federal procurement, in, below

Federal procurement, in

Generally, § 13:57-§ 13:69

Allocating responsibility where both contractor and government are at fault, § 13:65

Cause in fact, § 13:65

Damages, necessity of linking defect to, § 13:66

Design defects, latent, § 13:67

Economic waste doctrine, § 13:64

Latent defects, § 13:53 *et seq.*, 13:66-§ 13:68

Private contracting versus acceptance in government contracting, § 13:58

Strict compliance doctrine, § 13:64

- ACCEPTANCE OF WORK—Cont'd**
Federal procurement, in—Cont'd
 Untimely claims, § 13:69
Final, § 13:54
Goods, nonconforming. **Uniform Commercial Code (UCC)** (this index)
Implied acceptance as form of waiver, § 13:53, 13:54
Inspector's authority to accept nonconforming work, § 13:47
Latent defects, § 13:53 et seq., 13:66-§ 13:68
Partial, § 13:54
Payment and waiver or estoppel limiting recovery. Waiver of rights, below
Private contracting versus acceptance in government contracting, § 13:58
Strict compliance doctrine, § 13:64
Third-party liability, defense to, § 13:56
Uniform Commercial Code (UCC) (this index)
Untimely claims, § 13:69
Waiver and estoppel
 Conduct estopping owner from seeking to recover, § 13:81
 Dual agent's acceptance of nonconforming work, § 13:79
 Express and implied acceptance, § 13:53, 13:54
 Final payment, limiting recovery for, § 13:70-§ 13:75
 Implied acceptance, § 13:53, 13:54
 Knowingly accepting nonconforming work, § 13:78
 Observable defects, owner's acceptance of work containing, § 13:80
- ACCORD AND SATISFACTION**
Defined, § 7:239
- ACKNOWLEDGMENT FORMS**
Curtain wall manufactures, risk management techniques
- ACKNOWLEDGMENT FORMS—Cont'd**
 practiced by, § 7:211
- ACTS OF GOD**
Delays, § 15:46
Force Majeure (this index)
- ACTUAL CASH VALUE**
Insurance, § 11:270, 11:271, 11:271.10, 11:271.50, 11:273
- ADDITIONAL INSUREDS**
Insurance (this index)
- ADHESION CONTRACTS**
Risk allocations, § 3:27
Standard form agreement as, § 3:55
- ADMINISTRATION OF CONTRACT**
AIA General Conditions of the Contract for Construction form A201, § 5:95
Risk Management (this index)
- ADMIRALTY LAW**
Construction projects, application to; site risks, § 7:169
- ADVERTISEMENTS**
Bids, notice of invitation for, § 2:61, 2:71
- ADVERTISING LIABILITY INSURANCE**
CGL coverage, § 11:188
- AGC**
Associated General Contractors of America (AGC) (this index)
- AGENCY CONSTRUCTION MANAGEMENT**
Generally, § 6:83
Defined, § 6:83
Project delivery methods, § 6:12
- AGENCY LAW**
Arbitration agreement's effect, § 21:97

INDEX

AGENT ADMINISTRATORS

Design professionals, § 17:4, 17:6-
§ 17:8

AGENT OR BROKER

Insurance (this index)

AGREED REMEDIES AND DAMAGE MEASURES

Generally, § 19:52, 19:52.52-
§ 19:52.72

Active and passive negligence
distinction, § 19:52.70

Alternative performances, remedies
versus, § 19:52.65

Bargaining, role of, § 19:52.69

Broad indemnity agreements,
§ 19:52.53

Conditional payment provisions,
§ 19:52.56

Consequential damages, waivers of,
§ 19:52.54

Disclaimers

Implied warranties, § 19:52.61

Liability, § 19:52.62

Specific responsibilities,
§ 19:52.63

Exceptions to exculpation clauses,
§ 19:52.70

Exclusive remedy provisions,
§ 19:52.57

Exculpation clauses, § 19:52.52,
19:52.68, 19:52.70

Force majeure provisions, § 19:60

Fraud exception, § 19:52.70

Implied warranties, disclaimer of,
§ 19:52.61

Liability, disclaimer of, § 19:52.62

Limitation clauses, § 19:52.52

Limitation of liability provision

Generally, § 19:52.66

Bargaining, role of, § 19:52.69

Interpretation, § 19:52.67

Statutory defenses, § 19:52.71

Third party claims, application to,
§ 19:52.72

AGREED REMEDIES AND DAMAGE MEASURES

—Cont'd

No damage for delay clauses,
§ 19:52.55

Passive and active negligence distinc-
tion, § 19:52.70

Pay if paid provisions, § 19:52.56

Pay when paid provisions, § 19:52.56

Public policies affecting enforce-
ability of exculpatory provi-
sions, § 19:52.68

Specific responsibilities, disclaimer
of, § 19:52.63

Statutory defenses to limitation of
liability provisions, § 19:52.71

Subrogation, waivers of, § 19:52.58

Termination for convenience clause,
§ 19:52.60

Undercompensatory liquidated dam-
ages, § 19:52.64, 19:52.65

Waivers

Consequential damages,
§ 19:52.54

Subrogation, § 19:52.58

AGREEMENTS

Contracts and Agreements (this
index)

AIA

**American Institute of Architects
(AIA)**

ALIENATED PREMISES

EXCLUSION

CGL coverage, § 11:97

ALLIANCE AGREEMENTS

Project delivery methods, § 6:23

ALLOCATION ISSUES

**Commercial General Liability
(CGL) Coverage** (this index)

Subrogation, § 11:201, 11:202,
11:202.10

ALLOWANCES

Fixed-price agreements, § 5:8

ALTER EGO THEORY

Arbitration, § 21:96

AMBIGUITIES

Contract Interpretation (this index)

Parol Evidence (this index)

**AMERICAN ASSOCIATION OF
STATE HIGHWAY OFFICIALS
(AASHTO)**

Standard forms, § 5:4

AMERICAN BAR ASSOCIATION

Public Contract Law Section, § 1:5

AMERICAN INDIANS

Native Americans (this index)

**AMERICAN INSTITUTE OF
ARCHITECTS (AIA)**

Changes and claims clauses, § 4:7

Claims clauses, § 4:7

Construction change directive, § 4:7

Design assist agreement form,
§ 6:21.50

Forms. **American Institute of
Architects Standard Forms**
(this index)

Integrated project delivery (IPD)
agreements, § 6:31, 6:34, 6:36,
6:37

Standard forms. **American Institute
of Architects Standard Forms**
(this index)

2004 AIA design-build document
series, § 6:58

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS**

Generally, § 5:2

Abnormally dangerous activities,
safety precautions and program,
§ 5:200

Acceptance, payment not constitut-
ing, § 5:179

Access to work, § 5:85

Action or failure to act, no waiver
presumed by, § 5:249

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

Adjustments

Directive adjustment methods,
§ 5:145

Equitable adjustment, contractor's
duty to perform changed work
in face of disagreement over,
§ 5:146

Administration of contract, facilitat-
ing, § 5:95

Aesthetic matters decision final,
architect's, § 5:104

Allowances

Contract sum, including, § 5:62.30

Items, what is in and what is out,
§ 5:62.40

Prompt selections, owner's,
§ 5:62.50

Applicable laws, contractor not
responsible to ascertain whether
contract documents in accor-
dance with, § 5:62

Approvals, § 5:40

Architect scope provisions in A201

Generally, § 5:13

Activities of architect as no shield
for contractor, § 5:48

AIA General Conditions Docu-
ment, § 5:20.10

Authority of, § 5:97

Certificate for payment, architect's,
§ 5:170-§ 5:173

Change orders, preparation of,
§ 5:99

Contractor's failure to perform,
architect not responsible for,
§ 5:94

Dispute resolution provisions in
A201, above

Duties of

Limitations on altering, § 5:90

Owner's representative, duties
as, § 5:92

Identification of architect, § 5:89

INDEX

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Architect scope provisions in A201
—Cont'd
 - Payment, review of contractor's applications for, § 5:96
 - Performance, interpretation of parties', § 5:102
 - Project representative, architect's, § 5:101
 - Representative, owner's, § 5:37
 - Shop drawings, architect's review of, § 5:73, 5:98
 - Site investigation representation, § 5:48.10
 - Site visitations, § 5:93
 - Warranties and related documents, inspections and delivery of written, § 5:100
- Architect's traditional contract administration duties and formal disputes process, § 5:20.30
- "A series" form documents, § 5:2
- Assessments and charges, § 5:40
- Assignments
 - Contingent assignments of subcontracts, § 5:125
 - Lenders, assignment to, § 5:246
 - Successors and assigns provision, § 5:245
 - Termination of contract, owner's right to obtain assignment of subcontractor, § 5:246
- Availability of documents, § 5:2
- Bonds
 - Fiduciary bond, § 5:233
 - Payment bonds, § 8:186, 12:15
 - Performance and payment bonds, § 12:16
- Bonds, contractor's, § 5:208.20
- "B series" form documents, § 5:2
- Building information models use and reliance, § 5:33.60
- Capitalization (definitional), § 5:32

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Carry on work, owner's right to, § 5:45
- Certificate for payment, architect's, § 5:170-§ 5:173
- Change orders. Changes, below
- Changes
 - Abandonment, § 5:144
 - Cardinal changes, § 5:144
 - Changed work
 - Abandonment, § 5:144
 - Adjustments to contract sum, § 5:145.10
 - Cardinal changes, § 5:144
 - Claims if disagreement over contract time, § 5:145.20
 - Contractor to proceed promptly to execute, § 5:141
 - Directives, work change, § 5:144
 - Equitable adjustment, contractor's duty to perform changed work in face of disagreement over, § 5:146
 - Interference, significant owner, § 5:144
 - Quantum meruit, § 5:144
 - Rescission, § 5:144
 - Termination of contract, § 5:144
 - Unanticipated changes, § 5:144
 - Vague and incomplete scope of work, § 5:144
- Change order
 - Architect's preparation of, § 5:99
 - Defined, § 5:142
 - Directive as, § 5:147
- Deductive changes, § 5:149
- Directives, construction change, § 5:144, 5:150
- Directives used in absence of total agreement, § 5:144.10

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Changes—Cont'd
 - Dispute resolution
 - Payment certification process for, § 5:151
 - Equitable adjustment, contractor's duty to perform changed work in face of disagreement over, § 5:146
 - Interference, significant owner, § 5:144
 - Minor changes, § 5:152
 - Owner's right to make, § 5:139
 - Parties in agreement with respect to, § 5:140
 - Payment applications for changes in work, § 5:166
 - Quantum meruit, § 5:144
 - Rescission, § 5:144
 - Termination of contract, § 5:144
 - Unanticipated changes, § 5:144
 - Vague and incomplete scope of work, § 5:144
 - Work change directives, § 5:144
- Claims, notice of, § 5:33.40
- Claims administration
 - Additional costs, claims for, § 5:279
 - Additional time, notice for claims, § 5:280
 - Arbitration, § 5:292
 - Bond and lien rights, claims involving, § 5:288
 - Consequential damages, claims for, § 5:282
 - Consolidation or joinder, § 5:293
 - Continuing contract performance, § 5:277
 - Contract adjustments, initial decision maker's decision governs, § 5:278
 - Definition of claims, § 5:273
 - Dispute resolution, initial decision maker's decision, § 5:283

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Claims administration—Cont'd
 - Evaluation of claims, § 5:285
 - Final and binding decision, subject to further dispute procedures, § 5:286
 - Mediation
 - Generally, § 5:289
 - Conclusion without resolution, § 5:290
 - Costs, location, and enforcement, § 5:291
 - Notice of claims discovered
 - After to expiration of period for correction, § 5:276
 - Prior to expiration of period for correction, § 5:275
 - Notice of claims discovered prior to expiration of period for correction, § 5:275
 - Ten days of receipt of claim, action within, § 5:284
 - Time limits on claims, § 5:274
 - Waiver of right to pursue claims, § 5:287
 - Weather delays, § 5:281
- Claims administration provisions in A201
 - Generally, § 5:16, 5:20.10
 - Delay claims, procedures for, § 5:161
- Cleaning up
 - Owner's right to cleanup; dispute resolution, § 5:138
 - Penalty for failure to keep premises clean, § 5:84
 - Scope of work, § 5:83
- Commencement of work, date of, § 5:154
- Communication provisions in A201
 - Generally, § 5:14
 - Adjustments
 - Directive adjustment methods, § 5:145

INDEX

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Communication provisions in A201
—Cont'd
 - Administration of contract,
facilitating, § 5:95
 - Certificate for payment, architect's,
§ 5:170, 5:173
 - Change order, directive as, § 5:147
 - Changes, parties in agreement with
respect to, § 5:140
 - Directive adjustment methods,
§ 5:145
 - Documents and samples at site,
§ 5:69
 - Drawings, copies of, § 5:43
 - Manuals, copies of, § 5:43
 - Payment
 - Changes in work, applications
for, § 5:166
 - Submission process, § 5:165
 - Payment, architect's review of
contractor's applications for,
§ 5:96
 - Performance, architect's interpreta-
tion of parties', § 5:102
 - Progress payments, manner of
making, § 5:174
 - Punch list, contractor's, § 5:183
 - Risk management, § 7:230, 7:231
 - Superintendent, § 5:65
 - Timeliness of owner information,
§ 5:42
 - Values, schedule of, § 5:164
- Completion of work on time,
contractor's responsibility,
§ 5:159
- Complexity and diversity of insur-
ance products, § 5:295
- Compliance with law, § 5:61
- Conditions and limitations on use of
instruments of service, § 5:33.20
- Consequential damages claim, § 5:20
- Construction management, § 6:87

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Construction means, methods and
techniques, contractor's
responsibility for, § 5:52
- Contents of contract documents,
§ 5:22
- Contingent assignment of
subcontracts, § 5:127
- Contract documents (legal) provision;
paragraph 1.1.1, § 5:21
- Contractor defined, § 5:46
- Contractor's disclosures regarding
objections, § 5:65.10
- The contract (legal) provision;
paragraph 1.1.2, § 5:23
- Convenience, termination of contract
for, § 5:270-§ 5:272
- Coordination in event of use of sepa-
rate contractors, owner's,
§ 5:131
- Copyrights, § 5:86
- Correction of work
 - Acceptance of nonconforming
work, § 5:243
 - Correction period, § 5:239
 - Exclusive remedy, correction of
work not, § 5:242
 - Nonconforming work, § 5:240
 - One-year correction warranty,
§ 5:239
 - Repair of other construction dam-
aged by contractor's correc-
tion efforts, § 5:241
 - Substantial completion and correc-
tion remedy, § 5:239
- Correlation and intent of contract
documents (scope), § 5:29
- Coverage options, prompting discus-
sion, § 5:296
- "C series" form documents, § 5:2
- Cutting and patching
 - Contractor responsible for, § 5:81
 - Owner's, § 5:137

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Cutting and patching—Cont'd
 - Permission to cut and patch another's work; paragraph 3.14.2, § 5:82
- Damages
 - Generally, § 5:18, 5:20
- Day defined, § 5:156
- Decision-making process, § 5:20.40
- Deductive changes, § 5:149
- Default. Termination of contract, below
- Definitions
 - Generally, § 5:10
 - Capitalization, § 5:32
 - Change order, § 5:142
 - Commencement of work, date of, § 5:154
 - Contractor, § 5:46
 - Contractor defined, § 5:130
 - Day, § 5:156
 - The drawings, § 5:26
 - Housekeeping provisions, definitional and, § 5:10
 - Identification of architect, § 5:89
 - Initial decision maker, § 5:28.10
 - Invalid provisions, severable from whole, § 5:29.10
 - Product data, § 5:71
 - Project manual, § 5:28
 - The project, § 5:25
 - Samples, § 5:72
 - Shop drawings, § 5:70
 - Specifications, § 5:27
 - Subcontractor defined, § 5:122
 - Substantial completion, § 5:182
 - Substantial completion, date of, § 5:155
 - Sub-subcontractor defined, § 5:123
 - Sum, contract, § 5:163
 - Time, § 5:153
- Delays
 - Claims, procedures for, § 5:161
 - Excusable delays, § 5:160

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Delays—Cont'd
 - Extensions of time and, § 5:160
 - No damages for delay clause, § 5:20, 5:162
 - Reservation for delay damages, § 5:162
 - Substantial completion, § 5:182, 5:192
 - Termination of contract, § 5:256
 - Unforeseeable causes, § 5:160
- Design delegation, § 5:79
- Digital data use and transmission, § 5:33.50
- Directive adjustment methods, § 5:145
- Disbursements of property process as fiduciary for other insureds, owner's, § 5:232
- Dispute resolution provisions in A201
 - Generally, § 5:17
 - Aesthetic matters decision final, architect's, § 5:104
 - AIA General Conditions Document, § 5:20.20
 - 2007 AIA General Conditions Document, § 5:20.10
 - Architect to review and respond to requests for information, § 5:104.10
- Change directives
 - Payment certification process for, § 5:151
- Cleanup, owner's right to, § 5:138
- Impartial decision-making by architect, § 5:103
- Initial Decision Maker (IDM), selecting; AIA A201 document, § 5:20.20
- Third-party neutral, appointment of, § 5:20.10
- Documents and samples at site, § 5:69

INDEX

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

Documents to be included as part of contract documents, § 5:22

Drawings

- Copies of, § 5:43
- Definition, § 5:26
- Shop drawings, below

Easements, § 5:40

Emergencies, § 5:208

Employees and subcontractors, contractor responsible for acts of its, § 5:53

Engineers Joint Contract Documents Committee (EJCDC) forms compared, § 5:5

Equipment. Machinery and equipment, below

Errors and omissions, contractor's notification obligations as to, § 5:50

Evolution of AIA General Conditions Document, § 5:20.10

Explosives, use and storage of, § 5:199

Extensions of time, § 5:160

Failure to act, no waiver presumed by action or, § 5:249

Fees, § 5:60

Fiduciary bond, § 5:233

Final inspection, architect's, § 5:190

Final payment

- Contractor's submittals for, § 5:191
- Waiver of claims upon making or accepting, § 5:193, 5:194

Financial arrangements after commencement, evidence, § 5:39.10

Financial information, owner's obligation to provide, § 5:39

Flow down responsibilities to subcontractors, § 5:126

Forces, construction by owner's, § 5:132

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

Form A201. General Conditions of the Contract for Construction, below

Furnishing copy of bonds, § 5:208.30

General Conditions of the Contract for Construction

- Generally, § 5:2, 5:9
- 2007 AIA General Conditions Document, § 5:20.10
- Analysis of, § 5:9 et seq.
- Architect scope provisions, § 5:13
- Claims administration provisions, § 5:16
- Contract communication provisions, § 5:14
- Definitional and housekeeping provisions, § 5:10
- Dispute resolution provisions, § 5:17
- Housekeeping provisions, § 5:10
- Incorporation by reference, § 5:9
- Legal relationship provisions, § 5:11
- Quality assurance provisions, § 5:15
- Risk allocation provisions, § 5:20
- Risk mitigation provisions, § 5:19
- Risk transfer provisions, § 5:18
- Scope of, § 5:9
- Scope of work provisions, § 5:12

Governing law provision, § 5:244

Hazardous materials

- Indemnity, § 5:205
- Introduced by contractor, § 5:206
- Owner's obligations to verify presence of, § 5:204
- Stop work when encountering, § 5:203
- Use and storage of, safety precautions and program, § 5:199

Housekeeping provisions in A201, § 5:10

Identification of architect, § 5:89

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Indemnity and indemnification
 - Generally, § 5:20
 - Building Information Modeling (BIM), § 7:89
 - General provision, § 5:87
 - Hazardous materials, § 5:205
 - Remediation costs, § 5:207
 - Workers' compensation laws, no limitation on indemnity because of, § 5:88
- Information expressly required to be provided by parties in completing exhibit, § 5:298
- Initial decision maker, removing architect from dispute resolution process, § 5:20.20
- Injury or damage to person or property, § 5:202.10
- Inspections
 - Existing work inspection to determine suitability for subsequent work, § 5:54
 - Final inspection, architect's, § 5:190
 - Substantial completion, architect's inspection to determine certificate of, § 5:184
 - Testing and, § 5:250-§ 5:252
 - Warranties, architect's inspections and delivery of written warranties and related documents, § 5:100
- Insurance
 - Generally, § 7:16
 - Disbursements of property process as fiduciary for other insureds, owner's, § 5:232
 - Fiduciary bond, § 5:233
 - Loss of use insurance, § 5:227
 - No work until insurance and mortgages in place, § 5:158
 - Property coverage, § 7:16
 - Surety bond and, § 7:18
 - Workers' compensation, § 5:88

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Insurance, contractor's, § 5:208.10
- Insurance Exhibit, § 5:294
- Insurance requirements, § 5:300
- Interest on payment due provision, § 5:253
- Interpretation, § 3:54, 5:33
- Labor and materials, § 5:55
- Lack of progress, owner's right to terminate for, § 5:259
- Legal relationship provisions in A201, § 5:11
- Legal title and other property description information, owner's obligation to provide, § 5:38
- Lenders, assignment to, § 5:246
- License fees, § 5:86
- Loading precautions, § 5:202
- Loss of use insurance, § 5:227
- Machinery and equipment
 - Storage of equipment, § 5:133
- Maintenance
 - Partial occupancy of project, § 5:187
 - Remediation costs, indemnity for, § 5:207
 - Substantial completion, § 5:185
- Major changes, summary, § 5:301
- Manuals, § 5:27, 5:43
- Materials and equipment storage, § 5:133
- Mediation as prerequisite to dispute resolution process, § 5:20.50
- Mortgage in place, no work until, § 5:158
- No damages for delay clause, § 5:20, 5:162
- Nonconforming work, correction of.
 - Correction of work, above
- Notice, § 5:33.30, 5:60, 7:139, 7:231
- Obligation to refrain from materially varying financial arrangements, § 5:39.20

INDEX

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- One-year correction warranty,
§ 5:238, 5:239
- Organization of specifications, § 5:30
- Ownership of instruments of service,
§ 5:33.10
- Owner's information, § 5:42
- Owner's information, accuracy,
§ 5:41
- Owner's obligation
 - Continue architect's employment
or secure acceptable succes-
sor, § 5:40.20
 - Retention of licensed architect,
§ 5:40.10
- Partial occupancy of project, § 5:187-
§ 5:189
- Patching, cutting and. Cutting and
patching, above
- Patents, § 5:86, 7:217
- Payment
 - Acceptance, payment not constitut-
ing, § 5:179
 - Architect's review of contractor's
applications for, § 5:96
 - Bankruptcy, effect of, § 5:180
 - Certificate for payment, architect's,
§ 5:170-§ 5:173
 - Changes in work, § 5:166
 - Changes in work, applications for,
§ 5:166
 - Contractor's indemnity owed for
liens, § 5:180.10
 - Failure of payment, § 5:181
 - Final payment
 - Contractor's submittals for,
§ 5:191
 - Waiver of claims upon making
or accepting, § 5:193,
5:194
 - Interest on payment due provision,
§ 5:253
 - Joint checks, owner's right to
issue, § 5:173.10

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Payment—Cont'd
 - Progress payments, manner of
making, § 5:174, 8:3
 - Property of the estate, inability to
recover funds from, § 5:180
 - Stored materials, for, § 5:168
 - Subcontractors, to, § 5:167, 5:175-
§ 5:177
 - Submission process, § 5:165
 - Sum, contract, § 5:163
 - Suppliers' payment rights, § 5:178
 - Termination of contract, below
 - Total amount payable, § 5:163
 - Turnover of earned but unpaid
progress payments and retain-
ages, § 5:180
 - Values, schedule of, § 5:164
 - Waiver of claims upon making or
accepting final payment,
§ 5:193, 5:194
 - Warranty of clear title upon pay-
ment, § 5:169
 - Weak trust, § 5:180
- Performance
 - Architect's interpretation of par-
ties', § 5:102
 - Payment bonds and, § 12:16
- Perform construction, owner's right
to, § 5:129
- Permits, § 5:60
- Product data, § 5:71
- Progress payments, manner of mak-
ing, § 5:174, 8:3
- Project defined, § 5:25
- Project manual, § 5:28, 5:43
- Property description information,
owner's obligation to provide,
§ 5:38
- Publication of standard forms, § 5:2
- Punch list, contractor's, § 5:183,
5:185
- Quality assurance and quality control
provisions in A201
 - Generally, § 5:15

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

Quality assurance and quality control provisions in A201—Cont'd
Access to work, § 5:85
Additional testing, inspection, or approval, § 5:250.10
Carry on work, owner's right to, § 5:45
Certification, architect withholding its, § 5:172
Correction of work before substantial completion, § 5:237.20
Disputing architect decision regarding payment certification, § 5:172.10
Final inspection, architect's, § 5:190
Inspection of existing work to determine suitability for subsequent work, § 5:54
Nonconforming work removal from site, § 5:240
No work requiring submittals to be performed until approved, § 5:76
Objections to proposed subcontractors, § 5:124.10
Resubmittals, § 5:78
Schedules, work in conformance with most recent, § 5:68
Shop drawings, review and approval, contractor's, § 5:74
Site visitations, architect's, § 5:93
Stop work, owner's right to, § 5:44
Strict discipline and employment of fit personnel, contractor's enforcement of, § 5:57
Subcontractor selection, § 5:124
Substantial completion, § 5:184
Substitutions upon owner's consent, § 5:56
Testing and inspections, § 5:250, 5:252

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

Quality assurance and quality control provisions in A201—Cont'd
Uncovering of work, § 5:237, 5:237.10
Warranties, § 5:58
Quantum meruit, § 5:144
Recovery rights, contractor's termination notice and, § 5:257
Reimbursement obligation, contractor's, § 5:206.10
Rejection of arbitration as mandatory dispute resolution process, § 5:20.60
Reliance upon work performed by owner or separate contractors, contractor's, § 5:134
Remediation costs, indemnity for, § 5:207
Repair of other construction damaged by contractor's correction efforts, § 5:241
Representative, owner's, § 5:37
Reservation for delay damages, § 5:162
Resubmittals, § 5:78
Review obligation, contractor's, § 5:49
Rights and remedies provision, § 5:248
Risk allocation provisions in A201
Generally, § 5:21, 7:16
Acceptance of nonconforming work, § 5:243
Applicable laws, contractor not responsible to ascertain whether contract documents in accordance with, § 5:62
Assign subcontracts to successor, owner's right, § 5:128.10
Blasting activities, § 5:87
Changes
Changed work, contractor to proceed promptly to execute, § 5:141

INDEX

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Risk allocation provisions in A201
 - Cont'd
 - Changes—Cont'd
 - Directives, construction change, § 5:144
 - Equitable adjustment, contractor's duty to perform changed work in face of disagreement over, § 5:146
 - Owner's right to make, § 5:139
 - Clean, penalty for failure to keep premises, § 5:84
 - Compliance with law, § 5:61
 - Concealed or unknown conditions, claims for, § 5:62.10
 - Consequential damages claim, § 5:20
 - Construction means, methods and techniques, § 5:52
 - Contractor's design professional's certifications, § 5:79.20
 - Copyrights, § 5:86
 - Correction of work
 - Acceptance of nonconforming work, § 5:243
 - Correction period, § 5:239
 - Repair of other construction damaged by contractor's correction efforts, § 5:241
 - Substantial completion, before and after, § 5:238
 - Deductive changes, § 5:149
 - Delays to and by separate contractors, responsibility for, § 5:135
 - Design delegation, § 5:79, 5:79.10
 - Directives, construction change, § 5:144
 - Employees and subcontractors, contractor responsible for acts of its, § 5:53
 - Equitable adjustment, contractor's duty to perform changed work

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Risk allocation provisions in A201
 - Cont'd
 - in face of disagreement over, § 5:146
 - Errors and omissions; contractor's notification obligations as to, § 5:50
 - Failure to properly review contract documents, consequences of; contractor's notification obligations as to, § 5:51
 - Final completion, delay in, § 5:192
 - Hazardous materials
 - Indemnity, § 5:205
 - Introduced by contractor, § 5:206
 - Indemnification
 - General provision 3.18.1, § 5:87
 - Workers' compensation laws, no limitation on indemnity because of, § 5:88
 - Insurance, above
 - Interest on payment due provision, § 5:253
 - License fees, § 5:86
 - Limitation on subcontractor substitution, § 5:125.10
 - Minor changes, § 5:152
 - Nonconforming work, acceptance of, § 5:243
 - Owner's information, accuracy, § 5:41
 - Partial occupancy of project, § 5:187, 5:189
 - Patents, § 5:86
 - Payment
 - Stored materials, for, § 5:168
 - Subcontractor work, § 5:163
 - Unit prices, § 5:162.10
 - Waiver of claims upon making or accepting final payment, § 5:193, 5:194
 - Warranty of clear title, § 5:169

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Risk allocation provisions in A201—Cont'd
 - Perform construction, owner's right to, § 5:129
 - Reliance upon work performed by owner or separate contractors, contractor's, § 5:134
 - Remedy damage to separate contractor's work, contractor's obligations to, § 5:136
 - Repair of other construction damaged by contractor's correction efforts, § 5:241
 - Reservation for delay damages, § 5:162
 - Review obligation, contractor's, § 5:49
 - Royalties, patents and copyrights, § 5:86
 - Safety precautions and program, below
 - Separate contractors
 - Delays to and by, responsibility for, § 5:135
 - Reliance upon work performed by owner or separate contractors, contractor's, § 5:134
 - Remedy damage to separate contractor's work, contractor's obligations to, § 5:136
 - Shop drawings
 - Approval of drawings by architect does not relieve contractor's responsibility to comply with contract documents, § 5:77
 - Architect's review of shop drawings and other submittals, § 5:98
 - Representations regarding, contractor's, § 5:75

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Risk allocation provisions in A201—Cont'd
 - Stored materials, payment for, § 5:168
 - Subcontractor, contractor responsible for acts of its, § 5:53
 - Subcontractor, owner's right of objection to, § 5:125
 - Substantial completion, § 5:185, 5:192, 5:238
 - Suspension costs, § 5:128
 - Termination of contract, below
 - Testing costs, responsibility for, § 5:251
 - Time is of the essence, § 5:157
 - Waiver of claims upon making or accepting final payment, § 5:193, 5:194
 - Warranty of clear title, § 5:169
 - Weak trust, § 5:180
 - Workers' compensation laws, no limitation on indemnity because of, § 5:88
- Risk mitigation provisions in A201
 - Generally, § 5:19
 - Acceptance, payment not constituting, § 5:179
 - Adjacent properties and completed projects, waivers of subrogation regarding, § 5:208.90
 - Bonds, above
 - Bonds, contractor's, § 5:208.20, 5:208.30
 - Cancellation or expiration of contractor's insurance, § 5:208.40
 - Cancellation or expiration of owner's insurance, § 5:208.70
 - Contingent assignment of subcontracts, § 5:127
 - Emergencies, § 5:208
 - Failure to purchase required property insurance, § 5:208.60

INDEX

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Risk mitigation provisions in A201
—Cont'd
 - Final payment, contractor's
submittals for, § 5:191
 - Financial information, owner's
obligation to provide, § 5:39
 - Hazardous materials
 - Owner's obligations to verify
presence of, § 5:204
 - Stop work when encountering,
§ 5:203
 - Insurance, above
 - Insurance and mortgages in place,
no work until, § 5:158
 - Legal title and other property
description information,
owner's obligation to provide,
§ 5:38
 - Mortgage in place, no work until,
§ 5:158
 - Owner's insurance, § 5:208.50
 - Partial occupancy of project,
§ 5:188
 - Payment
 - Acceptance, payment not
constituting, § 5:179
 - Failure of payment, § 5:181
 - Final payment, contractor's
submittals for, § 5:191
 - Subcontractors, to, § 5:175-
§ 5:177
 - Suppliers' payment rights,
§ 5:178
 - Property description information,
owner's obligation to provide,
§ 5:38
 - Safety precautions and program,
below
 - Suppliers' payment rights, § 5:178
 - Termination of contract, below
 - Waivers of subrogation regarding
property insurance applicable
to project, § 5:208.80

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Risks and responsibilities, accepted
approaches to, § 5:1, 5:2
- Risk transfer provisions in A201
Generally, § 5:18
 - Bonds, above
 - Insurance, above
- Royalties, patents and copyrights,
§ 5:86
- Safeguards and posting warnings,
erection of, § 5:198
- Safety precautions and program
 - Abnormally dangerous activities,
§ 5:200
 - Contractor's safety precautions,
§ 5:196
 - Emergencies, § 5:208
 - Erection of safeguards and posting
warnings, § 5:198
 - Explosives, use and storage of,
§ 5:199
 - Hazardous materials, above
 - Loading precautions, § 5:202
 - Representative, contractor's safety,
§ 5:201
 - Responsibility of contractor for
giving notices and complying
with safety regulations,
§ 5:197
 - Safeguards and posting warnings,
erection of, § 5:198
 - Scaffolding, § 5:202
 - Scope of work, § 5:195
 - Stored materials, contractor's
responsibility for damage to,
§ 5:200
 - Warnings, erection of safeguards
and posting, § 5:198
- Samples, § 5:72
- Scaffolding, safety precautions and
program, § 5:202
- Schedules
 - Scope of work provisions
Construction schedules, § 5:66

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Schedules—Cont'd
 - Scope of work provisions—Cont'd
 - Submittal schedule, § 5:67
 - Work in conformance with most recent schedules, § 5:67
- Scope of work provisions
 - Generally, § 5:12
 - Approvals, § 5:40
 - Assessments and charges, § 5:40
 - Cleaning up, § 5:83
 - Completion of work on time, contractor's responsibility, § 5:159
 - Contract documents, work in accordance with, § 5:47
 - Coordination in event of use of separate contractors, owner's, § 5:131
 - Cutting and patching
 - Contractor responsible for; paragraph 3.14.1, § 5:81
 - Permission to cut and patch another's work; paragraph 3.14.2, § 5:82
 - Cutting and patching, owner's, § 5:137
 - Easements, § 5:40
 - Equipment storage, § 5:133
 - Fees, § 5:60
 - Labor and materials, § 5:55
 - Materials and equipment storage, § 5:133
 - Notices, § 5:60
 - Permits, § 5:60
 - Record drawings, § 5:12
 - Risk transfer, § 5:18
 - Safety precautions and program, § 5:195
- Schedules
 - Construction schedules, § 5:66
 - Submittal schedule, § 5:67
- Site, use of, § 5:80
- Taxes, § 5:59

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Scope of work provisions—Cont'd
 - Work provision 1.1.3, § 5:24
- Separate contractors
 - Coordination in event of use of separate contractors, owner's, § 5:131
 - Delays to and by, responsibility for, § 5:135
 - Reliance upon work performed by owner or separate contractors, contractor's, § 5:134
 - Remedy damage to separate contractor's work, contractor's obligations to, § 5:136
- Shop drawings
 - Approval of drawings by architect does not relieve contractor's responsibility to comply with contract documents, § 5:77
 - Architect's review of, § 5:73, 5:98
 - Definition, § 5:70
 - Representations regarding drawings and other submittals, contractor's, § 5:75
 - Review and approval, contractor's, § 5:74
 - Risk allocation provisions in A201
 - Approval of drawings by architect does not relieve contractor's responsibility to comply with contract documents, § 5:77
 - Architect's review of shop drawings and other submittals, § 5:98
 - Representations regarding, contractor's, § 5:75
- Specifications
 - Definition, § 5:27
 - Organization of, § 5:30
- Stop work, owner's right to, § 5:44
- Stored materials, contractor's responsibility for damage to, § 5:200

INDEX

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

Strict discipline and employment of
fit personnel, contractor's
enforcement of, § 5:57

Subcontractors

- Contingent assignment, § 5:127
- Contractor responsible for acts of
its, § 5:53
- Debtor's right to recover payments
made to subcontractors and
suppliers, § 5:180
- Defined, § 5:122
- Flow down responsibilities to,
§ 5:126
- Objection to, owner's right of,
§ 5:125

Payment

- Applications for subcontractor
work, § 5:167
- Making payments to, § 5:175-
§ 5:177
- Selection, § 5:124
- Sub-subcontractor defined, § 5:123

Termination of contract

- Assignment of subcontractor,
owner's right to obtain,
§ 5:246

Substantial completion

- Architect's inspection to determine
certificate of, § 5:184
- Certificate of, § 5:185, 5:186
- Correction remedy, § 5:238, 5:239
- Date of, § 5:155
- Defined, § 5:182
- Final completion, delay in, § 5:192
- Punch list, § 5:183, 5:185

Substitutions upon owner's consent,
§ 5:56

Successors and assigns provision,
§ 5:245

Sum, contract, § 5:163

Superintendent, § 5:65

Superintendent, reasonable objections
or changing without consent,
§ 5:65.20

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

Suppliers

- Debtor's right to recover payments
made to subcontractors and
suppliers, § 5:180
- Payment rights, § 5:178

Suspension by owner for conve-
nience, § 5:269

Suspension costs, § 5:128

Suspension of operations affecting
burial markers, archaeological
sites, or wetlands, § 5:62.20

Tailoring coverage by exercising
options and specifying limits
and durations, § 5:299

Taxes, § 5:59

Technical language, § 5:31

Termination of contract

- Generally, § 5:255-§ 5:272
- Architect's certification, termina-
tion upon notice and, § 5:263
- Cause, for, § 5:272, 18:34-§ 18:36
- Construction change directives,
§ 5:144
- Constructive termination, § 5:270
- Contractor's obligations upon
owner's termination for con-
venience, § 5:271
- Contractor's right of, § 5:255-
§ 5:257
- Convenience, for, § 5:270-§ 5:272
- Delay, due to, § 5:256
- Distribution of excess contract
sum/contractor's reimburse-
ment obligation, § 5:268
- Excess contract sum, distribution
of, § 5:268
- Lack of progress, owner's right to
terminate for, § 5:259
- Notice of, § 5:257

Payment

- Convenience, termination for,
§ 5:272
- No right to, § 5:267

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Termination of contract—Cont'd
 - Pre-termination claims, preservation of, § 5:270
 - Recovery rights, notice of termination and, § 5:257
 - Reimbursement obligation, distribution of contractor's, § 5:268
 - Settlements, § 5:272
 - Suspension by owner for convenience, § 5:269
 - 30-day stoppage requirement, § 5:255
 - Unilateral termination by owner, § 5:270
 - Work stoppage due to owner's default, § 5:258
- Testing and inspections, § 5:250-§ 5:252
- Time
 - Commencement of work, date of, § 5:154
 - Completion of work on time, contractor's responsibility, § 5:159
 - Definition, § 5:153
 - Delays and extensions of time, § 5:160
 - Extensions of time, § 5:160
 - Substantial completion, date of, § 5:155
 - Time is of the essence provision, § 5:157
- Timeliness of owner information, § 5:42
- Total amount payable, § 5:163
- Types and extent of insurance coverage, § 5:297
- Uncovering of work, § 5:237
- Use and dissemination of owner's financial information, § 5:39.30
- Values, schedule of, § 5:164
- Waivers
 - Action or failure to act, no waiver presumed by, § 5:249

**AMERICAN INSTITUTE OF
ARCHITECTS STANDARD
FORMS—Cont'd**

- Waivers—Cont'd
 - Final payment, owner's waiver of claim upon making, § 5:193
- Warnings, erection of safeguards and posting, § 5:198
- Warranties
 - Architect's inspections and delivery of written warranties and related documents, § 5:100
 - Clear title, § 5:169
 - Contractor's, § 5:58
 - Nonconforming work, correction of, § 5:238
 - One-year correction warranty, § 5:238, 5:239
 - Special warranties required by contract documents, § 5:58.10
- Workers' compensation, § 5:88
- Work (scope) provisions; paragraph 1.1.3, § 5:24
- Work stoppage due to owner's default, § 5:258

**AMERICANS WITH
DISABILITIES ACT (ADA)**

- Design professionals, liability of, § 7:234, 17:37
- Indemnity and indemnification, § 10:124.10

ANALYTICAL CONFLICT

- Insurance, interpretation of contracts, § 11:33

ANIMALS

- Endangered species, § 7:186

**ANOTHER'S EMPLOYEES
COVERAGE**

- CGL coverage, exclusions, § 11:149, 11:149.10

ANTI-ASSIGNMENT CLAUSES

- Insurance, § 11:25, 11:25.10, 11:300.20

INDEX

ANTICIPATORY REPUDIATION

Termination for cause, § 18:23

ANTI-CONCURRENT CAUSATION CLAUSES

Insurance, § 11:227, 11:227.10

ANTI-INDEMNITY STATUTES

Indemnity and Indemnification
(this index)

ANTI-SUBROGATION RULE

Subrogation (this index)

ANTITRUST LAWS

Bid award, remedies for improper,
§ 2:153

Bid shopping, § 2:110

Insurance industry exemption from,
§ 12:6

McCarran-Ferguson Act, § 12:6

Suretyship, § 12:6

APPARENT AUTHORITY DOCTRINE

Scope of authority, confusion over,
§ 7:232

APPEALS

Arbitration (this index)

OSHA citations, § 13:14

APPELLATE ARBITRATION

Generally, 21:318

Institutional appellate arbitration
rules, differences, 21:321

Narrow grounds for award vacatur
and judicial standards of award
review, 21:319, 21:320

Overcoming concerns regarding
grounds, 21:320

Viability of approach, 21:322

APPORTIONMENT

Insurance, loss between covered and
noncovered causes, § 11:228

APPRAISAL PROCESS

Insurance (this index)

APPROVALS

AIA General Conditions of the
Contract for Construction for
Construction form A201 provi-
sions, § 5:40

Repudiation of necessary
governmental approvals or
agreements, § 7:329

ARBITRATION

Generally, § 1:6, 21:1-§ 21:316

Action for statutory bar purposes,
§ 21:175

Agency law, § 21:95

Agents, effect on, § 21:95

AIA General Conditions of the
Contract for Construction form
A201, § 5:244

Alter ego theory, § 21:96

Ambiguity, interpretation of agree-
ments, § 21:116

American Arbitration Association
(AAA), § 21:2

“Any” and “all” claims, agreeing to
arbitrate, § 21:126

Appealability of trial court orders,
§ 21:288-§ 21:296

Appeal of order denying arbitration,
staying litigation, § 21:163

Appeals

Ambiguity of finality, FAA Section
16, § 21:293

Award

Deferential standard of review;
confirming award, § 21:209

Vacating. Vacating awards and
limited standard of review,
below

FAA Section 3, stays of litigation,
§ 21:292

Federal Arbitration Act (FAA),
preemption of state law,
appellate review of
unconscionability determina-
tions, § 21:143

Final decision approach, U.S.

Supreme Court uses, § 21:296

ARBITRATION—Cont'd

- Appeals—Cont'd
 - Frivolous appeals, sanctions for, § 21:295
 - Mandamus, use to compel arbitration, § 21:294
 - Trial court orders, appealability of, § 21:288-§ 21:296
 - U.S. Supreme Court uses final decision approach, § 21:296
 - Waiver of right to arbitration; standard of review, § 21:179
- Arbitrability
 - Generally, § 21:57-§ 21:71
 - Broad characterizations, § 21:59
 - Challenges to arbitration agreements, contrasting, § 21:61
 - Choice of law, state, § 21:69
 - Courts resolving arbitrability matters, § 21:58
 - Decisions made by whom, § 21:60, 21:62
 - Defined, § 21:58
 - Intent to arbitrate arbitrability, clearly and unmistakably evidencing, § 21:63
 - Multiple contracts, § 21:71
 - Narrow approaches, § 21:59
 - Preservation of objection, standard of review, § 21:68
 - Standard of review, § 21:67, 21:68
 - Termination or repudiation of entire contract, § 21:70
 - “Arising out of or related to” clause in agreement, § 21:125
- Assent to arbitrate
 - Generally, § 21:80-§ 21:92
 - Authority to contract challenges, § 21:81
 - Bidding, solicitation and contract award process, § 21:91
 - Confusion over assent, care to avoid, § 21:86
 - Consequences of modification of contract, § 21:85

ARBITRATION—Cont'd

- Assent to arbitrate—Cont'd
 - Constructive or inquiry notice, § 21:90.60
 - Determination whether agreement exists, § 21:84.50
 - Discovery on arbitration agreement, appropriateness, § 21:84
 - Home or product warranty documents, § 21:90
 - Incorporation doctrine, § 21:92
 - Merger doctrine, effect on prior understandings, § 21:89
 - Modifications to contract, effect of, § 21:85-§ 21:89
 - Online commerce, goods or services secured through, § 21:90.50
 - Partial deletion of arbitration language, § 21:87
 - Particular issues, § 21:90-§ 21:92
 - Presumption favoring arbitration, application of, § 21:82
 - Remote purchasers, § 21:90.70
 - Searching for, § 21:47, 21:50
 - State law, application, § 21:83
 - Subsequent amendments and agreements with arbitration provisions, § 21:88
 - Sureties, claims against, § 21:92
 - Warranty documents, § 21:90
 - Written warranties, enforcing arbitration agreements in, § 21:90.60
- Assessment whether language sufficient to mandate arbitration, § 21:48
- Assignees, effect on, § 21:99
- Assumption of obligation to arbitrate, § 21:100
- Authority of arbitrators
 - Generally, § 21:199-§ 21:203
 - Disqualify counsel, § 21:200
 - Immunity, § 21:203
 - Limitations on parties' delegation of authority to, § 21:202

INDEX

ARBITRATION—Cont'd

- Authority of arbitrators—Cont'd
 - Rescission of contract, authority to award, § **21:201**
 - Sanctions, authority to issue, § **21:199**
- Award
 - Confirming award, § **21:209 to 21:211**
 - Correction of award. Modification or correction of award, below
 - Deferential standard of review; confirming award, § **21:209**
 - Foreign arbitral awards, enforcement of, below
 - Language requirements for agreements, § **21:211**
 - Modification or correction of award, below
 - New York Convention, below
 - Time requirements for confirming award, § **21:210**
 - Vacating. Vacating awards and limited standard of review, below
- Bankruptcy proceedings, Federal Arbitration Act (FAA), § **21:28**
- Broadly drafted agreements, § **21:122**
- Change order, limiting arbitration to, § **21:134**
- Choice of law provisions
 - Arbitrability, § **21:69**
 - International arbitration agreements, § **21:44**
 - Law governing arbitration agreements, extent of influence, § **21:43**
 - Separability, § **21:75**
- Claim preclusion. Res judicata, below
- Claim submission to design professional as condition precedent to arbitration, § **21:56**
- Class actions, § **21:204, 21:205**
- Clauses in. Scope of agreement, below

ARBITRATION—Cont'd

- Collateral estoppel
 - Defense for design professionals, § **21:274**
 - Defensive versus offensive, § **21:273**
 - Establishing preclusive effect of award, § **21:266**
 - Lack of clear and complete record, § **21:267**
 - Offensive versus defensive, § **21:273**
 - Public policy considerations, § **21:270**
 - Surety, § **21:275**
- Common law, challenges to enforcement of agreement based on, § **21:135**
- Compelling arbitration
 - Generally, § **21:152-21:159**
 - Attorneys' fees, recovery of, § **21:157**
 - Burdens of proof, § **21:158**
 - Federal Arbitration Act Section 4, § **21:152, 21:153, 21:158**
 - Hearing location, arbitrators authority over, § **21:156**
 - Jurisdiction over FAA Sec. 4, § **21:153**
 - Magistrate judge, authority to compel, § **21:155**
 - Mandamus to review orders to compel arbitration, § **21:294**
 - Subject matter jurisdiction, § **21:154**
- Conditions precedent to arbitration
 - Generally, § **21:52-21:56**
 - Claim submission to design professional, § **21:56**
 - Licensing, § **21:55**
 - Mediation as condition, § **21:54**
 - Time limitations, compliance with contractual, § **21:53**
- Confidentiality, § **21:10**
- Conflict of laws
 - Governing law, below

ARBITRATION—Cont'd

- Consenting to FAA jurisdiction, § 21:19
- Consolidation of arbitration proceedings
 - Generally, § 21:277-§ 21:281
 - Court or arbitrator, who decides, § 21:281
 - Evolution of AIA's approach, § 21:278
 - Judicial attitudes, § 21:280
 - State law and consolidation, § 21:279
- Consumer disputes, scrutiny of arbitration as forum, § 21:6
- Consumer protection act claims, § 21:171
- Contrast with other alternative dispute resolution, § 21:3
- Contribution, § 21:166
- Correction of award. Modification or correction of award, below
- Costs
 - Attorneys' fees, vacating awards and limited standard of review, § 21:251
 - Waiver of right to arbitrate, party refusing to pay share of costs, § 21:191
- Court-ordered discovery in aid of international arbitration, § 21:195
- Courts resolving arbitrability matters, § 21:58
- Design-build contracts, § 21:173
- Discovery, § 21:193-§ 21:195
- Disqualification of arbitrator, § 21:197
- Duress or coercion, § 21:148
- Electronic writings, § 21:49, 21:50
- Employment disputes, scrutiny of arbitration as forum, § 21:6
- Enforceability of arbitration agreement
 - Common law, challenges to enforcement of agreement based on, § 21:135

ARBITRATION—Cont'd

- Enforceability of arbitration agreement—Cont'd
 - Public policy, challenges to enforcement of agreement based on, § 21:136
 - Signatures and enforceability of arbitration agreement, below
 - Uniform Commercial Code, arbitration agreements subject to, below
 - Written agreement requirement, below
- Equitable estoppel, § 21:101
- Estoppel. Preclusive effects of arbitration awards, below
- Exceeding one's powers, defined, § 21:250
- Extrinsic evidence to determine scope, role of, § 21:119
- False claim disputes, arbitrating, § 21:172
- False Claims Act implications on prohibition for federal employment disputes, § 21:8
- Favoring by federal policy
 - Generally, § 21:20-§ 21:23
 - Agreement to arbitrate, impact on questions regarding, § 21:22
 - Questions regarding parties subject to arbitration, effect on, § 21:21
- Reversing presumption, § 21:23
- Federal Arbitration Act (FAA)
 - Generally, § 21:2
 - Ambiguity of finality, Section 16, § 21:293
 - Appealability of trial court orders, § 21:288-§ 21:296
 - Arbitrator authority, § 21:64
 - Bankruptcy proceedings, § 21:28
 - Choice of law
 - International agreements, § 21:44
 - Class action waivers, arbitration agreements as, § 21:204
 - Confirming award, § 21:209

INDEX

ARBITRATION—Cont'd

- Federal Arbitration Act (FAA)
 - Cont'd
 - Consenting to FAA jurisdiction, § **21:19**
 - Denials to compel arbitration, appealability of, § **21:289**
 - Federal question jurisdiction, § **21:24**
 - Fraud, below
 - Interstate commerce, § **21:16 to 21:18**
 - Jurisdiction
 - Over arbitration, generally, § **21:16**
 - Law-of-the-case doctrine, § **21:29**
 - Limiting the exercise of federal court jurisdiction, § **21:221**
 - Modification or correction of award, below
 - Mutuality of obligation, defense of lack of; preemption of state law, § **21:147**
 - New York Convention, below
 - Orders granting motion to compel arbitration, appealability of, § **21:291**
 - Orders relating to stay of litigation, appealability of, § **21:290**
 - Policy favoring arbitration, § **21:162**
 - Preemption of state law
 - Generally, § **21:30-§ 21:38**
 - Analyzing arbitration agreements under the lens of substantive unconscionability, § **21:140**
 - Appellate review of unconscionability determinations, § **21:143**
 - Applicability of state law to FAA arbitrability disputes, § **21:32**
 - Class action waivers, arbitration agreements as, § **21:204**
 - Fraud, below

ARBITRATION—Cont'd

- Federal Arbitration Act (FAA)
 - Cont'd
 - Preemption of state law—Cont'd
 - Inconsistent arbitrability law, § **21:33**
 - Inconsistent general contract law, § **21:34**
 - Interpretive models preempted by FAA, express and unequivocal standard, § **21:38**
 - Judicial decision law, § **21:36**
 - Mutuality of obligation, defense of lack of, § **21:147**
 - Preston v. Ferrer, preemption after, § **21:37**
 - Procedural matters, § **21:31**
 - Separability doctrine applicability to contract revocation challenges, § **21:32**
 - Unconscionability defense, § **21:137 et seq.**
 - Unconscionable language, severing, § **21:144**
 - Vacatur law, § **21:35**
 - Venue laws, § **21:30.10**
 - Procedural to substantive law, evolution from, § **21:14-§ 21:19**
 - Section 3, appeal issues relating to stay, § **21:292**
 - Section 4, compelling arbitration, § **21:152, 21:153, 21:158**
 - Section 16, ambiguity of finality, § **21:293**
 - Separability doctrine applicability to contract revocation challenges, § **21:32**
 - Signatures and enforceability of arbitration agreement.
 - Signatures, role of
 - Solidification of substantive law of arbitration in Supreme Court, § **21:15**
 - Statute of limitations defense, arbitrating, § **21:159**
 - Staying litigation, § **21:290**

ARBITRATION—Cont'd

- Federal Arbitration Act (FAA)
 - Cont'd
 - Stay of litigation, Section 3 appeal issues relating to, § 21:292
 - “Substantially affect” interstate commerce, necessity to, § 21:18
 - Substantive law, evolution from procedural to, § 21:14-§ 21:19
 - Unconscionability defense and preemption of state law, § 21:137 et seq.
 - United States v. Lopez, § 21:16
 - Vacating awards. Vacating awards and limited standard of review, below
 - Westmoreland doctrine, § 21:24
 - Written agreement requirement, valid. Written agreement requirement, below
- Federal contractors, Franken amendment, § 21:7
- Federal district court authority to compel arbitration, § 21:220
- Federal jurisdiction
 - Amount in controversy, § 21:25
 - Arbitration motions after state court rulings, § 21:222
 - District court, § 21:25
 - Federal question, § 21:24
 - Petitions to compel vs. vacate awards, § 21:219
- Final decision approach, § 21:296
- Foreign arbitral awards, enforcement of
 - Generally, § 21:300-§ 21:311
 - New York Convention, below
- Foreign corporations, vacating awards and limited standard of review, § 21:227
- Forum selection provisions, § 21:39
- Fraud
 - Execution of contract, § 21:77
 - Inducement of contract, § 21:76

ARBITRATION—Cont'd

- Fraud—Cont'd
 - Statute of frauds, § 21:110
 - Vacating awards and limited standard of review, § 21:237-§ 21:239
- Frivolous appeals, sanctions for, § 21:295
- Governing law
 - Agreement, § 21:40-§ 21:44
 - AIA standard form A201, § 5:244
 - Vacating awards, § 21:228
- Hearing locale. Venue, below
- Hearing location, arbitrators authority over, § 21:156
- Historical development, § 21:2
- Illegality claims, arbitrability of, § 21:66
- Immunity, arbitral, § 21:203
- Incorporation of arbitration provisions by reference, § 21:101
- Indemnity, § 21:166
- Initiating arbitration sufficient to stop running limitations period, § 21:177
- Injunctive relief, judicial authority to issue, § 21:26, 21:27
- Insurance appraisal as arbitration, § 21:12
- Interpretation of agreements
 - Generally, § 21:115-§ 21:120
 - Ambiguity, § 21:116
 - Extrinsic evidence to determine scope, role of, § 21:119
 - General remedies provisions, conflicts with, § 21:120
 - Multiple arbitration clauses, § 21:117
 - Permissive or mandatory language, § 21:115
- Referencing other documents, incorporation of obligation
 - Binding subcontractors to prime agreement^{8217s} arbitration provision, § 21:118

INDEX

ARBITRATION—Cont'd

- Interpretation of arbitration agreements, § **3:9**
- Issue preclusion. Collateral estoppel, above
- Joint ventures, effect on, § **21:97**
- Judicial enforcement of subpoenas, § **21:194**
- Judicial expressions of deference paid awards, § **21:229**
- Jurisdiction. Federal jurisdiction, above
- Jury waiver provisions and arbitration agreements, § **21:13**
- Law governing, § **21:40-§ 21:44**
- Law governing agreements, influence of choice of law provisions, § **21:43**
- Licensing as condition precedent, § **21:55**
- Magnuson-Moss warranty claims, § **21:170**
- Mandamus, use of review orders to compel arbitration, § **21:294**
- Mandamus used to review orders to compel arbitration, § **21:289**
- Manifest disregard of law; vacating award, § **21:260 to 21:263**
- Mechanics' liens, § **21:133, 21:169, 21:276**
- Mediation as condition precedent, § **21:54**
- Mediation as form of arbitration, § **21:11**
- Merger doctrine, effect on prior understandings, § **21:89**
- Miller Act bond claims, § **21:168**
- Modification or correction of award
 - Generally, § **21:212-§ 21:217**
 - Imperfect in form, § **21:215**
 - Matter not submitted, § **21:214**
 - Miscalculation or misdescription, evident material, § **21:213**
 - Resubmission of matter to arbitrator for clarification, § **21:216**
- Motions to stay arbitration, § **21:161**

ARBITRATION—Cont'd

- Multiple arbitration clauses, § **21:117**
- Narrowly-tailored clauses. Scope, below
- New York Convention
 - Generally, § **21:300**
 - Application of, § **21:301**
 - Defenses to enforcement, § **21:302**
 - Domesticity of award, § **21:306**
 - Enforcement prerequisites, § **21:301**
 - Federal law, application of, § **21:303**
 - Foreign jurisdiction, enforcement of award by, § **21:311**
 - Signatories to, § **21:300, 21:305**
 - U.S. enforcement of award
 - Generally, § **21:303, 21:307-§ 21:310**
 - Nullified in foreign country, § **21:310**
 - Refusal provisions, interpretation of, § **21:308, 21:309**
 - Written agreement requirement, § **21:304-§ 21:306**
- Nonsignatories, arbitration agreement's effect on
 - Generally, § **21:93-§ 21:108, 21:95-§ 21:108**
 - Agency law, § **21:95**
 - Agents, § **21:95**
 - Alter ego theory, § **21:96**
 - Assignees, § **21:99**
 - Assumption of obligation to arbitrate, § **21:100**
 - Burdens and rights, decided by whom, § **21:104**
 - Challenges and decisions, § **21:104, 21:105**
 - Corporate officers and directors, § **21:106, 21:107**
 - Equitable estoppel, § **21:101, 21:102**
 - Exceptions to general rule that non-signatories not bound, § **21:94**

ARBITRATION—Cont'd

- Nonsignatories, arbitration agreement's effect on—Cont'd
- Intertwining or alternative estoppel for binding non-signatories, § 21:103
- Non-privity constructions participants, § 21:102
- Rights and obligations, § 21:93
- Right to seek review of denial to stay litigation, § 21:105
- Staying litigation for arbitration, § 21:164
- Subrogees, § 21:99
- Successors, § 21:99
- Sureties as nonsignatories, § 21:108
- Third-party beneficiaries, § 21:98
- Oral agreement and duty to arbitrate, § 21:51
- Partiality of arbitrator, waiver of right to object, § 21:236
- Partnerships, effect on, § 21:97
- Preclusive effects of arbitration awards
 - Generally, § 21:266-§ 21:276
 - Claim preclusion. Res judicata, below
 - Collateral estoppel, above
 - Establishing preclusive effect of award, § 21:266
 - Issue preclusion. Collateral estoppel, above
 - Jurisdiction's preclusion law, applicability of, § 21:268
 - Lack of clear and complete record, § 21:267
 - Mechanics' lien actions and, § 21:276
 - Public policy considerations, § 21:270
 - Res judicata, below
 - Subsequent arbitration, effect on, § 21:269
 - Surety and, § 21:275

ARBITRATION—Cont'd

- Preemption of state law by FAA. Federal Arbitration Act (FAA), above
- Preliminary injunctive relief in aid of arbitration, § 21:27
- Preserve statute of limitations, contractual attempts to, § 21:176
- Pricing disputes, limiting arbitration to, § 21:134
- Public authorities, with, § 21:285
- Public policy
 - Challenges to enforcement of agreement based on, § 21:136
 - Vacating award on public policy grounds, § 21:264
- Rapid resolution ADR, problems with arbitration, § 21:4
- Re-evaluation of strengths of arbitration, § 21:5
- Remote purchasers, assent to arbitrate, § 21:90.70
- Rescission claims, arbitrability of, § 21:65
- Rescission of contract, authority of arbitrator to award, § 21:201
- Res judicata
 - Generally, § 21:266
 - Application to give preclusive effect to awards, § 21:271
 - Establishing preclusive effect of award, § 21:266
 - Lack of clear and complete record, § 21:267
 - Public policy considerations, § 21:270
 - Subsequent arbitration, as defense in, § 21:270
 - Subsequent arbitration, preclusive effect on, § 21:269
 - Surety, § 21:275
- Scope of agreement
 - Generally, § 21:121-§ 21:134
 - Aesthetic effect, AIA arbitration clause exception, § 21:130
 - "Any" and "all" claims, agreeing to arbitrate, § 21:126

INDEX

ARBITRATION—Cont'd

- Scope of agreement—Cont'd
 - “Arising out of or related to” clause, § 21:125
- Broad vs. narrow agreements, § 21:122
- Change order, limiting arbitration to, § 21:134
- Consumer protection act claims, § 21:171
- Contribution, § 21:166
- Extrinsic evidence to determine, § 21:119
- False claim disputes, arbitrating, § 21:172
- Federal policy favoring arbitration, influence on determination, § 21:123
- Guidelines, § 21:121-§ 21:134
- Indemnity, § 21:166
- Intertwining doctrine, § 21:124
- Magnuson-Moss warranty claims, § 21:170
- Mechanics' liens, § 21:133, 21:169
- Miller Act bond claims, § 21:168
- Narrow agreements and clauses, generally, § 21:128, 21:129
- Pricing disputes, limiting arbitration to, § 21:134
- Reaching back in time, agreement's ability, § 21:127
- Specific types of damages eliminated in agreement, § 21:132
- Specified thresholds, § 21:131
- Subrogation, § 21:167
- Tailoring scope, § 21:130-§ 21:134
- Third-party claims, § 21:166
- Tort claims, § 21:165
- Venue requirements and Miller Act bond claims, § 21:168
- Warranty claims, Magnuson-Moss, § 21:170
- Warranty documents, home and products, § 21:90
- Scrutiny as forum, § 21:6

ARBITRATION—Cont'd

- Selection of arbitrator
 - Generally, § 21:196-§ 21:198
- Challenges to party-arbitrator appointments, § 21:196
- Court intervention, § 21:198
- Disqualification, § 21:197
- Separability doctrine
 - Generally, § 21:72-§ 21:79
 - Authority to contract, § 21:78
 - Broad and narrow applications, § 21:73
 - Choice-of-law provisions, § 21:75
 - Contract formation, application to, § 21:79
 - Criticisms and state law, § 21:74
 - Evading, challenges to, § 21:72
 - Execution of contract, fraud in, § 21:77
 - Fraud, § 21:76, 21:77
 - Inducement of contract, fraud in, § 21:76
- Signatures, role of
 - Generally, § 21:46
 - Federal policy favoring arbitration on question of whether parties agreed to arbitrate, impact of, § 21:22
 - Incomplete negotiations, § 21:80
 - Multiple arbitration clauses, § 21:117
 - State law governing matter, determining which, § 21:41
 - State's arbitration statute, consequences of selecting to arbitrate pursuant to, § 21:42
 - Uniform Commercial Code, arbitration agreements subject to, below
- Sovereign immunity, role of, § 21:287
- Standard and jurisdiction, staying arbitration, § 21:160
- Statute of limitations defense, arbitrating, § 21:58, 21:174-§ 21:177

ARBITRATION—Cont'd

- Staying arbitration, § 21:160, 21:161
- Staying litigation, § 21:162 to 21:164, 21:290
- Subpoenas, arbitrator's authority to issue, § 21:193
- Subrogation, § 21:167
- Subrogees, effect on, § 21:99
- Successors, effect on, § 21:99
- Sureties as nonsignatories, § 21:108
- Third parties
 - Beneficiaries, effect on, § 21:98
 - Claims, § 21:166
 - Vacating award where award affecting rights of, § 21:254
- Time limitations
 - Compliance with contractual, § 21:53
 - Motions to vacate or confirm award, § 21:224, 21:225
- Tort claims, arbitrating, § 21:165
- Tribal entities, § 21:286
- Unauthorized practice of law
 - Generally, § 21:297-§ 21:299
 - Effect of finding on award, § 21:298
 - Vacatur challenges based on, § 21:299
- Unconscionability of agreements, § 21:145, 21:145.50
- Undue means; vacating awards, § 21:239
- Uniform Arbitration Act, § 21:2
- Uniform Commercial Code, arbitration agreements subject to
 - Generally, § 21:109-§ 21:114
 - Acceptances containing arbitration provisions, § 21:113
 - Course of dealing and trade usage, relevance of, § 21:114
 - Gap-filler terms, § 21:112
 - Material alteration rule, § 21:113
 - Parties' communications, importance of property characterizing, § 21:111
 - Statute of frauds, § 21:110

ARBITRATION—Cont'd

- Uniform Commercial Code, arbitration agreements subject to
 - Cont'd
 - Supplementary terms, § 21:112
- United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. New York Convention, above
- United States Supreme Court arbitration decisions in the 21st century, § 21:9
- Vacating awards and limited standard of review
 - Generally, § 21:218-§ 21:265
 - Arbitrator partiality, waiver of right to object, § 21:236
 - Attorneys' fees, § 21:251
 - Authority to award reformation relief, § 21:257
 - Awarding reformation relief, authority, § 21:257
 - Bias, failure to disclose information suggesting potential, § 21:240
 - Broad judicial review, seeking, § 21:234
 - Burden born by parties seeking to overturn awards, § 21:230
 - Corruption, § 21:237-§ 21:239
 - Decision and record provide no basis for award, § 21:231
- Disclosures
 - Generally, § 21:240-§ 21:244
 - Bias, failure to disclose information suggesting potential, § 21:240
 - Inadequate or untimely arbitrator disclosure, § 21:244
 - Lawyer-arbitrator, § 21:241
 - Material facts, duty to investigate, § 21:243
 - Partiality, evident, § 21:245, 21:246
 - Prior relationships, non-disclosure of, § 21:242

INDEX

ARBITRATION—Cont'd

- Vacating awards and limited standard of review—Cont'd
 - Equitable or injunctive relief, awarding, § 21:259
 - Exceeded powers, arbitrators
 - Generally, § 21:249-§ 21:259
 - Attorneys' fees, § 21:251
 - Interest, § 21:252
 - Interim relief, § 21:255
 - Punitive damages, § 21:253
 - Reasoned awards, § 21:256, 21:256.10, 21:256.20
 - Third party rights, award affecting, § 21:254
 - Exceeding one's powers, defined, § 21:250
 - Exclusive grounds for review of awards, § 21:232
 - Ex parte communications as misconduct, § 21:248
 - Explain reasoning or basis of award, arbitrator's obligation to, § 21:258
 - Fraud, § 21:237-§ 21:239
 - Frivolous appeals, sanctions for, § 21:295
 - Governing law, § 21:228
 - Immunity, arbitral, § 21:203
 - Interest, § 21:252
 - Interim relief, § 21:255
 - Judicial expressions of deference paid awards, § 21:229
 - Judicial grounds, § 21:233
 - Manifest disregard of law, § 21:260 to 21:263
 - Misconduct, § 21:247, 21:248
 - Out-of-state lawyers' participation, challenges to, § 21:284
 - Overturing awards, high burden, § 21:230
 - Partiality, evident
 - Generally, § 21:245, 21:246
 - Behavior unrelated to disclosure, § 21:246

ARBITRATION—Cont'd

- Vacating awards and limited standard of review—Cont'd
 - Partiality, evident—Cont'd
 - Cases unrelated to nondisclosure, § 21:246
 - Lawyer-arbitrator, disclosure and, § 21:241
 - Post-award discovery in aid of motion, § 21:265
 - Public policy grounds, § 21:264
 - Punitive damages, § 21:253
 - Reasoned awards
 - Generally, § 21:256
 - Definition, § 21:256.10
 - Failing to issue, proper remedy, § 21:256.20
 - Reformation relief, authority to award, § 21:257
 - Refusing to postpone hearing or hear evidence, § 21:247
 - Service of notice to vacate, foreign corporations, § 21:227
 - Standard of review, § 21:229-§ 21:234
 - Third party rights, award affecting, § 21:254
 - Time within which motion to vacate or confirm award, § 21:224, 21:225
 - Unauthorized practice of law, challenge based on, § 21:299
 - Undue means, § 21:239
 - Venue, § 21:123
 - Waiver of right to vacate, § 21:235, 21:236
- Valid written agreement requirement.
 - Written agreement requirement, below
- Venue
 - Challenges of hearing locales, who decides, § 21:284
 - Enforceability of hearing locale designations, § 21:282
 - Hearing locale, § 21:282-§ 21:284
 - Miller Act bond claims, § 21:168

ARBITRATION—Cont'd

- Venue—Cont'd
 - Motions to confirm or vacate awards, § 21:223
 - State law regulating forum locale in construction, § 21:283
- Venue requirements and Miller Act bond claims, § 21:168
- Vouching-in process and; indemnity, § 10:127
- Waiver of right to arbitration
 - Generally, § 21:178:21:192
 - Class actions, preemption of state law, § 21:204
 - Deciding questions of waiver, § 21:182
 - Exceeding contractual time limitation to demand arbitration, § 21:192
 - Factors for establishing, § 21:184-§ 21:187
 - Inconsistent acts, § 21:186
 - Knowledge of right to arbitrate, § 21:185
 - Mechanics' liens, § 21:190
 - No-waiver clause, effect of, § 21:188, 21:189
 - Prejudice, § 21:187
 - Proper law to apply, determining, § 21:183
 - Refusal to pay share of costs, § 21:191
 - Revival of right after initial waiving of right, § 21:180
 - Standard of review, § 21:179
 - Texas changes to law of waiver, § 21:181
- Warranty claims and documents.
 - Scope of agreement, above
- Westmoreland doctrine, § 21:24
- Written agreement requirement
 - Generally, § 21:45-§ 21:51
 - Assent to arbitrate, § 21:47, 21:50
 - Assessment whether language sufficient to mandate arbitration, § 21:48

ARBITRATION—Cont'd

- Written agreement requirement
 - Cont'd
 - Drafting agreements, § 21:208
 - Electronic documents, assent to arbitrate, § 21:50
 - Electronic writings, § 21:49
 - New York Convention, § 21:304-§ 21:306
 - Signatures and enforceability of arbitration agreement.
 - Signatures, above
 - Uniform Commercial Code, arbitration agreements subject to, below
 - Validity, § 21:45
- ARCHITECTS**
 - Design Professionals (this index)
- ARCHITECT SCOPE PROVISIONS**
 - American Institute of Architects Standard Forms (this index)
- AREA-WIDE DISRUPTION**
 - Business interruption insurance, due to massive infrastructure failure, § 11:262
- ASBESTOS**
 - Environmental risks, § 7:179, 7:192
 - Risk management and repose statute, § 7:33
 - Spearin warranties, § 9:5
- AS-BUILT ANALYSIS**
 - “As planned” analysis versus, § 15:132
 - “Collapsed as-build” method, § 15:135
- “AS PLANNED” SCHEDULE**
 - Time impact evaluation, § 15:129, 15:131, 15:134
- ASSESSMENTS**
 - AIA General Conditions of the Contract for Construction for Construction form A201 provisions, § 5:40

INDEX

ASSIGNMENTS

- American Institute of Architects Standard Forms** (this index)
- Arbitration agreement's effect on assignees, § **21:99**
- Insurance, anti-assignment clauses, § **11:25, 11:25.10, 11:300.20**
- Lender assignment of and subrogation to owner's position under owner-contractor contract, § **8:130**
- Payment bond rights, § **8:207**
- Payment rights, § **8:68**
- Subrogation, assignment of subrogation rights, § **11:204**

ASSOCIATED GENERAL CONTRACTORS OF AMERICA (AGC)

- Construction management standard forms, § **6:88**
- Standard forms, § **6:88**

ASSOCIATIONS

- Insurance guaranty, § **11:326**

ASSUMPTION OF RISK

- Lender liability, defense to, § **8:147**
- Mutual mistake in bid, § **2:133**

AT-RISK CONSTRUCTION MANAGEMENT

- Generally, § **6:84**
- Forms, § **6:89**

ATTORNEYS

- Attorneys' Fees** (this index)
- Commercial General Liability (CGL) Coverage** (this index)
- Fees. **Attorneys' Fees** (this index)
- Indemnity clause provision for attorneys' fees. **Indemnity Clause** (this index)
- Insurance and duty to defend. **Commercial General Liability (CGL) Coverage** (this index)

ATTORNEYS' FEES

- Arbitration award, vacating, § **21:251**

ATTORNEYS' FEES—Cont'd

- Breach of contract and common law damage measures, § **19:98**
- Commercial General Liability (CGL) Coverage** (this index)
- As damages "because of" bodily injury or property damage, **11:232.30**
- Indemnity Clause** (this index)
- Payment bonds, § **8:204**
- Substantial completion, § **8:38**

AUCTIONS

- Online reverse auctions, § **7:124**
- Reverse auction bidding, § **7:124**

AUTHORITY AND AUTHORIZATION

- Insurance appraisers, § **11:278**

AUTO COVERAGE

- Insurance, § **11:296, 11:297**

AUTOMATIC STAY

- Bankruptcy** (this index)
- Mechanics' lien, perfection of, § **5:180**

AUTOMOBILES

- Motor Vehicles** (this index)

BACKUP OF WATER EXCLUSION

- Insurance, § **11:240**

BAD FAITH

- Control concept and implications of, § **15:26**
- Defined, § **12:7**
- No damages for delay clause, bad faith exception, § **15:76**
- Surety's general agreement of indemnity, § **10:139**
- Suretyship and, § **12:7**

BANKRUPTCY

- Affirmative defenses to preference actions. Preferences, below
- AIA standard form A201 risk allocation provisions, § **5:180**

BANKRUPTCY—Cont'd

Arbitration, Federal Arbitration Act (FAA), § **21:28**

Automatic stay

 Generally, § **8:108-§ 8:124**

 Chapter 7, § **8:110**

 Chapter 11, § **8:110**

 Defined, § **8:108**

 Mechanics' liens, § **8:173**

 Relief from, § **8:110**

 Risk management; tolling statutes of limitation and repose due to bankruptcy filing, § **7:36**

 Surety, completing

 Interest in bonded contract funds, notifying obligee prior to lifting stay about, § **12:115**

 Principal's waiver of automatic stay, § **12:112**

 Trust property, application to, § **8:109**

Bankruptcy Abuse and Consumer Protection Act, § **8:124**

Conversion of chapter 11 case to chapter 7, § **8:116, 8:124**

Credit counseling requirement under Bankruptcy Abuse and Consumer Protection Act, § **8:124**

Debtor's right to recover payments made to subcontractors and suppliers, § **5:180**

Debt relief agencies under Bankruptcy Abuse and Consumer Protection Act, § **8:124**

Eleventh Amendment's bar against federal court actions, § **8:107**

Executory contracts, § **7:273, 12:117**

Fiduciary status, trust fund act sufficient to create, § **8:50**

Joint check arrangements, effect of, § **8:59**

Letters of credit and preferences, § **8:112**

Lis pendens, § **8:173**

BANKRUPTCY—Cont'd

Mechanics' liens

 Effect of bankruptcy, § **8:173**

 Lien defined, § **8:173**

 New value, § **8:173**

 Perfection of, § **5:180, 8:173**

 Preference payments, statutory lien exception to, § **8:118**

 Safe harbors, § **8:173**

 Set-offs, § **8:122**

Performance bonds and surety salvage, § **12:107**

Preferences

 Generally, § **8:111-§ 8:124**

 Affirmative defenses to preference actions

 Generally, § **8:115-§ 8:123**

 Mechanics' liens, § **8:118**

 New value exchange exception, contemporaneous, § **8:116**

 Ordinary course of business exception, § **8:117**

 Statutory lien exception, § **8:118**

 Unsecured credit exception, § **8:119**

 Bankruptcy Abuse and Consumer Protection Act, § **8:124**

 Calculating preference period, § **8:114**

 Chapter 7 distributions, § **8:113**

 Conversion of chapter 11 case to chapter 7, § **8:116**

 Earmarking doctrine, § **8:111**

 Elements of, § **8:112**

 Letters of credit, § **8:112**

 Mechanics' lien exception, § **8:118**

 New value exchange exception, contemporaneous, § **8:116**

 Ordinary course of business exception, § **8:117**

 Payment risks, § **7:315**

 Statutory lien exception, § **8:118**

 Unsecured credit exception, § **8:119**

Property of the estate, inability to recover funds from, § **5:180**

INDEX

BANKRUPTCY—Cont'd

- Recoupment, § 8:120, 8:123
- Risk management
 - Lender, surety or insurer insolvency, § 7:279
 - Major participant insolvency, § 7:271-§ 7:273
- Risk management; tolling statutes of limitation and repose due to bankruptcy filing, § 7:36
- Salvage, surety, § 12:107
- Set-offs
 - Generally, § 8:120
 - Mechanics' liens, § 8:122
 - Surety's rights, § 8:121
- Suretyship** (this index)
- Termination of contract, § 18:29
- Tolling statutes of limitation and repose due to bankruptcy filing, § 7:36
- Trust fund debts, dischargeability of, § 8:50, 8:51
- Turnover of earned but unpaid progress payments and retainages, § 5:180
- Unexpired leases or executory contracts, assumption or rejection of, § 12:117

BAR CHART

- Scheduling, § 15:3
- Time impact evaluation, § 15:122

BENEFICIARIES

- Loan agreement, contractor as third party beneficiary to, § 8:133
- Performance Bonds** (this index)

BETTERMENT DEFENSE

- Contract damages, limitation on, § 19:26-§ 19:29
- Design professionals, liability under economic loss rule, § 17:99

BIDDER RESPONSIBILITY

- Bids** (this index)

BID PROTEST

- Generally, § 2:143

BID PROTEST—Cont'd

- Damage remedy against owner, § 2:148
- Delay in assertion of, § 2:147
- Forum for protest, § 2:146-§ 2:148
- Mootness of protesting improper award, § 2:145
- Standing, § 2:144

BIDS

- Actual damages, § 2:64, 2:65
- Advertisement of notice of invitation for, § 2:61, 2:71
- Alternative selection process, § 2:49
- Amendments to bid invitation, failure to acknowledge, § 2:79
- American Institute of Architects Standard Forms** (this index)
- Anti-retaliation, remedies for improper award and judicial review, § 2:153.50
- Antitrust laws, remedies for improper award under, § 2:153
- Award
 - Generally, § 2:139-§ 2:142
 - Final notice of award, § 2:139
 - Firm bid acceptance time, bidder's voluntary extension of, § 2:141
 - Judicial review of improper award. Remedies for improper award and judicial review, below
 - Private contracts, § 2:142
 - Public contracts, § 2:140
 - Remedies for improper award and judicial review, below
- Balanced bidding, § 2:86
- Battle of forms, § 2:142
- Beneficiaries, security, § 2:70
- Bidder responsibility, evaluation of
 - Generally, § 2:94-§ 2:105
 - Debarment from future contract award, § 2:105
 - Defamation action based on nonresponsibility determination, § 2:96

BIDS—Cont'd

- Bidder responsibility, evaluation of—Cont'd
 - Discretion in determining responsibility, § 2:94
 - Discretion in judging
 - Generally, § 2:96-§ 2:102
 - Experience, bidder, § 2:101
 - Information required for responsibility determination, § 2:100
 - Integrity, bidder, § 2:97
 - Licensure, bidder, § 2:98
 - Past performance on prior contracts, § 2:99
 - Social responsibility, bidder, § 2:102
 - Experience, bidder, § 2:101
 - Hearing, request for pre-award nonresponsibility, § 2:104
 - Information required for responsibility determination, § 2:100
 - Integrity, bidder, § 2:97
 - Licensure, bidder, § 2:98
 - Minimum experience qualifications, § 2:101
 - Past performance on prior contracts, § 2:99
 - Pre-award survey, § 2:94
 - Prequalification, bidder, § 2:103
 - Responsiveness versus, § 2:95
 - Social responsibility, bidder, § 2:102
 - Suspension and debarment from future contract award, § 2:105
- Bid form, failure to properly complete, § 2:76, 2:87
- Bonds. Security, below
- Brand name specifications, misuse of, § 2:46
- Cancellation of all bids
 - Generally, § 2:135-§ 2:137
 - Compelling reasons for cancellation, failure to make findings on, § 2:135, 2:136

BIDS—Cont'd

- Cancellation of all bids—Cont'd
 - Lower prices, cancellation to obtain, § 2:137
- Catch all exemption, public interest, § 2:39
- Change Orders** (this index)
- Changes and Extras Clauses** (this index)
 - Changes clauses, § 2:43
 - Chiseling, bid, § 2:110, 7:125
 - Christian Doctrine, § 2:23
 - Circumvention of statutory mandate, preventing illegal
 - Generally, § 2:40-§ 2:51
 - Bid alternative selection process, § 2:49
 - Brand name specifications, misuse of, § 2:46
 - Cardinal change, § 2:43
 - Changes clauses, § 2:43
 - Conflicts of interest, preventing, § 2:51
 - Geographic limitations, § 2:48
 - Material changes to terms of bid after opening of bids, § 2:42
 - Open product competition with post-bid specification, § 2:47
 - Post-bid negotiation of changes, engaging in, § 2:42
 - Proprietary features, specifications containing, § 2:45
 - Reclassification of work to fit exemption, § 2:44
 - Restrictive bidder qualification requirements, § 2:48
 - Restrictive product specifications
 - Generally, § 2:45
 - Brand name specifications, misuse of, § 2:46
 - Open product competition with post-bid specification, § 2:47
 - Proprietary features, specifications containing, § 2:45

INDEX

BIDS—Cont'd

- Circumvention of statutory mandate, preventing illegal—Cont'd
- Restrictive product specifications—Cont'd
 - Salient characteristics, specifying, § 2:46
- Safety concerns and bid alternative selection process, § 2:49
- Salient characteristics, specifying, § 2:46
- Selection process, bid alternative, § 2:49
- Short time for bid preparation, unreasonably, § 2:50
- Small dollar exemption, § 2:41
- Splitting project into number of small contracts, § 2:41
- Time for bid preparation, unreasonably short, § 2:50
- Civil rights laws, remedies for improper award under, § 2:152
- Clarifications, pre-bid, § 2:64
- Compelling reasons for cancellation, failure to make findings on, § 2:135, 2:136
- Competitive sealed bidding, generally, § 2:14, 2:21 et seq.
- Conflicts of interest, preventing, § 2:51
- Conformance with invitation requirements, failure to offer to work in, § 2:84
- Construction defined, § 2:27
- Constructive changes. **Changes and Extras Clauses** (this index)
- Costs for bid preparation and remedies for improper award, § 2:148
- Damages
 - Actual, § 2:64, 2:65
 - Liquidated, § 2:64, 2:65
 - Lost profits, remedies for improper award, § 2:148, 2:149
 - Remedies for improper award, § 2:148, 2:149
 - Security damage measures, § 2:69

BIDS—Cont'd

- Damages—Cont'd
 - Third parties causing bid to be nonresponsive, recourse against, § 2:93
- Debarment of bidder from future contract award, § 2:105
- Defamation action based on nonresponsibility determination, § 2:96
- Default exemption, § 2:33
- Design-bid-build, § 2:11
- Design-bid-multi-prime approach, § 6:14
- Disadvantaged business enterprises (DBE), § 2:55, 2:55.50-2:55.57, 2:102
- Discrepancies, § 2:63
- Discretion in judging
 - Bidder responsibility, evaluation of, above
 - Responsiveness, evaluation of, § 2:92
- Documentation, failure to provide mandated, § 2:78
- E-mail, submission by, § 2:72
- Emergency work, § 2:31
- Employment preferences. Preferences, below
- Equitable estoppel and reliance on oral representations made at pre-bid conferences, § 2:65
- Estimation of labor, costs and equipment hours, § 2:61
- Evaluation of bidder responsibility. Bidder responsibility, evaluation of, above
- Evaluation of responsiveness. Responsiveness, evaluation of, below
- Exemptions, statutory
 - Generally, § 2:24 et seq.
 - Construction defined, § 2:27
 - Impracticability and probity exemptions, below, § 2:27
 - Infrastructure facility defined, § 2:27

BIDS—Cont'd

- Exemptions, statutory—Cont'd
 - Public agency exemptions, statutory, § 2:26
 - Public corporations, governmentally created, § 2:26
 - Public work exclusions, statutory, § 2:27
- Experience, bidder, § 2:101
- Extension of firm bid period, § 2:73
- Extras clauses. **Changes and Extras Clauses** (this index)
- Facial compliance, § 2:76
- Facsimile, submission by, § 2:72
- Federal procurement principles, § 2:23
- Firm bid acceptance time, bidder's voluntary extension of, § 2:141
- Firm bid rule
 - Generally, § 2:4, 2:106
 - Challenging, § 2:106
 - Implied-in-law contracts created by promissory estoppel, § 2:7
 - Mistake in bid, § 2:117
 - Opening bids, § 2:73, 2:106
 - Promissory estoppel, § 2:4, 2:7, 2:106
- Front-end loaded contracts and unbalanced bids, § 8:67
- Geographic limitations, § 2:48
- Hearing, request for pre-award nonresponsibility, § 2:104
- Illegal circumvention of statutory mandate, preventing.
 - Circumvention of statutory mandate, preventing illegal, above
- Immaterial defects, § 2:74, 2:91
- Impracticability and probity exemptions
 - Generally, § 2:28
 - Catch all exemption, public interest, § 2:39
 - Default, § 2:33
 - Emergency work, § 2:31

BIDS—Cont'd

- Impracticability and probity exemptions—Cont'd
 - Inadequate competition exemption, § 2:29
 - Intergovernmental exemption, § 2:38
 - Professional or personal services, § 2:30
 - Public forces exemption, § 2:37
 - Small dollar exemption, § 2:32
 - Social programs, § 2:35
 - Source of funds, § 2:36
 - Special legislative exemption, § 2:34
- Inadequate competition exemption, § 2:29
- Incomplete bid form, § 2:87
- Indefinite delivery/indefinite-quantity contracts (IDIQ), § 6:16
- Infrastructure facility defined, § 2:27
- Initial bid alterations, failure to, § 2:83
- Injunctive relief for improper award, § 2:150
- Integrity, bidder, § 2:97
- Integrity. Circumvention of statutory mandate, preventing illegal, above
- Intent to be bound, evidence of, § 2:85
- Intergovernmental exemption, § 2:38
- Invitation for bids, publication of, § 2:61, 2:71
- Job targeting wage subsidy programs, § 2:60
- Judicial review of improper award.
 - Remedies for improper award and judicial review, below
- Labor preferences. Preferences, below
- Late bids, submission of, § 2:81
- Latent discrepancies, § 2:63
- Licensure, bidder, § 2:98
- Liquidated damages, § 2:64, 2:65

INDEX

BIDS—Cont'd

- Lost profits, remedies for improper award, § **2:148, 2:149**
- Low price bid, evaluation of, § **2:138**
- Mail, submission by, § **2:72**
- Material changes to terms of bid after opening of bids, prohibition against, § **2:42**
- Material deviations requiring rejection of bid as nonresponsive
 - Generally, § **2:74-§ 2:90**
 - Amendments to bid invitation, failure to acknowledge, § **2:79**
 - Balanced bid, failure to submit, § **2:86**
 - Bid form, failure to properly complete, § **2:76, 2:87**
 - Complete and unqualified bid form, § **2:87**
 - Documentation, mandated, § **2:78**
 - Experience qualification information, § **2:89**
 - Facial compliance, § **2:76**
 - Incomplete bid form, § **2:87**
 - Initial bid alterations, failure to, § **2:83**
 - Intent to be bound, evidence of, § **2:85**
 - Late bids, § **2:81**
 - Offer to do work in conformance with invitation requirements, § **2:84**
 - Security, § **2:80**
 - Self-performed work requirement, failure to satisfy, § **2:90**
 - Site inspection, mandatory, § **2:82**
 - Social program preference compliance information, failure to submit, § **2:88**
 - Subcontractor listing, § **2:77**
 - Time, failure to submit bid on, § **2:81**
- Minimum experience qualifications, bidder's, § **2:101**
- Minor deviations or informalities, waiver of, § **2:74, 2:91**

BIDS—Cont'd

- Minority-owned business enterprises (MBE), § **2:55, 2:89, 2:102**
- Mistake in Bid** (this index)
- Modifying submitted bids, § **2:72**
- Nonresponsive, material deviations requiring rejection of bids as. Material deviations requiring rejection of bid as nonresponsive, above
- Notice of invitation for, § **2:61, 2:71**
- Opening, § **2:72, 2:73, 2:106**
- Open product competition with post-bid specification, § **2:47**
- Owner preparation, § **2:61**
- Past performance of bidder on prior contracts, § **2:99**
- Patent and latent discrepancies, § **2:63, 2:65**
- Performance Bonds** (this index)
- Post-bid negotiation of changes, prohibition against engaging in, § **2:42**
- Pre-bid clarifications and communications, § **2:64, 3:19**
- Pre-bid conference, § **2:61**
- Preferences
 - Generally, § **2:52**
 - Constitutional challenges, § **2:52**
 - Disadvantaged business enterprises (DBE), § **2:55, 2:55.50-§ 2:55.57, 2:102**
 - Hiring, § **2:57**
 - Independent contractors, classification as, § **2:56**
 - Job targeting wage subsidy programs, § **2:60**
- Labor preferences
 - Generally, § **2:56**
 - Hiring, § **2:57**
 - Independent contractors, classification as, § **2:56**
 - Job targeting wage subsidy programs, § **2:60**
 - Prevailing wage requirements, § **2:59**

BIDS—Cont'd

- Preferences—Cont'd
 - Labor preferences—Cont'd
 - Project labor agreements, § 2:58
 - Minority-owned business enterprises (MBE), § 2:55, 2:89, 2:102
 - Prevailing wage requirements, § 2:59
 - Project labor agreements, § 2:58
 - Residency, § 2:53
 - Small businesses, § 2:54
 - Strict scrutiny, § 2:52
 - Women business enterprises (WBE), § 2:55, 2:89, 2:102
- Preparation, § 2:61-§ 2:70
- Prequalification, bidder, § 2:103
- Prerequisites for sealed bid, § 2:22
- Prevailing wage requirements, § 2:59
- Price Arrangements** (this index)
- Private contracts, award of, § 2:142
- Probity. Impracticability and probity exemptions, above
- Procedures, § 2:23
- Professional or personal services exemption, § 2:30
- Project labor agreements, § 2:58
- Promissory estoppel
 - Firm bid rule, § 2:4, 2:7, 2:106
 - Sub-bids, § 2:7, 2:107, 2:116
- Proprietary features, specifications containing, § 2:45
- Protest. **Bid Protest** (this index)
- Publication of invitation for bids, § 2:61, 2:71
- Public forces exemption, § 2:37
- Reasonable and prudent bidder standard, § 2:64
- Reasonableness of time for preparation of, § 2:71
- Rejection of all bids. Cancellation of all bids, above
- Reliance on sub-bid, bidder's lack of, § 2:109-§ 2:114

BIDS—Cont'd

- Remedies for improper award and judicial review
 - Generally, § 2:143-§ 2:154
 - Anti-retaliation laws, § 2:153.50
 - Antitrust laws, § 2:153
 - Civil rights laws, § 2:152
 - Common law, recovery under, § 2:151-§ 2:153.5
 - Costs for bid preparation, § 2:148
 - Damage remedy against owner, § 2:148, 2:149
 - Delay in asserting protest, § 2:147
 - Forum for protest, § 2:146-§ 2:148
 - Injunctive relief, § 2:150
 - Lost profits, § 2:148, 2:149
 - Mootness of protest, § 2:145
 - Special statutes, recovery under, § 2:151-§ 2:153.5
 - Standing to protest, § 2:144
 - Threshold questions impacting right to relief, § 2:143
- Repudiation defense, § 7:130-§ 7:135
- Residency preferences, § 2:53
- Responsiveness, evaluation of
 - Generally, § 2:74-§ 2:93
 - Abuse of discretion standard, § 2:92
 - Bidder responsibility versus, § 2:95
 - Discretion in judging bid responsiveness, § 2:92
- Material deviations requiring rejection of bid as nonresponsive, above
- Minor deviations, waiver of, § 2:74, 2:91
- Nonresponsive, material deviations requiring rejection of bids as. Material deviations requiring rejection of bid as nonresponsive, above
- Third parties causing bid to be nonresponsive, recourse against, § 2:93

INDEX

BIDS—Cont'd

- Restrictive bidder qualification requirements, § 2:48
- Restrictive product specifications.
 - Circumvention of statutory mandate, preventing illegal, above
- Review of plans and specifications, § 2:62
- Risk Management** (this index)
- Safety concerns and bid alternative selection process, § 2:49
- Salient characteristics, specifying, § 2:46
- Security
 - Generally, § 2:68
 - Beneficiaries, § 2:70
 - Cardinal changes to agreement and discharge of performance bond surety, § 4:17
 - Contract formation risks, § 7:128
 - Damage bond, § 7:128
 - Damage measures, § 2:69
 - Forfeiture bond, § 7:128
 - Material deviations requiring rejection of bid as nonresponsive, § 2:80
 - Submission and opening of bids, § 2:72
- Selection process, bid alternative, § 2:49
- Self-performed work requirement, failure to satisfy, § 2:90
- Shopping a bid. **Bid Shopping** (this index)
- Short time for bid preparation, unreasonably, § 2:50
- Site investigation, § 2:64, 2:82
- Small business preferences, § 2:54
- Small dollar exemption, § 2:32, 2:41
- Social program
 - Exemption, § 2:35
 - Preference compliance information, failure to submit, § 2:88
- Social responsibility, bidder, § 2:102
- Source of funds exemption, § 2:36

BIDS—Cont'd

- Source selection procedures, § 2:14
- Special conditions, § 2:61
- Special legislative exemption, § 2:34
- Specifications for, drafting, § 2:21
- Statutory mandates, § 2:23 et seq.
- Statutory preferences. Preferences, above
- Sub-bidders, withdrawal of bids by, § 2:7
- Sub-bids, enforcement of
 - Generally, § 2:107-§ 2:116
 - Chiseling, bid, § 2:110
 - Conditional intent to be bound, § 2:108
 - Equivocal or conditional intent to be bound, § 2:108
 - Identity, contractor change of, § 2:114
 - Letters of intent, § 2:108
 - Materially different terms, rejection of sub-bid by post-bid negotiation of, § 2:111
 - Mistake, § 2:112
 - One-way or two-way street for subcontractors, § 2:117
 - Promissory estoppel, § 2:7, 2:107, 2:116
 - Reliance on sub-bid, bidder's lack of, § 2:109-§ 2:114
 - Shopping, bid, § 2:110
 - Subcontractor or supplier, owner rejection of, § 2:115
 - Supplier, owner rejection of, § 2:115
 - Timely acceptance of sub-bid, lack of, § 2:113, 2:114
- Subcontractor listing requirements, § 2:66, 2:77, 2:116
- Submission, § 2:62-§ 2:73
- Substitutions, pre-bid, § 2:65.50
- Surety. Security, above
- Suspension and debarment of bidder from future contract award, § 2:105
- Telegraph, submission by, § 2:72

BIDS—Cont'd

- Third parties causing bid to be nonresponsive, recourse against, § 2:93
- Time to prepare, § 2:21, 2:50, 2:61, 2:71
- Two-step procedures, competitive, § 2:170
- Unbalanced bidding, § 2:65, 2:86
- Waiver
 - Evaluation of responsiveness and waiver of minor deviations, § 2:74, 2:91
 - Risk management and waiver of bid process, § 7:252
 - Unilateral mistakes, waiver of rights to relief for, § 2:131
- Warranties** (this index)
- Withdrawing submitted bids, § 2:72, 2:73, 2:106
- Women business enterprises (WBE), § 2:55, 2:89, 2:102

BID SHOPPING

- Contract formation risks, § 7:123, 7:132
- Defined, § 2:110
- Sub-bid, enforcement of, § 2:77
- Subcontractor listing, failure to comply with mandatory, § 2:77

BIM

- Building Information Modeling (BIM)** (this index)

BLANKET ENDORSEMENTS

- CGL coverage, additional insureds, § 11:153

BODILY INJURY

- Commercial General Liability (CGL) Coverage** (this index)
- Torts** (this index)

BOILER AND MACHINERY INSURANCE

- Generally, § 11:214

BONDS

- Generally, § 12:1
- Arbitrating Miller Act bond claims, § 21:168
- Bid security. **Bids** (this index)
- Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures, § 19:84
- Common Law Bonds** (this index)
- Damage bond, § 7:128
- Damages expectation, failed; impaired bonding capacity, § 7:265
- Fiduciary bond, § 5:233
- Forfeiture bond, § 7:128
- Indemnity and Indemnification** (this index)
- Licensing construction professionals, § 16:12
- Payment Bond** (this index)
- Performance Bonds** (this index)
- Reinsurance of bond risk, § 12:12
- Suretyship** (this index)
- Termination for cause based on failure to maintain, § 18:30
- Tripartite relationship, § 12:2
- Underwriting, § 12:11

BORROWED EQUIPMENT

- Insurance for, § 11:319

BOSTON HARBOR PROJECT

- Project delivery methods, § 6:40

BRAND NAME SPECIFICATIONS

- Implied warranty of commercial availability under, § 9:108

BREACH OF CONTRACT

- CGL coverage, coverage for, § 11:92
- Termination of Contract** (this index)

BRIBERY

- Foreign Corrupt Practices Act and international anti-bribery initiatives, § 20:12

INDEX

BROKERS

Insurance (this index)

BROWNFIELDS

Environmental risks, § 7:185

BUILDER'S RISK INSURANCE

Insurance (this index)

“BUILD FIRST” REQUIREMENT

Insurance, valuation, § 11:274

BUILDING CODES

Design professionals, standard of care, § 17:15

Implied duty to warn of defects, errors and code violations, § 9:116

Inspections (this index)

National Building Code, § 16:2

Permits. Licenses and Permits (this index)

Uniform Building Code and inspection requirements. Inspections (this index)

BUILDING FUTURE'S COUNCIL

Project delivery methods, report on importance of choosing appropriate, § 6:41

BUILDING INFORMATION

MODELING (BIM)

Generally, § 7:65-§ 7:89

American system, § 7:78

Architecture practice, § 7:67

Benefits, § 7:83, 7:85

Complex projects, uses in, § 7:83

Computer-aided design, § 7:66

Costs, § 7:87

Craft labor supply, § 7:78

Data exchange, cost of inadequate interoperability, § 7:68

Declining construction productivity, § 7:77

Defined, § 7:65, 7:81

Deliverable, model as, § 7:86

Design community, effect on, § 7:84

Developing an execution plan, § 7:71

BUILDING INFORMATION

MODELING (BIM)—Cont'd

Digital technology, § 7:86

Drawings, § 7:84

Evaluation of productivity, § 7:77

Flat or declining construction productivity, § 7:74

Global positioning system (GPS) technology, § 7:80

Guidelines, § 7:83

Hurricanes and natural disasters, effect of, § 7:78

Immigration policy and effect on labor shortages, § 7:78

Importance of productivity, § 7:76

Increasing productivity through innovation, § 7:79

Indemnification provisions, § 7:89

Indications of poor productivity, § 7:77

Labor productivity, § 7:78

Labor shortages, § 7:78

Legal landscape, changing, § 7:89

Lonely versus social, § 7:70

Payment for, § 7:87

Process change, as agent for, § 7:88

Procurement, owner's perspective, § 7:72

Productivity problems, § 7:75

Purpose of, § 7:81

Radio frequency identification technology (RFID), § 7:80

Relationship between productivity and innovation, § 7:80

Research and development, § 7:74

Scope of work, § 7:73

Shifting demographics and labor shortages, § 7:78

Skilled personnel, shortage of, § 7:78

Social versus lonely, § 7:70

Uses, § 7:83

Versions, § 7:69

BUILD-OPERATE-TRANSFER

Project delivery method, § 6:9

BUILD-OWN-LEASE APPROACH

Project delivery methods, § 6:10

BUILD-OWN-OPERATE APPROACH

Project delivery method, § 6:10

BURDEN OF PROOF

Insurance coverage disputes, shifting burdens of proof and persuasion in, § 11:29.20

Mistake in bid, remediation of, § 2:118

Time impact evaluation, § 15:121

BUSINESS INTERRUPTION INSURANCE

Generally, § 11:255 et seq.

Actual loss sustained, establishment of, § 11:264

Area-wide disruption due to massive infrastructure failure, causation element in light of, § 11:262

Causation element in light of area-wide disruption due to massive infrastructure failure, § 11:262

“Cause of loss” must cause physical damage, § 11:260

Civil authority coverage, § 11:267

Common law, insured’s duty to mitigate loss under, § 11:257

Conditions, generally, § 11:268.10

Contingent business interruption coverage, § 11:266

Establishment of physical damage to covered property, § 11:259

Extent of suspension or business interruption necessary to trigger coverage, § 11:263

Indemnity, period of, § 11:265

Ingress/egress coverage, § 11:268

Insured’s duty to mitigate loss under common law, § 11:257

Katrina effect, § 11:262

Losses, generally, § 11:255 et seq.

Massive infrastructure failure, causation element in light of area-wide disruption due to, § 11:262

BUSINESS INTERRUPTION

INSURANCE—Cont’d

Physical damage, § 11:259, 11:261

Recovery of business losses, § 11:257

Sue and labor clause, § 11:257

Traditional business interruption coverage, § 11:258

“BUSINESS RISK”

CGL coverage, defective work exclusions, § 11:94

BUSINESS RISK DOCTRINE

Commercial General Liability (CGL) Coverage (this index)

BUY AMERICAN ACT

FCA liability for violations of, § 8:80

Procurement restrictions on materials, § 7:139

CANCELLATION

Commercial General Liability (CGL) coverage (this Index)

Insurance policy, § 11:324

CARDINAL CHANGES

Changes and Extras Clauses (this index)

CARE, CUSTODY OR CONTROL EXCLUSION

CGL coverage, § 11:99

CAUSATION CLAUSES

Insurance, anti-concurrent, § 11:227, 11:227.10

CAUSATION ELEMENT

Business interruption insurance, area-wide disruption due to massive infrastructure failure, § 11:262

“CAUSE OF LOSS”

Business interruption insurance, physical damage, § 11:260

CERCLA

Comprehensive Environmental Response, Compensation and

INDEX

CERCLA—Cont'd

Liability Act (CERCLA) (this index)

CERTIFICATES AND CERTIFICATION

Design professional's liability for negligent certification. **Design Professionals** (this index)

FCA liability in claims certification process, § 8:77

Payment, architect's certificate for payment; AIA standard form A201 provisions, § 5:170-§ 5:172

Warranties compared, § 9:9

CGL COVERAGE

Commercial General Liability (CGL) Coverage (this index)

CHANGED CONDITIONS CLAUSE

Completion of project risks, § 7:290

Differing site conditions, § 14:45

CHANGE ORDERS

Actual authority, § 4:43

American Institute of Architects (AIA)

Architect's preparation of change orders; A201 form provision 4.2.8, § 5:99

Changes and claims clauses, § 4:7

Apparent authority, § 4:45

Arbitration, § 21:134

Architect's preparation of change orders; A201 form provision 4.2.8, § 5:99

Authorization for

Generally, § 4:42-§ 4:47

Actual authority, § 4:43

Apparent authority, § 4:45

Delegate scope of authority, § 4:43

Estoppel, authority by, § 4:47

Function, authority limited by, § 4:43

Implied authority, § 4:44

Ratification, authority by, § 4:46

CHANGE ORDERS—Cont'd

Daily reports, § 4:54, 4:55

Delays, § 15:64

Documenting construction claims, § 4:55

Duty to proceed with, contractor's, § 4:49

Estoppel, authority by, § 4:47

Federal Acquisition Regulation mandating contracts exceeding § 100,000 must include changes clause, § 4:5

Guaranteed maximum price ceiling, exempt from, § 6:17

Implied authority, § 4:44

Lien waivers and releases, § 4:48

Management of process, § 4:54, 4:55

Parol evidence rule, § 3:20

Performance bond surety's defense, § 12:56

Ratification, authority by, § 4:46

Release arising out of, settlement and, § 4:48

Requirements, § 4:5

Settlement and release arising out of, § 4:48

Unit price contracts, § 8:16

Waiver of risks

Execution of change order release language, waiver of claims through, § 7:247

Written change order requirements, § 7:250

Written order requirement

Generally, § 4:5, 4:37-§ 4:41

Anti-waiver clauses, implications of, § 4:40

Enforcement of writing requirement, implications of, § 4:38-§ 4:40

Order requirement, implications of, § 4:40

Purpose of requirement, § 4:37

Unit price contracts, § 8:16

Waiver of writing requirement, § 4:39, 7:250

**CHANGES AND EXTRAS
CLAUSES**

- Generally, § **4:1-§ 4:55**
- Abandonment of contract. Cardinal changes or abandonment of contract, above
- Acceleration; Type V constructive change, § **4:34**
- Administrative relief for claims arising under contract, clauses as basis for
 - Generally, § **4:9-§ 4:21**
 - Abandonment of contract. Cardinal changes or abandonment of contract, above
 - Cardinal changes or abandonment of contract, above
 - Contract scope defined, § **4:10, 4:11**
 - General scope defined, § **4:10, 4:12**
- American Institute of Architects (AIA) changes and claims clauses, § **4:7**
- American Institute of Architects Standard Forms** (this index)
- Cardinal changes or abandonment of contract
 - Generally, § **4:13-§ 4:20**
 - AIA General Conditions of the Contract for Construction form A201 provisions, § **5:144**
 - Cardinal change defined, § **4:13**
 - Competitive sealed bidding statute, violation of, § **4:21**
 - Cumulative impact of changes as cardinal changes, § **4:14**
 - Deductive change, § **4:19**
 - Partial termination for convenience, § **4:19**
 - Performance bond surety, discharge of, § **4:17**
 - Performance bond surety's defense, § **12:60**
 - Practical proof of cardinal change, § **4:15**

**CHANGES AND EXTRAS
CLAUSES—Cont'd**

- Cardinal changes or abandonment of contract—Cont'd
 - Quantum of recovery, § **4:16**
 - Sovereign immunity defense, § **4:20**
 - Stop work, right to, § **4:18**
 - Termination of contract, § **4:18, 18:27**
- Change defined, § **4:1**
- Change Orders** (this index)
- Claims
 - False claims, below
 - Management of change order process and documenting construction claims, § **4:55**
 - Release arising out of change orders, settlement and, § **4:48**
 - Segregated damage approach to claims, § **4:50, 4:55**
 - Settlement and release arising out of change orders, § **4:48**
 - Severin doctrine, § **4:55**
 - Submission of claim, timeliness requirements for, § **4:36, 4:36.50, 4:36.60**
- Timeliness
 - Notice of change, § **4:35**
 - Point of no return and notice of claim, § **4:35**
 - Submission of claim, § **4:36**
- Unsegregated damage approach to claims, § **4:50, 4:55**
- Competitive sealed bidding statute, violation of, § **4:21**
- Completion of project risks, § **7:290**
- Constructive changes
 - Generally, § **4:25-§ 4:34**
 - Acceleration; Type V constructive change, § **4:34**
 - Ambiguity, specification, § **4:27**
 - Application of doctrine, § **4:25**
 - Cooperate, owner's failure to; Type II constructive change, § **4:31**

INDEX

CHANGES AND EXTRAS

CLAUSES—Cont'd

- Constructive changes—Cont'd
 - Defective or impracticable specifications; Type III constructive change, § 4:32
 - Defined, § 4:25
 - Development of doctrine, § 4:25
 - Hypertechnical inspection, § 4:28
 - Impracticable specifications; Type III constructive change, § 4:32
- Inspections** (this index)
- Misrepresentation; Type I construction changes
 - Generally, § 4:26-§ 4:30
 - Ambiguity, specification, § 4:27
 - Hypertechnical inspection, § 4:28
 - Post-award changes in laws or regulations, § 4:30
 - Waivers, specification, § 4:29
- Owner interference or failure to cooperate; Type II constructive change, § 4:31
- Superior knowledge, wrongful withholding of; Type IV constructive change, § 4:33
- Waivers, specification, § 4:29
- Cooperate, owner's failure to; Type II constructive change, § 4:31
- Cumulative impact of changes as cardinal changes, § 4:14
- Damages** (this index)
- Deductive change, § 4:19
- Defective or impracticable specifications; Type III constructive change, § 4:32
- Extra work defined, § 4:1
- False claims
 - Generally, § 4:50-§ 4:53
 - Federal Acquisition Regulation, § 4:51
 - Federal False Claims Act, § 4:51
- Remedies
 - Private, § 4:53

CHANGES AND EXTRAS

CLAUSES—Cont'd

- False claims—Cont'd
 - Remedies—Cont'd
 - State and local, § 4:52
 - Sanctions, federal, § 4:51
 - Segregated damage approach, § 4:50
 - Unsegregated damage approach, § 4:50
- Federal Acquisition Regulations** (this index)
- Federal False Claims Act, § 4:51
- Formal changes, § 4:23
- Highway construction alteration and extras clauses, § 4:8
- Hindrances, § 4:1
- Historical background, § 4:3
- Impracticable specifications; Type III constructive change, § 4:32
- Inspections** (this index)
- Misrepresentation; Type I constructive change. Constructive changes, above
- Notice of change, timeliness of, § 4:35
- Owner interference or failure to cooperate; Type II constructive change, § 4:31
- Partial termination for convenience, § 4:19
- Performance bond surety
 - Defenses
 - Cardinal changes, § 12:60
 - Change orders, § 12:56
 - Discharge of, § 4:17
 - Purpose of, § 4:2
- Relief for claims arising under contract, administrative. Administrative relief for claims arising under contract, clauses as basis for
- Remedies
 - Administrative relief for claims arising under contract, clauses as basis for, above

CHANGES AND EXTRAS

CLAUSES—Cont'd

Remedies—Cont'd

False claims

Private, § 4:53

State and local, § 4:52

Segregated damage approach to claims, § 4:50, 4:55

Severin doctrine, § 4:55

Site conditions, § 14:45

Sovereign immunity defense, § 4:20

Standard form approaches to changes

Generally, § 4:4

American Institute of Architects (AIA) changes and claims clauses, § 4:7

Federal changes clause, § 4:5

Highway construction alteration and extras clauses, § 4:8

Standard Form 23A, § 4:3

Value engineering clause, federal, § 4:6

Stop work, right to, § 4:18

Superior knowledge, wrongful withholding of; Type IV constructive change, § 4:33

Termination of contract, § 4:18

Timeliness of notice of change, § 4:35

Types of changes, generally, § 4:22-§ 4:34

Unilateral changes, § 4:2

Unsegregated damage approach to claims, § 4:50, 4:55

Value engineering changes, § 4:6, 4:24

CHAPTER 7

Bankruptcy (this index)

CHAPTER 11

Bankruptcy (this index)

CHINESE DRYWALL LOSSES

CGL coverage, § 11:138.10

CHOICE OF FORUM

Indemnity, § 10:24

CHOICE OF FORUM—Cont'd

Interpretation of provisions, § 3:9

CHOICE OF LAW

Arbitration (this index)

Insurance, issues in coverage disputes, § 11:38 et seq.

Political risks where local courts or administrative bodies failing to recognize, § 7:332

CHRISTIAN DOCTRINE

Competitive sealed bidding, § 2:23

Contract interpretation, § 3:33

CIRCUMVENTION OF COMPETITIVE BIDDING

Bids (this index)

CISG

United Nations Convention on Contracts for the International Sale of Goods (CISG) (this index)

CIVIL AUTHORITY COVERAGE

Business interruption insurance, § 11:267

CIVIL RIGHTS

Bid award, remedies for improper, § 2:152

CLAIMS

Acceleration Claim (this index)

American Institute of Architects (AIA) changes and claims clauses, § 4:7

American Institute of Architects Standard Forms (this index)

Bonds (this index)

Changes and Extras Clauses (this index)

Delays (this index)

Disruption Claim (this index)

False Claims Act (FCA) (this index)

Notice requirements and compliance problems, § 7:231

Pass-through claims arrangements, § 8:58

INDEX

CLAIMS—Cont'd

- Payment Bonds** (this index)
- Performance Bonds** (this index)
- Salvage, surety, § **12:103**
- Suretyship, § **12:6**
- Suspension** (this index)
- Waivers** (this index)

CLAIMS-MADE COVERAGE

- Insurance** (this index)

CLASS ACTIONS

- Arbitrability, § **21:206**
- Arbitration, § **21:204, 21:205**
- Interim awards, judicial authority to review, § **21:207**

CLAUSES

- Insurance** (this index)

CLEAN AIR ACT

- Purpose of, § **5:207**
- Risk management, § **7:178**

CLEANUP

- American Institute of Architects Standard Forms** (this index)

CLEAN WATER ACT

- Purpose of, § **5:207**
- Storm water discharge, regulating permits issued for, § **7:187**

CMAA

- Construction Management Association of America, Inc. (CMAA)** (this index)

COAA (CONSTRUCTION OWNERS OF AMERICA)

- Standard form agreements, § **5:7**

COASTAL ZONE AREAS

- Coastal Zone Management Act, § **7:184**
- Environmental risks, § **7:184**

COERCION

- Defense to arbitrability, § **21:148**

COLLAPSE

- Insurance** (this index)

COLLATERAL ESTOPPEL

- Arbitration** (this index)
- Design professionals, § **21:274**
- Vouching-in process and indemnity, § **10:126**

COLLATERAL-SOURCE RULE

- Subrogation, § **11:202.10, 11:205**

COLLECTION ACTIVITIES

- Risk management, § **7:45**

COLLECTIVE PROJECT

DELIVERY TEAM (CPD)

- Integrated project delivery (IPD), § **6:27**

COMMENCEMENT OF WORK

- Date of; AIA General Conditions of the Contract for Construction form A201 provisions, § **5:154**

COMMERCIAL GENERAL

LIABILITY (CGL)

COVERAGE

- Generally, § **11:40-§ 11:188**
- Absolute pollution exclusion, § **11:116, 11:117**
- Additional Insured** (this index)
- Additional insureds
 - Generally, § **11:151-§ 11:172**
 - Allocation of coverage, indemnity agreements and, § **11:162**
 - Anti-indemnity laws, state, § **11:163**
 - Application of exclusions to additional insured, § **11:160**
 - Blanket endorsements, § **11:153**
 - Broad view interpretation, § **11:155**
 - Cancellation, additional insured's right to notice of, § **11:158**
 - “Caused, in whole or in part, by” additional insured form, § **11:155.10**

**COMMERCIAL GENERAL
LIABILITY (CGL)**

COVERAGE—Cont'd

Additional insureds—Cont'd

Certificate of insurance

Generally, § 11:171 et seq.

Agent's authority to alter terms
of coverage, § 11:171.20

Condition of additional insured
status, as, § 11:171.10

Fraud liability, § 11:171.30

Insured's right to rely, § 11:172

Received prior to loss,
§ 11:152.30

Completed operations versus ongoing
operations, § 11:168

Conflict issues created by
additional insured status,
§ 11:169

Contribution among primary and,
rights of, § 11:170.10

Creation of coverage, § 11:152

Cross-suits exclusion and,
§ 11:160.20

Defense obligations owed to
additional insureds, § 11:161

Duty to defend, § 11:44, 11:161

Endorsements, blanket and
scheduled, § 11:153

Excess coverage, determination of,
§ 11:151.10, 11:159

Exclusions, application to
additional insured, § 11:160

Fraud liability, certificate of insurance,
§ 11:171.30

General supervisory coverage,
§ 11:157

Indemnity agreements and allocation
of coverage, § 11:162

Indemnity obligations coverage
compared, § 11:164

Insured contract, writing requirement
as, § 11:152.10

Interpretation, § 11:154, 11:155

Named insured's representations,
effect of, § 11:151.20

**COMMERCIAL GENERAL
LIABILITY (CGL)**

COVERAGE—Cont'd

Additional insureds—Cont'd

Named insured's work and

additional insured coverage,
nexus between, § 11:154.50

Named insured's work or operations,
scope of, § 11:156

Narrow view interpretation,
§ 11:154

Notice of cancellation, additional
insured's right to, § 11:158

Ongoing operations

Completed operations versus,
§ 11:168

“Out of” ongoing operations
defined, § 11:168.10

Other insurance and additional
insured coverage, § 11:173.80

Owner's and Contractor's Protective
(OCP) liability coverage
comparison, § 11:166

Own negligence of additional
insured, coverage for,
§ 11:155

Pitfalls, § 11:165

Primary coverage, determination
of, § 11:159, 11:170.10

Privity between named insured
and, § 11:152.20

Right to rely by insured on certificate
of insurance, § 11:172

Scheduled endorsements, § 11:153

Scope of coverage, § 11:154-
§ 11:156.10

State anti-indemnity laws,
§ 11:163

Subrogation rights of insurer,
effect of additional insured
status on, § 11:170

Third-party beneficiary status in
lieu of, § 11:151.40

2004 ISO additional insured
endorsements, § 11:167

Writing requirement, § 11:152,
11:152.10

INDEX

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Advertising liability insurance, § 11:188
- Alienated premises exclusion, § 11:97
- Allocation issues
 - Additional insureds, indemnity agreements and, § 11:162
 - Among triggered policies, § 11:187
 - Coverage trigger issues, consequences of different coverage triggers on loss allocation, § 11:181.50
 - Duty to settle, § 11:66
 - Other insurance, allocation of defense costs among successive insurers, § 11:173.50
- Ambiguity of pollution exclusion in context of indoor pollution, § 11:124
- Another's employees coverage, exclusions, § 11:149, 11:149.10
- Anti-indemnity laws for additional insureds, state, § 11:163
- Application of exclusions to additional insured, § 11:160
- Attorneys. Duty to defend, below Attorney's fees
 - As element of damages, § 11:86
 - Extent of insurer's obligation to pay independent counsel rates, duty to defend, § 11:60.50
 - Recovery in coverage actions, duty to defend, § 11:64
 - Supplemental payments, duty to defend, § 11:64.50, 11:64.60
- Automobile exclusion, § 11:144
- Blanket endorsements, additional insureds, § 11:153
- Bodily injury
 - "Bodily injury" requirement, generally, § 11:80.10
 - Coverage for, § 11:80

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Bodily injury—Cont'd
 - Distinction from personal injury, personal and advertising liability insurance, § 11:188
 - "Occurrence," § 11:71, 11:72
 - And sick buildings, § 11:128
- Breaches of contract, coverage for, § 11:92
- Breaching duty to defend, consequences of, § 11:63
- "Business risk," defective work exclusions, § 11:94
- Cancellation, additional insured's right to notice of, § 11:158
- Cancellation and timing of injury, § 11:324.10
- Care, custody or control exclusion, § 11:99
- "Caused, in whole or in part, by" additional insured form, § 11:155.10
- Certificate of insurance. Additional insureds, above
- Certificate of insurance received prior to loss, § 11:152.30
- Chinese drywall losses, coverage for, § 11:138.10
- Claims-made policy form, analysis of duty to defend under, § 11:45
- Completed operations work
 - Exclusion, § 11:103-§ 11:105
 - Ongoing operations, additional insureds
 - Compared, § 11:168
 - "Out of" ongoing operations defined, § 11:168.10
 - Products-completed operations hazard, § 11:103.10
- Completion of work for purposes of completed operations coverage, § 11:104
- Concurrent causation doctrine, pollution-related injury, § 11:119

**COMMERCIAL GENERAL
LIABILITY (CGL)**

COVERAGE—Cont'd

- Conflict issues created by additional insured status, § 11:169
- Consequences of breaching duty to defend, § 11:63
- Consequential losses and sick buildings, § 11:130
- Construction and interpretation. Interpretation, below
- Continuous injury trigger, § 11:185
- Continuous or repeated exposure as “occurrence,” § 11:73
- Contractual liability exclusion
 - Generally, § 11:108-§ 11:112
 - Broadly construed, § 11:109.10
 - Exceptions, § 11:110, 11:111
 - Insured contract exception, § 11:110
 - Liability in any event exception, § 11:111
 - Obligation of insurer to pay indemnitee’s defense costs, § 11:112
 - Scope of, § 11:109
 - Texas, § 11:109.20
- Coverage B “personal injury”
 - “Occurrence,” § 11:71
 - And pollution-related injury, § 11:115
- Coverage trigger issues
 - Generally, § 11:175 et seq.
 - Allocation among triggered policies, § 11:187
 - Common misconceptions, § 11:176
 - Continuous injury trigger, § 11:185
 - Definition of “occurrence,” coverage triggers influenced by, § 11:178
 - Equitable contribution, § 11:187.0§ 5
 - Exposure trigger, § 11:183
 - Injured property, coverage triggers and ownership of, § 11:179

**COMMERCIAL GENERAL
LIABILITY (CGL)**

COVERAGE—Cont'd

- Coverage trigger issues—Cont'd
 - Injury-in-fact trigger, § 11:184
 - Limits of coverage, coverage triggers and, § 11:180
 - Loss allocation, consequences of different coverage triggers on, § 11:181.50
 - Manifestation trigger, § 11:182
 - Occurrence-based policies, coverage trigger theories under, § 11:181-§ 11:185
 - Ownership of injured property, coverage triggers and, § 11:179
 - Problem with conflating “injury” with “occurrence,” § 11:177
 - Stacking, § 11:186, 11:186.10
 - When does damage occur, generally, § 11:175
- Cross-liability exclusion, § 11:141
- Cross-suits exclusion and additional insured coverage, § 11:160.20
- Damages
 - Attorney’s fees as element of damages, § 11:86
 - “Loss of use” damages, below
- Damage to property. Property damage, below
- Defective products or work
 - Exclusions. Defective work exclusions, below
 - Exclusions affecting coverage for defective work. Business risk, above
 - Incorporation of, § 11:88
 - Repair as “property damage,” § 11:87
 - Repair of defective work and the occurrence element, § 11:68.50
- Defective work exclusions
 - Generally, § 11:94-§ 11:107
 - Alienated premises exclusion, § 11:97

INDEX

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Defective work exclusions—Cont'd
 - “Business risk,” § 11:94
 - Care, custody or control exclusion, § 11:99
 - Completed operations work exclusion, § 11:103-§ 11:105
 - Completion of work for purposes of completed operations coverage, § 11:104
 - Damage to property, various exclusions pertaining to, § 11:95-§ 11:101
 - Exclusion J, § 11:95-§ 11:101
 - Faulty workmanship exclusion, § 11:101
 - Impaired property exclusion and its predecessor, § 11:106
 - Insured, property loaned to named insured exclusion, § 11:98
 - “Loss of use” damages, exclusions addressing, § 11:106
 - Named insured, exclusion for property loaned to, § 11:98
 - Occupied property exclusion, § 11:96
 - Owned property exclusion, § 11:96
 - PCOH work exclusion, § 11:103.50
 - Property being worked on exclusion, § 11:100
 - Property damage, various exclusions pertaining to, § 11:95-§ 11:101
 - Property loaned to named insured exclusion, § 11:98
 - Property owned, rented or occupied exclusion, § 11:96
 - Rented property exclusion, § 11:96
 - Sistership exclusion, § 11:107
 - Subcontractor exception to completed operations work exclusion, § 11:105
 - Work product exclusion, § 11:102

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Defense
 - Costs of indemnitee, insurer’s obligation to pay, contractual liability exclusion, § 11:112
 - Coverage trigger issues, equitable contribution, shifting burdens of proof where non-participating insurer fails to provide defense, § 11:187.0§ 5
 - Duty to defend, below
 - Obligations owed to additional insureds, § 11:161
- Definitions
 - “Occurrence,” § 11:67-§ 11:79, 11:178
 - “Property damage,” § 11:81-§ 11:90
- Demand for defense by insured, duty to defend, § 11:52
- Denial of coverage, insurer’s duty to promptly give notice of, § 11:58
- Determination of what property is damaged for insuring clause, § 11:83
- Doctrine of reasonable expectations, sick buildings, § 11:122
- Duties of defense counsel, duty to defend, § 11:61
- Duty to defend
 - Generally, § 11:41-§ 11:64
 - Additional insureds, § 11:44, 11:161
 - Affirmative defenses, § 11:51.10
 - Attorneys, generally, § 11:60 et seq.
 - Attorney’s fees, above
 - Breaching duty to defend, consequences of, § 11:63
 - Claims-made policy form, analysis under, § 11:45
 - Consequences of breaching duty to defend, § 11:63
 - Demand for defense by insured, § 11:52

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Duty to defend—Cont'd
 - Denial of coverage, insurer's duty to promptly give notice of, § 11:58
 - Duties of defense counsel, § 11:61
 - Excess insurers' duty to defend, § 11:48
 - Exhaustion of policy limits, extinguishing defense obligation through, § 11:56
 - Existence of suit in triggering, § 11:51, 11:51.0§ 5
 - Extinguishing defense obligation through exhausting policy limits, § 11:56
 - Extrinsic evidence
 - Allegations of complaint, § 11:43
 - Texas versus California, § 11:43.10
 - General coverage advice, obligations of defense counsel to give to insured, § 11:62
 - Indemnify, scope of duty to defend broader than, § 11:42.10
 - Between insureds, duty to defend in suits, § 11:49
 - Insured's obligation to reimburse insurer for costs incurred in defending noncovered claims, § 11:46
 - Joint ventures, § 11:42.40
 - Limitation of coverage, insurer's duty to promptly give notice of, § 11:58
 - Noncovered claims, insured's obligation to reimburse insurer for costs incurred in defending, § 11:46
 - Notice of claim, § 11:52
 - Notice of denial or limitation of coverage, insurer's duty to promptly give, § 11:58
 - Obligations of defense counsel to give general coverage advice

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Duty to defend—Cont'd
 - to insured, § 11:62
 - Owner Controlled Insurance Program, § 11:53
 - Pre-tender defense costs, § 11:47
 - Recovery of attorney's fees in coverage actions, § 11:64
 - Reimbursement of insurer for costs incurred in defending noncovered claims, insured's obligation, § 11:46
 - Reservation of rights letters, § 11:57
 - Scope of duty, determination of, § 11:42, 11:42.10
 - Selection of defense counsel, § 11:60
 - Self-insured retention limit, effect of, § 11:42.20
 - Separation of insureds clause; effect on defense and coverage duties, § 11:42.30
 - Severability-of-interests clause; effect on defense and coverage duties, § 11:42.30
 - Surety as beneficiary of insurer's duty to defend, § 11:55
 - Suspended corporations, § 11:54
 - Texas rule forbidding resort to extrinsic evidence when evaluating defense obligations, exceptions, § 11:43.50
 - Triggering, § 11:50, 11:51, 11:51.0§ 5
 - Duty to settle, § 11:65, 11:66
 - E. Coli bacteria-related loss, coverage for, § 11:136
 - Earth movement exclusion, § 11:142
 - Economic loss, § 11:84, 11:85, 11:92.50
 - Electronic data, property damage and, § 11:90
 - Employee exclusion, § 11:148, 11:148.10, 11:149, 11:149.10

INDEX

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Employment status, workers' compensation coverage, § **11:298**
- Endorsements, blanket and scheduled, additional insureds, § **11:153**
- Enforcement of pollution exclusion, sick buildings, § **11:125**
- Environmental liability. Pollution-related injury, below
- Exceptions, contractual liability exclusion, § **11:110, 11:111**
- Excess coverage determination, additional insureds, § **11:151.10, 11:159**
- Excess insurers' duty to defend, § **11:48**
- Exclusion J, § **11:95-§ 11:101**
- Exclusions
 - Generally, § **11:93-§ 11:150.20**
 - Additional insured, § **11:160**
 - Another's employees, coverage responsibility for, § **11:149, 11:149.10**
 - Application to additional insured, § **11:160**
 - Automobile exclusion, § **11:144**
 - Commercial work exclusion, § **11:150.20**
 - Completed operations work exclusion; products-completed operations hazard, § **11:103.10**
 - Contractor-subcontractor exclusion, § **11:150.10**
 - Contractual liability exclusion, above
 - Cross-liability exclusion, § **11:141**
 - Defective work exclusions, above
 - Earth movement exclusion, § **11:142**
 - Employee exclusion, § **11:148, 11:148.10, 11:149, 11:149.10**
 - Exclusion J, § **11:95-§ 11:101**

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Exclusions—Cont'd
 - Expected or intended injury exclusion, § **11:93.10**
 - Exterior insulation and finish system (EIFS) exclusion, § **11:139**
 - Independent contractor exclusion, § **11:148.10**
 - Intentional conduct, § **11:93**
 - Joint venture exclusion, § **11:145, 11:146**
 - Mold exclusions, specific, § **11:134**
 - Pollution-related injury, exclusions and coverage for, below
 - Prior injury exclusions, § **11:150**
 - Products-completed operations hazard, § **11:103.10**
 - “Professional services” exclusion, § **11:147**
 - Roofing exclusion, § **11:140**
 - Sick buildings, below
 - Watercraft exclusion, § **11:143**
- Exhaustion of policy limits, extinguishing defense obligation through, § **11:56**
- Existence of suit in triggering duty to defend, § **11:51, 11:51.0§ 5**
- Expectation, “occurrence,” § **11:69**
- Expected or intended injury exclusion, § **11:93.10**
- Exposure trigger, § **11:183**
- Exterior insulation and finish system (EIFS) exclusion, § **11:139**
- Extinguishing defense obligation through exhausting policy limits, § **11:56**
- Extrinsic evidence, duty to defend
 - Allegations of complaint, § **11:43**
 - Texas versus California, § **11:43.10**
- Fact-based inquiries, “occurrence,” § **11:77**

COMMERCIAL GENERAL LIABILITY (CGL) COVERAGE—Cont'd

Faulty workmanship

- Alabama rule on whether faulty workmanship is “occurrence,” § **11:76.10**
- Exclusion, § **11:101**
- Georgia rule on whether faulty workmanship is “occurrence,” § **11:76.10**
- Indiana rule on whether faulty workmanship is “occurrence,” § **11:76.10**
- Kentucky rule on whether faulty workmanship is “occurrence,” § **11:76.10**
- Mississippi rule on whether faulty workmanship is “occurrence,” § **11:76.10**
- As “occurrence,” § **11:75, 11:76, 11:76.10**
- South Carolina rule on whether faulty workmanship is “occurrence,” § **11:76.10**
- Florida, “occurrence,” § **11:75**
- Fraud liability, additional insureds, certificate of insurance, § **11:171.30**
- General coverage advice, obligations of defense counsel to give to insured, § **11:62**
- General supervisory coverage, additional insureds, § **11:157**
- Historical evolution of pollution exclusion, § **11:123**
- Impaired property exclusion and its predecessor, § **11:106**
- Incorporation of defective products or work, § **11:88**
- Indemnity and indemnification
 - Additional insureds, § **11:162-11:164**
 - And allocation of coverage, additional insureds, § **11:162**
 - Anti-indemnity statutes, additional insureds, § **11:163**

COMMERCIAL GENERAL LIABILITY (CGL) COVERAGE—Cont'd

Indemnity and indemnification—Cont'd

- Comparison of coverage, additional insureds, § **11:164**
- Contractual liability exclusion, insurer’s obligation to pay indemnitee’s defense costs, § **11:112**
- Duty to defend broader than duty to indemnify, scope of, § **11:42.10**
- Effect on “other insurance” provision, § **11:174**
- Independent contractor exclusion, § **11:148.10**
- Injured property, coverage triggers and ownership of, § **11:179**
- Injury-in-fact trigger, § **11:184**
- Insured
 - Additional insureds, above
 - Contract exception, contractual liability exclusion, § **11:110**
 - Duty to defend in suits between insureds, § **11:49**
 - Named insured, below
 - Obligation to reimburse insurer for costs incurred in defending noncovered claims, § **11:46**
 - Property loaned to named insured exclusion, § **11:98**
- Insurer’s obligation to pay indemnitee’s defense costs, contractual liability exclusion, § **11:112**
- Intended injury exclusion, § **11:93.10**
- Intention, “occurrence,” § **11:69, 11:70**
- Intentional conduct, exclusions, § **11:93**
- Interpretation
 - “Absolute pollution” exclusion, § **11:117**
 - Additional insureds, § **11:154, 11:155**

INDEX

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Interpretation—Cont'd
 - Pollution exclusion, § **11:121**
- Joint venture exclusion, § **11:145, 11:146**
- Joint ventures, duty to defend, § **11:42.40**
- Lead paint claims, coverage for, § **11:138**
- “Legally obligated to pay” requirement, § **11:91**
- Liability in any event exception, contractual liability exclusion, § **11:111**
- Limitation of coverage, § **11:58, 11:180, 11:228.10**
- Limits of coverage, coverage triggers and, § **11:180**
- Literal reading of pollution exclusion, § **11:121**
- “Loss of use” damages
 - Defective work exclusions, § **11:101, 11:106**
 - “Loss of use” injury, below
 - Sick buildings, § **11:131**
 - Third-party property, § **11:82**
- “Loss of use” injury
 - Generally, § **11:89**
 - Exclusions addressing damages, § **11:106**
 - Sick buildings, damages, § **11:131**
- Manifestation trigger, § **11:182**
- Mold
 - Damage, coverage for, § **11:133, 11:134**
 - Exclusions, § **11:134**
- Named insured
 - Additional insureds, above
 - Exclusion for property loaned to, § **11:98**
 - Work or operations, scope of, § **11:156, 11:156.10**
- Noncovered claims, insured’s obligation to reimburse insurer for

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- costs incurred in defending, § **11:46**
- Notice
 - Cancellation, additional insured’s right to, § **11:158**
 - Denial or limitation of coverage, insurer’s duty to promptly give, § **11:58**
 - Duty to defend, notice of claim, § **11:52**
- Number of “occurrences,” determination of, § **11:79**
- Obligation of insurer to pay indemnitee’s defense costs, contractual liability exclusion, § **11:112**
- Obligations of defense counsel to give general coverage advice to insured, § **11:62**
- Occupied property exclusion, § **11:96**
- “Occurrence”
 - Generally, § **11:67-§ 11:79**
 - Analysis of “occurrence,” § **11:77**
 - Bodily injury, § **11:71, 11:72**
 - Continuous or repeated exposure, § **11:73**
 - Coverage B “personal injury,” § **11:71**
 - Defined, § **11:67-§ 11:79, 11:178**
 - Expectation, § **11:69**
 - Fact-based inquiries, § **11:77**
 - “Faulty workmanship” as “occurrence,” § **11:75, 11:76, 11:76.10**
 - Florida, § **11:75**
 - Intention, § **11:69, 11:70**
 - Legislative developments addressing occurrence, § **11:67.50**
 - Misunderstandings about relationship between poor workmanship and “occurrence,” § **11:74**
- Number of “occurrences,” determination of, § **11:79**

COMMERCIAL GENERAL LIABILITY (CGL) COVERAGE—Cont'd

- “Occurrence”—Cont'd
 - Performance bond, liability policy as, § 11:78
 - Poor workmanship, injury arising from, § 11:68, 11:74
 - Relationship between poor workmanship and “occurrence,” § 11:74
 - Repair of defective work and the occurrence element, § 11:68.50
 - Repeated exposure, § 11:73
 - Sick-building coverage and occurrence requirement, § 11:127
 - Tennessee, § 11:75
 - Texas, § 11:75
 - Trend toward faulty workmanship as “occurrence,” § 11:76, 11:76.10
 - Trigger of coverage theories under occurrence-based policies, § 11:181-§ 11:185
 - Varying degrees of intentionality, § 11:70
- Occurrence-based policies, coverage trigger theories under, § 11:181-§ 11:185
- Odorless gas; coverage for injury to tangible property, § 11:85.10
- Ongoing operations, additional insureds
 - Completed operations compared, § 11:168
 - “Out of” ongoing operations defined, § 11:168.10
- “Other insurance” provisions, § 11:173 et seq.
- Owned property exclusion, § 11:96
- Owner Controlled Insurance Program, duty to defend, § 11:53
- Owner’s and Contractor’s Protective (OCP) liability coverage

COMMERCIAL GENERAL LIABILITY (CGL) COVERAGE—Cont'd

- comparison, additional insureds, § 11:166
- Ownership of injured property, coverage triggers and, § 11:179
- Own negligence of additional insured, coverage for, § 11:155
- Performance bond, liability policy as, § 11:78
- “Performing operations” defined, pollution-related injury, § 11:118
- Personal injury
 - Coverage B “personal injury,” above
 - Distinction from bodily injury, personal and advertising liability insurance, § 11:188
- Personal liability insurance, § 11:188
- Physical injury to tangible property, § 11:85, 11:85.10
- Policy exclusions. Exclusions, above
- Pollution-related injury
 - Indoor pollution. Sick buildings, below
 - Sick buildings, below
- Pollution-related injury, exclusions and coverage for
 - Generally, § 11:113-§ 11:138
 - Absolute pollution exclusion, § 11:116, 11:117
 - Application to construction operations, § 11:114
 - Chinese drywall losses, § 11:138.10
 - Concurrent causation doctrine, § 11:119
 - Coverage B (personal injury coverage), § 11:115
 - E. Coli bacteria-related loss, coverage for, § 11:136
 - Interpretation of “absolute pollution” exclusion, § 11:117
 - Lead paint claims, coverage for, § 11:138

INDEX

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Pollution-related injury, exclusions and coverage for—Cont'd
 - Mold damage, coverage for, § 11:133, 11:134
 - Mold exclusions, specific, § 11:134
 - “Performing operations” defined, § 11:118
 - Pollutant defined, § 11:117.10
 - Sick buildings, below
 - Silica claims coverage, § 11:135
 - “Sudden and accidental” exception, § 11:113
 - Welding fume exposure claims, § 11:137
- Poor workmanship as “occurrence,” § 11:68, 11:74
- Pre-tender defense costs, duty to defend, § 11:47
- Primary coverage determination, additional insureds, § 11:159, 11:170.10
- Prior injury exclusions, § 11:150
- Privity between named insured and additional insureds, § 11:152.20
- Products-completed operations hazard, § 11:103.10
- Professional liability coverage, § 11:286, 11:286.10
- “Professional services” exclusion, § 11:147
- Property being worked on exclusion, § 11:100
- Property damage
 - Defined, § 11:81-§ 11:90
 - Loss of use of property not physically injured, § 11:89.50
 - Rip and tear damages to non-defective work, § 11:87.50
 - And sick buildings, § 11:129, 11:132
 - Various exclusions pertaining to, § 11:95-§ 11:101

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

- Property loaned to named insured exclusion, § 11:98
- Property owned, rented or occupied exclusion, § 11:96
- Reasonable expectations doctrine, pollution exclusion, § 11:122
- Recovery of attorney’s fees in coverage actions, duty to defend, § 11:64
- Reimbursement of insurer for costs incurred in defending noncovered claims, insured’s obligation, § 11:46
- Release or discharge requirement, sick buildings, § 11:126
- Rented property exclusion, § 11:96
- Repair of defects
 - Defective products or work, above
- Repeated exposure as “occurrence,” § 11:73
- Reservation of rights letters, duty to defend, § 11:57
- Right of reimbursements, duty to settle, § 11:66
- Right to rely by insured on certificate of insurance, additional insureds, § 11:172
- Risk, business. Business risk doctrine, above
- Risk management, § 7:15
- Roofing exclusion, § 11:140
- Scheduled endorsements, additional insureds, § 11:153
- Selective or targeted tenders, § 11:59
- Self-insured retention limit; effect on duty to defend, § 11:42.20
- Separation of insureds clause; effect on defense and coverage duties, § 11:42.30
- Settlement, duty of, § 11:65, 11:66
- Severability-of-interests clause; effect on defense and coverage duties, § 11:42.30

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

Sick buildings
 Generally, § **11:120 et seq.**
 Ambiguity of pollution exclusion
 in context of indoor pollution,
 § **11:124**
 Bodily injury and, § **11:128**
 Consequential losses and, § **11:130**
 Doctrine of reasonable expecta-
 tions, § **11:122**
 Enforcement of pollution exclu-
 sion, § **11:125**
 Exclusions, generally, § **11:120 et
 seq.**
 Historical evolution of pollution
 exclusion, § **11:123**
 Interpretation of pollution exclu-
 sion, § **11:121**
 Literal reading of pollution exclu-
 sion, § **11:121**
 Loss of use damages and, § **11:131**
 “Occurrence” requirement, sick-
 building coverage and,
 § **11:127**
 Pollution exclusion, generally,
 § **11:120 et seq.**
 Property damage and, § **11:129,**
11:132
 Reasonable expectations doctrine,
 pollution exclusion, § **11:122**
 Release or discharge requirement,
 § **11:126**
 Timing of property damage,
 § **11:132**
 Trigger theories, § **11:132**
 Silica claims coverage, § **11:135**
 Sistership exclusion, § **11:107**
 Stacking, § **11:186, 11:186.10**
 State anti-indemnity laws, additional
 insureds, § **11:163**
 Subcontractor exception to completed
 operations work exclusion,
 § **11:105**

**COMMERCIAL GENERAL
LIABILITY (CGL)
COVERAGE—Cont'd**

Subrogation rights of insurer, effect
 of additional insured status on,
 § **11:170**
 “Sudden and accidental” exception,
 pollution-related injury,
 § **11:113**
 Surety as beneficiary of insurer’s
 duty to defend, § **11:55**
 Suspended corporations, duty to
 defend, § **11:54**
 Tangible property, physical injury to,
 § **11:85, 11:85.10**
 Tennessee, “occurrence,” § **11:75**
 Texas, contractual liability exclusion
 in, § **11:109.20**
 Texas, “occurrence,” § **11:75**
 Texas rule forbidding resort to
 extrinsic evidence when evaluat-
 ing defense obligations, excep-
 tions, § **11:43.50**
 Third-party beneficiary status in lieu
 of additional insureds,
 § **11:151.40**
 “Third-party property,” “property
 damage” and, § **11:82**
 Timing of injury and policy cancella-
 tion, § **11:324.10**
 Timing of property damage, sick
 buildings, § **11:132**
 Torts. Bodily injury, above
 Triggering
 Coverage trigger issues, above
 Duty to defend, § **11:50, 11:51,**
 11:51.0§ 5
 Other insurance vs. trigger theo-
 ries, allocation of defense
 costs among successive insur-
 ers, § **11:173.50**
 Sick buildings, trigger theories,
 § **11:132**
 2004 ISO additional insured endorse-
 ments, § **11:167**
 Watercraft exclusion, § **11:143**

INDEX

COMMERCIAL GENERAL LIABILITY (CGL)

COVERAGE—Cont'd

- Welding fume exposure claims,
§ 11:137
- Workers' compensation coverage,
boundary disputes with,
§ 11:298
- Work product exclusion, § 11:102
- Writing requirement, additional
insureds, § 11:152, 11:152.10

COMMON LAW

- Business interruption insurance,
insured's duty to mitigate loss,
§ 11:257
- Warranties, § 9:1, 9:69.50, 9:70

COMMON LAW BONDS

- Class of covered items, § 8:194
- Defined, § 8:185
- Payment bonds, § 8:181, 8:185
- Protected claimants, § 8:192
- Statutory bonds versus, § 8:189-
§ 8:162
- Suit, notice and commencement of,
§ 8:205

COMMUNICATION RISKS

- Generally, § 7:6, 7:219-§ 7:237
- Ambiguous contract documents,
§ 7:223
- Ambiguous contract or work scopes,
§ 7:225
- Claim notice requirements and
compliance problems, § 7:231
- Construction team's obligation to
comply with all laws, regula-
tions, ordinances and codes,
§ 7:234
- Cultural differences, § 7:221
- Defamation risks, § 7:236
- Description of project conditions,
failure to accurately describe,
§ 7:226
- Design responsibilities of contracting
team, failure to clearly delineate,
§ 7:233

COMMUNICATION RISKS

—Cont'd

- Fees
 - Ill-defined costs, § 7:229
 - Responsibility for, confusion over,
§ 7:227
- Flow down clauses, § 7:225
- Ill-defined costs, § 7:229
- Incorporation by reference, § 7:225
- Indefinite or ambiguous contract or
work scopes, § 7:225
- Indian tribes, doing business with,
§ 7:222
- Languages, different, § 7:220
- Laws, regulations, ordinances and
codes compliance, § 7:234
- Material information, failure to give
notice of, § 7:230
- Overhead costs, § 7:229
- Personality conflicts between
member participants, § 7:235
- Poorly coordinated contract docu-
ments, § 7:133
- Scope of authority, confusion over,
§ 7:232
- Scope of design and construction
team's obligation to comply
with all laws, regulations, ordi-
nances and codes, § 7:234
- Shop drawings, confusion over,
§ 7:228
- Tax exempt and federal projects,
§ 7:227
- Tortious communications, § 7:236
- Unit-price arrangements, confusion
over meaning of, § 7:237
- Vague, indefinite or ambiguous
contract or work scopes, § 7:225

COMPARATIVE FAULT

- Design professionals, § 17:20
- Indemnity and, § 10:96, 10:125

COMPENSATION

- Damages** (this index)
- Delay, compensable. **Delays** (this
index)

COMPENSATION—Cont'd

Fixed price contracts. **Lump Sum Contracts** (this index)

Lump Sum Contracts (this index)

Price Arrangements (this index)

Suretyship, compensated, § 12:5

Unit Price Contracts (this index)

Wages and Salaries (this index)

Workers' Compensation (this index)

COMPETITIVE NEGOTIATION

Contract Formation (this index)

COMPLETED OPERATIONS WORK

Commercial General Liability (CGL) Coverage (this index)

COMPLETION COSTS

Insurance, direct physical loss limitation on increased completion costs due to covered loss, § 11:223

COMPLETION OF PROJECT RISKS

Generally, § 7:280-§ 7:290

Accelerated and/or out-of-sequence work conditions, § 7:298

Changed conditions or changed work, delay responding to and giving direction where, § 7:290

Chart, § 7:340

Concurrent delays, § 7:286

Constructability problems and cost issues, § 7:301

Construction means and methods, improper or inefficient, § 7:300

Control of party, delays not within, § 7:284

Control of party, delays within, § 7:285-§ 7:287

Costs

Generally, § 7:291-§ 7:301

Accelerated and/or out-of-sequence work conditions, § 7:298

COMPLETION OF PROJECT

RISKS—Cont'd

Costs—Cont'd

Constructability problems, § 7:301

Construction means and methods, improper or inefficient, § 7:300

Disrupted work conditions, § 7:297

Inspection and testing requirements, overly burdensome, § 7:299

Labor, cost escalation of critical, § 7:292

Materials and equipment, cost escalation of, § 7:292

Out-of-sequence work conditions, § 7:298

Overruns within contractor's control, § 7:293

Overtime, § 7:298

Point of No Return concept, § 7:298

Scope of work, involuntary changes to, § 7:295

Unproductive/disrupted work conditions, § 7:297

Voluntary owner changes, § 7:294

Work units, increase in, § 7:296

Defective construction, § 7:305

Design work delays, § 7:281

Goods, nonconforming or defective, § 7:310

Inspection and testing

Overly burdensome requirements; cost issues, § 7:299

Quality, § 7:309

Untimely, § 7:288

Labor, cost escalation of critical, § 7:292

Liquidated damages, § 7:287

Materials and equipment, cost escalation of, § 7:292

Multiple primes/coordination failures, § 7:289

Nonconforming work, § 7:306

INDEX

**COMPLETION OF PROJECT
RISKS—Cont'd**

- Performance requirements, failure to achieve, § 7:308
- Plans and specifications, inadequate or insufficient, § 7:303
- Quality
 - Generally, § 7:302-§ 7:310
 - Defective construction, § 7:305
 - Goods, nonconforming or defective, § 7:310
 - Inspection and testing, inadequate, § 7:309
 - Nonconforming work, § 7:306
 - Performance requirements, failure to achieve, § 7:308
 - Plans and specifications, inadequate or insufficient, § 7:303
- Specifications
 - Inadequate or insufficient, § 7:303
 - Unsuitable products, use of, § 7:304
 - Unsuitable products, use of, § 7:304
 - Warranties/remedies, inadequate, § 7:307
- Remedies, inadequate, § 7:307
- Scope of work, involuntary changes to, § 7:295
- Specifications
 - Inadequate or insufficient, § 7:303
 - Unsuitable products, use of, § 7:304
- Submission process, delays in, § 7:282
- Testing, inspection and. Inspection and testing, above
- Time
 - Generally, § 7:280-§ 7:290
 - Changed conditions or changed work, delay responding to and giving direction where, § 7:290
 - Concurrent delays, § 7:286

**COMPLETION OF PROJECT
RISKS—Cont'd**

- Time—Cont'd
 - Control of party, delays not within, § 7:284
 - Control of party, delays within, § 7:285-§ 7:287
 - Design work delays, § 7:281
 - Inspection and testing, untimely, § 7:288
 - Liquidated damages, § 7:287
 - Multiple primes/coordination failures, § 7:289
 - Submission process, delays in, § 7:282
 - Testing and inspection, untimely, § 7:288
 - Transmittal/submission process, delays in, § 7:282
 - Transmittal/submission process, delays in, § 7:282
 - Unproductive/disrupted work conditions, § 7:297
 - Warranties/remedies, inadequate, § 7:307
 - Work units, increase in, § 7:296

**COMPLEX BUILDING
MATERIALS**

Technology Risks (this index)

COMPLIANCE WITH LAW

AIA General Conditions of the Contract for Construction form A201 provisions, § 5:61

COMPREHENSIVE

**ENVIRONMENTAL
RESPONSE, COMPENSATION
AND LIABILITY ACT
(CERCLA)**

Contaminated soil, § 7:178, 7:182

Design professionals, liability of, § 17:32, 17:33

Indemnity for remediation costs, § 5:207, 10:50

COMPUTERS

Technology Risks (this index)

**CONCURRENT CAUSATION
DOCTRINE**

CGL coverage, pollution-related
injury, § **11:119**
Efficient proximate cause doctrine
compared, § **11:225.10**

CONCURRENT DELAY
Delays (this index)

CONDITIONS

Insurance policies, § **11:16**

CONDOMINIUMS

Mechanics' liens, § **8:167**
Mixed-use projects, § **7:116**
Risk management, § **7:116**

CONFLICT OF INTEREST

Competitive sealed bidding, § **2:51**
Vouching-in process and indemnity,
§ **10:128**

CONFLICT OF LAWS

Arbitration (this Index)

CONFLICTS

CGL coverage, conflict issues created
by additional insured status,
§ **11:169**
Dispute Resolution (this index)
Interpretation of contracts, § **11:33**

CONGESTION

Site risks, § **7:161**

ConsensusDOCS

Construction management, § **6:89**
Integrated project delivery (IPD),
§ **6:31, 6:34, 6:35, 6:37**
Performance bond, § **12:17**

CONSENT CLAUSES

Insurance, § **11:26**

CONSENT JUDGMENTS

Insurance, duties of insured, § **11:22**

CONSEQUENTIAL DAMAGES

AIA General Conditions of the
Contract for Construction form

CONSEQUENTIAL DAMAGES

—Cont'd

A201, risk allocation provisions,
§ **5:20**

Design professionals, waivers of
consequential damages,
§ **17:98.10**

Foreseeability of, § **19:16-§ 19:19**

Implied product warranties of
merchantability and fitness for
particular purpose, § **9:41, 9:49**

Risk management, § **7:186**

Waivers, § **19:52.54**

**CONSEQUENTIAL LOSS
EXCLUSION**

Insurance, § **11:237**

**CONSTITUTIONAL
CHALLENGES**

Bids, statutory preferences. **Bids** (this
index)

Defamation issues, § **7:236**

Disadvantaged Business Enterprises
(DBE), § **7:137**

Eleventh Amendment's bar against
federal court actions, § **8:107**

Mechanics' liens, § **8:153**

Race-based procurement programs,
§ **7:137**

Repose statute, § **7:32**

Socioeconomic contractor selection
programs, § **7:137**

Strict scrutiny, § **7:137**

**CONSTRUCTION AND
INTERPRETATION**

Commercial General Liability
(CGL) Coverage (this index)

Contract Interpretation (this index)

Indemnity and Indemnification
(this index)

Insurance contracts. **Insurance** (this
index)

Mechanics' lien statutes, § **8:152**

CONSTRUCTION LAW

Generally, § **1:1, 1:2**

INDEX

CONSTRUCTION LAW—Cont'd

Academia and, § 1:4
American Bar Association, § 1:5
American Institute of Architects Standard Forms (this index)
Arbitration (this index)
Bids (this index)
Breach of contract and termination.
 Termination of Contract (this index)
Cause, termination of contract for.
 Termination for Cause (this index)
Changes and Extras Clauses (this index)
Complexity, § 1:2
Construction defined, § 2:27
Constructive changes. **Changes and Extras Clauses** (this index)
Contracts and Agreements (this index)
Convenience, termination of contract for. **Termination for Convenience** (this index)
Custom and usage. **Trade, Custom and Usage** (this index)
Defined, § 1:3
Design-Bid-Build (this index)
Design-GMP-Build Project Delivery Method (this index)
Development of, § 1:1
Equity law and, § 1:3
Extras clauses. **Changes and Extras Clauses** (this index)
Historical background, § 1:1
Infrastructure facility defined, § 2:27
Integrated Project Delivery (IPD)
International Construction (this index)
Interpretation of contracts. **Contract Interpretation** (this index)
Mistake in Bid (this index)
No Damage for Delay Clause (this index)
Performance Bonds (this index)
Practice, § 1:6

CONSTRUCTION LAW—Cont'd

Price Arrangements (this index)
Public Works (this index)
Risk Management (this index)
Scope of, § 1:3
Sealed bidding procedures. **Bids** (this index)
Statutory law and, § 1:3
Suretyship law and, § 1:3
Teaching, § 1:4
Tort law and, § 1:3
Trade, Custom and Usage (this index)
Usage, custom and. **Trade, Custom and Usage** (this index)
Warranties (this index)
CONSTRUCTION MANAGEMENT
Generally, § 6:82-§ 6:93
Advantages, § 6:93, 6:94
Advantages of approach, § 6:42
AGC standard form agreements, § 6:80
Agency construction management, § 6:12, 6:83
AIA standard form agreements, § 6:87
At-risk construction management, § 6:84, 6:89
CMAA forms, § 5:7, 6:90
ConsensusDocs CM agreement form, § 6:89
Construction management at risk, § 6:13
Designer as construction manager, § 6:85
Disadvantages, § 6:93, 6:94
Historical background, § 6:82
Indemnity, § 10:59
Liability of construction manager, § 6:91
Litigation risks, § 6:91
Procurement risk on public projects, § 6:92
Project delivery methods
 Agency construction management, § 6:12

CONSTRUCTION MANAGEMENT

—Cont'd

Project delivery methods—Cont'd
Construction management at risk,
§ 6:13

Schedule (this index)

Services provided, § 6:86

Standard forms

AGC standard form agreements,
§ 6:80

AIA standard form agreements,
§ 6:87

CMAA forms, § 5:7, 6:90

**CONSTRUCTION MANAGEMENT
ASSOCIATION OF AMERICA,
INC. (CMAA)**

Standard form agreements, § 5:7,
6:90

**CONSTRUCTION MANAGEMENT
SERVICES**

Insurance, professional liability
coverage, § 11:294

CONSTRUCTION MANAGER

Boston Harbor project, § 6:40

Construction management at risk,
§ 6:13

Construction Management (this
index)

Design-bid-multi-prime approach,
§ 6:14

Designer as, § 6:85

Indemnity, § 10:59

Licensing construction professionals,
§ 16:15

Litigation risks and liability of,
§ 6:91

**CONSTRUCTION OWNERS OF
AMERICA (COAA)**

Standard form agreements, § 5:7

**CONSTRUCTIVE
ACCELERATION**

Generally, § 15:94-§ 15:100

Actual acceleration and incurrence of
damages, of, § 15:100

CONSTRUCTIVE

ACCELERATION—Cont'd

Compensable delay justifying exten-
sion of time, § 15:95

Excusable delay justifying extension
of time, § 15:95

Express direction to accelerate,
§ 15:98

Extension of time, § 15:95, 15:96

Failure to grant additional time,
§ 15:97

Implied direction to accelerate,
§ 15:98

Notices

Claim, of, § 15:99

Delaying event and request for
extension of time, § 15:96

Wrongful refusal to grant additional
time, § 15:97

CONSTRUCTIVE CHANGES

Changes and Extras Clauses (this
index)

CONSTRUCTIVE TRUST

Bankruptcy, § 5:180

Lender liability, § 8:142, 8:143

Restitution, § 19:43

CONSUMER LAW PROTECTIONS

Arbitration of claims, § 21:171

Warranties, § 9:10, 9:55

CONSUMER PROTECTION ACT

Warranty liability, § 9:7

**CONTEMPORANEOUS ANALYSIS
METHOD**

Time impact evaluation, § 15:130

CONTINGENCY ACCOUNTS

Risk management, § 7:134

CONTINGENT ASSIGNMENT

Subcontracts, of, § 5:127

**CONTINGENT BUSINESS
INTERRUPTION INSURANCE**

Generally, § 11:266

INDEX

CONTINUOUS EXPOSURE AS “OCCURRENCE”

CGL coverage, § 11:73

CONTINUOUS INJURY TRIGGER

CGL coverage, § 11:185

CONTRACT COMMUNICATION PROVISIONS

**American Institute of Architects
Standard Forms** (this index)

CONTRACT DISPUTES ACT

Payment

FCA liability under, § 8:83

Prejudgment interest under, § 8:62

Sovereign immunity, § 8:102

CONTRACT FORMATION

Acceptance, § 2:4

Best value objective, § 2:21, 2:155,
2:156, 2:172

Bids (this index)

Competitive negotiation

Generally, § 2:21, 2:154-§ 2:168

Award, negotiated, § 2:166

Best value objective, § 2:155,
2:156

Capability factors, § 2:157

Defamation, common law, § 2:168

Evaluation factors, selection of,
§ 2:157

Evaluation of proposals, § 2:161

Objective of negotiations, § 2:156

Offer factors, § 2:157

Pre-award negotiation, § 2:162

Preparation and submission of
proposals, § 2:160

Profit, negotiated, § 2:165

Protests against award, § 2:167

Request for proposals (RFPs),
§ 2:158 to 2:161

Statutory authority for formation,
§ 2:155-§ 2:157

Submission of proposals, § 2:160

Techniques, § 2:164

Construction management project
delivery method, § 2:13

CONTRACT FORMATION

—Cont’d

Contextual contract, generally, § 2:8-
§ 2:20.50

Contract defined, § 2:1

Cost plus contracts, § 2:15, 2:18

Cost reimbursement with fixed fee,
§ 2:18

Cost reimbursement with fixed fee up
to guaranteed maximum price,
§ 2:19

Cost sharing contracts, § 2:19.50

Defamation, common law, § 2:168

Delivery of project. Project delivery
methods, below

Design-build project delivery
method, § 6:78, 6:79

Express contract formation, § 2:2-
§ 2:4

False Claims Act (FCA) liability in,
§ 8:74

Firm bid rule, § 2:4

Firm-fixed price contract, § 2:15

Firm-unit price contract, § 2:16

Implied-in-fact contract formation,
§ 2:5

Implied-in-law contract formation,
§ 2:6, 2:7

Interpretation of contracts. **Contract
Interpretation** (this index)

Letters of intent, § 2:3

Offer, § 2:4

Package project delivery. Project
delivery methods, below

Private contracts, § 2:21

Process, § 2:9:50

Project delivery methods

Construction management, § 2:13

Defined, § 2:10

Design-bid-build, § 2:11

Design-build, § 2:12

Elements of package project
delivery, § 2:10

Promise defined, § 2:1

Request for proposals (RFPs),
§ 2:158 to 2:161

CONTRACT FORMATION

—Cont'd

- Risk Management** (this index)
- Sealed bidding procedures. **Bids** (this index)
- Sole source, negotiation of contract with, § 2:21
- Source selection procedures, § 2:14
- Specifications, drafting, § 2:21
- Teaming agreements, § 2:3
- Time and materials, and force account, § 2:20
- Two-step procedures, competitive
 - Generally, § 2:169-§ 2:172
 - Best value source selection procedure, state and local, § 2:172
 - Design-build source selection procedure, § 2:171
 - Sealed bidding, § 2:170
- Types of contracts, § 2:15-§ 2:20.50

CONTRACT INTERPRETATION

- Generally, § 3:1-§ 3:57
- Adhesion contracts, § 3:27, 3:55, 3:56
- Affirmative obligation on bidders to examine contract documents, § 3:27
- Ambiguous language. Objective versus subjective theory, below
- American Institute of Architect's (AIA) General Conditions document, § 3:54, 5:33
- Analytical conflict, insurance contracts, § 11:33
- "Any provision herein to the contrary notwithstanding" language, § 3:39
- Arbitration agreements, § 3:9
- Boilerplate agreements, standard. Standard form agreements, interpreting
- Choice of forum clause, § 3:9
- Christian doctrine, § 3:33
- Clarification duty, contractually mandated, § 3:27

CONTRACT INTERPRETATION

—Cont'd

- Commercial General Liability (CGL) Coverage** (this index)
 - Insurance contracts
- Common laws, § 3:1
- Condition precedent, § 3:9
- Conflict, analytical, insurance contracts, § 11:33
- Construed against the drafter rule, § 3:27
- Contextual ambiguity, § 3:7
- Contra proferentem rule, § 3:28, 3:56
- Course of dealings, role of, § 3:48
- Course of performance evidence, § 3:49-§ 3:51
- Custom and usage. **Trade, Custom and Usage** (this index)
- Deviation from policy language, insurance contracts, § 11:37
- Duty to inform under superior knowledge doctrine, § 3:25
- Evidence, extrinsic, insurance contracts, § 11:33
- Exclusionary language, insurance contracts, § 11:30
- Exculpatory provisions, § 3:9
- Expressio unius est exclusio alterius doctrine, § 3:38
- Extrinsic evidence, insurance contracts, § 11:33
- Facial ambiguity, § 3:6-§ 3:8
- Flow down clauses, § 3:32
- Form agreements, standard. Standard form agreements, interpreting
- Four corners rule, § 3:1
- General provisions, specific governing, § 3:34
- Historical background, § 3:1
- Illusory coverage, insurance contracts, § 11:34
- Illustration of competing maxims and rules, § 3:1
- Inclusion of one is inclusion of others doctrine, § 3:38
- Incorporation by law, § 3:33

INDEX

CONTRACT INTERPRETATION

—Cont'd

- Incorporation by reference, § 3:31
- Indefiniteness versus ambiguous language, § 3:6
- Indemnity agreements, § 3:9
- Insurance** (this index)
- Latent ambiguity, § 3:8
- Liberal versus strict construction, § 3:9
- Limitation of liability clause, § 3:9, 19:52.67
- Maxims and rules, illustrative, § 3:1
- No damages for delay clauses, § 3:9
- Objective versus subjective theory
 - Generally, § 3:2-§ 3:9
 - Ambiguous language
 - Ambiguity defined, § 3:6
 - Contextual ambiguity, § 3:7
 - Facial ambiguity, § 3:6-§ 3:8
 - Indefiniteness versus, § 3:6
 - Latent ambiguity, § 3:8
 - Patent ambiguity, § 3:8
 - Arbitration agreements, § 3:9
 - Choice of forum clause, § 3:9
 - Condition precedent, § 3:9
 - Confusion over interpretation, § 3:5
 - Contextual ambiguity, § 3:7
 - Custom and usage, § 3:5
 - Exculpatory provisions, § 3:9
 - Facial ambiguity, § 3:6-§ 3:8
 - Government contract cases interpretation under plain meaning rule, § 3:4
 - Indefiniteness versus ambiguous language, § 3:6
 - Indemnity agreements, § 3:9
 - Insurance agreements, § 3:9
 - Latent ambiguity, § 3:8
 - Liberal versus strict construction, § 3:9
 - Limitation of liability clause, § 3:9
 - No damages for delay clauses, § 3:9
 - Patent ambiguity, § 3:8

CONTRACT INTERPRETATION

—Cont'd

- Objective versus subjective theory
 - Cont'd
 - Pay-if-paid clause, § 3:9
 - Plain meaning rule, § 3:1, 3:4
 - Strict versus liberal construction, § 3:9
- Order of precedence provisions, § 3:40
- Ordinary terms, § 3:37
- Parol Evidence** (this index)
- Patent ambiguity, § 3:8, 3:11-§ 3:20, 3:22-§ 3:24
- Pay-if-paid clause, § 3:9
- Plain meaning rule
 - Generally, § 3:1, 3:4, 3:44
 - Insurance contracts, § 11:31
- Preferences and maxims, § 3:1
- Preference standards
 - Generally, § 3:29-§ 3:40
 - “Any provision herein to the contrary notwithstanding” language, § 3:39
- Christian doctrine, § 3:33
- Contractual preferences, § 3:39, 3:40
- Expressio unius est exclusio alterius doctrine, § 3:38
- Flow down clauses, § 3:32
- General provisions, specific governing, § 3:34
- Inclusion of one is inclusion of others doctrine, § 3:38
- Incorporation by law, § 3:33
- Incorporation by reference, § 3:31
- Insurance contracts, reasonable expectations doctrine, § 11:35
- Order of precedence provisions, § 3:40
- Ordinary terms, § 3:37
- Principal purpose doctrine, § 3:36
- Private terms, § 3:37
- Specifications tree and incorporation by reference rule, § 3:31

CONTRACT INTERPRETATION

—Cont'd

- Preference standards—Cont'd
 - Specific governing general provisions, § 3:34
 - Technical terms, § 3:37
 - Terms, meaning of, § 3:37
 - Trade practice analysis, § 3:37
 - Typed over the printed, § 3:35
 - Upper tier contract provisions incorporated into lower tier agreements, § 3:32
 - Whole agreement preference, § 3:30, 3:31
 - Written over typed, § 3:35
- Principal purpose doctrine, § 3:36
- Private terms, § 3:37
- Punctuation, insurance contracts, § 11:32
- Reasonableness of interpretation. Preference standards, above
- Recitals, § 3:10
- Reformation of contract, § 3:57, 11:36
- Risk allocations
 - Generally, § 3:21-§ 3:28
 - Affirmative obligation on bidders to examine contract documents, § 3:27
 - Clarification duty, contractually mandated, § 3:27
 - Consequences of drafting ambiguous language, § 3:28
 - Construed against the drafter rule, § 3:27
 - Contractor's failure to rely on interpretation, § 3:26
 - Contra proferentem rule, § 3:28
 - Defined, § 3:21
 - Duty to inform under superior knowledge doctrine, § 3:25
 - Patent ambiguity doctrine, § 3:22-§ 3:24
 - Superior knowledge doctrine, § 3:25

CONTRACT INTERPRETATION

—Cont'd

- Specifications tree and incorporation by reference rule, § 3:31
 - Specific governing general provisions, § 3:34
 - Standard form agreements, interpreting
 - Generally, § 3:52-§ 3:56
 - Adhesion contracts, § 3:55, 3:56
 - Altering standard agreements, problems resulting from, § 3:54
 - American Institute of Architect's (AIA) General Conditions document, § 3:54
 - Contra proferentem rule, § 3:56
 - Customizing or altering standard agreements, problems resulting from, § 3:54
 - Objectionable terms, § 3:53
 - Quasi-adhesion analysis, § 3:56
 - Strict versus liberal construction, § 3:9
 - Subjective theory. Objective versus subjective theory, above
 - Superior knowledge doctrine, § 3:25
 - Technical terms, § 3:37
 - Terms, meaning of, § 3:37
 - Third-party standards incorporation and whole agreement rule, § 3:30
 - Trade, Custom and Usage** (this index)
 - Trade practice analysis, § 3:37
 - Typed over the printed, § 3:35
 - Upper tier contract provisions incorporated into lower tier agreements, § 3:32
 - Usage, custom and. **Trade, Custom and Usage** (this index)
 - Whole agreement preference, § 3:30, 3:31
 - Written over typed, § 3:35
- CONTRACTOR**
See specific headings

INDEX

CONTRACTOR DESIGN INSURANCE

Generally, § 11:287

CONTRACTS AND AGREEMENTS

Adhesion contracts

Risk allocations, § 3:27

Standard form agreement as,
§ 3:55, 3:56

**American Institute of Architects
Standard Forms** (this index)

Arbitration (this index)

Bids (this index)

Breach of contract and termination.

Termination of Contract (this
index)

Cause, termination for. **Termination
for Cause** (this index)

Changes and Extras Clauses (this
index)

**Commercial General Liability
(CGL) Coverage** (this index)

Communication Risks (this index)

Construction law compared, § 1:3,
1:4

Constructive changes. **Changes and
Extras Clauses** (this index)

Convenience, termination for.

Termination for Convenience
(this index)

Custom and usage. **Trade, Custom
and Usage** (this index)

Damages (this index)

Definition of contract, § 2:1

Design responsibility, delegation of,
§ 6:44

“Efficient proximate cause” doctrine,
insurance, § 11:226

Extras clauses. **Changes and Extras
Clauses** (this index)

Fixed price contracts. **Lump Sum
Contracts** (this index)

Formation of. **Contract Formation**
(this index)

Indemnity and Indemnification
(this index)

Indemnity Clause (this index)

CONTRACTS AND AGREEMENTS —Cont’d

Insurance (this index)

International Construction (this
index)

Interpretation of. **Contract Interpre-
tation** (this index)

Liability exclusion. **Commercial
General Liability (CGL)
Coverage** (this index)

Loans (this index)

Lump Sum Contracts (this index)

Mediated settlement agreements,
preparation, § 21:317

Parol Evidence (this index)

Performance Bonds (this index)

Price Arrangements (this index)

Risk Management (this index)

Scope of contract law, § 1:3, 1:4

Sealed bidding procedures. **Bids** (this
index)

Termination of Contract (this
index)

Trade, Custom and Usage (this
index)

Unit Price Contracts (this index)

Usage, custom and. **Trade, Custom
and Usage** (this index)

Warranties (this index)

CONTRACTUAL LIABILITY EXCLUSION

**Commercial General Liability
(CGL) Coverage** (this index)

CONTRIBUTION

Generally, § 10:5, 10:156-§ 10:160

Accrual of right to, § 10:6

Arbitrating third-party claims,
§ 21:166

Curtain wall failures, § 7:213

Defined, § 10:5

Derivative nature of right, § 10:159

Design Professionals (this index)

Diminished role in construction
disputes, § 10:156

Economic loss recovery, § 10:160

CONTRIBUTION—Cont'd

- Good faith settlement bar to, § 10:166
- Indemnity compared, § 10:5, 11:190
- Joint liability, need for, § 10:157
- Limitations on right of, § 10:156
- Minnesota's bridge-collapse litigation; statutes of repose, § 10:11
- No right to, § 19:34
- Pro tanto rule, § 10:163, 10:166
- Repose, statutes of; Minnesota's bridge-collapse litigation, § 10:11
- Risk management; time limitations governing contribution claims, § 7:31
- Set-off issues, § 10:163
- Subrogation, contribution and indemnity distinguished, § 11:190
- Third-party defendant liable to plaintiff, § 10:159
- Tort reform legislation, effect of, § 10:158
- Workers' compensation acts bar to contribution claims against employers for loss incurred by injured employees, § 10:162

CONTROL CONCEPT

- Time (this index)

COOPERATION

- Implied duty of, § 9:113, 12:55
- Insurance, loss of right to demand cooperation, § 11:22.50

COPYRIGHT

- Architectural works, for, § 17:85-§ 17:87
- Architectural Works Copyright Protection Act of 1990, § 7:218, 17:87, 17:87.50
- Copyright Act of 1976, § 17:86
- Design-build project and control and ownership of design documents, § 6:72
- Idea/expression dichotomy, § 17:86

COPYRIGHT—Cont'd

- Infringement; AIA General Conditions of the Contract for Construction form A201 risk allocation provisions, § 5:86
- Litigation in construction industry, § 17:87.50
- Statute of limitations, 17:87.70
- Technology risks, § 7:218

CORONAVIRUS

- Force majeure and relief from disruption caused by COVID-19 pandemic, § 7:322

CORPORATIONS

- Insurance, § 11:13.50
- Officers and directors as non-signatories to arbitration agreement, § 21:106, 21:107

CORRECTION OF WORK

- American Institute of Architects Standard Forms (this index)
- One-year correction warranty, § 5:238, 5:239, 9:69

CORROSION

- Insurance coverage exclusion, § 11:246

CORRUPTION

- Vacatur of arbitration award, basis for, § 21:237

COST ESTIMATION LIABILITY

- Design professionals, § 17:43-§ 17:47

COST PLUS CONTRACTS

- Determination whether contract is, § 2:18
- Formation, § 2:15, 2:18

COST PLUS FEE CONTRACTS

- Generally, § 6:108
- Determination of fee, § 6:108
- Lump sum contract compared, § 6:108

INDEX

- COST REIMBURSEMENT CONTRACT WITH FIXED FEE**
 - Formation of, § 2:18
- COST REIMBURSEMENT CONTRACT WITH FIXED FEE UP TO GUARANTEED MAXIMUM PRICE**
 - Formation of, § 2:19
- COSTS**
 - Generally. **Fees** (this index)
 - Arbitration** (this index)
 - Commercial General Liability (CGL) Coverage** (this index)
 - Risk management, cost shifting, § 7:40
- COST SHARING CONTRACTS**
 - Generally, § 2:19.50
- COURSE OF DEALINGS**
 - Contract interpretation, § 3:48
 - Expectation risks, § 7:260, 7:261
 - Implied product warranties of merchantability and fitness for particular purpose arising from, § 9:39
 - Uniform Commercial Code, arbitration agreements subject to, § 21:114
- COURSE OF PERFORMANCE**
 - Contract interpretation, § 3:49-§ 3:51
- COVERAGE**
 - Insurance** (this index)
- COVERAGE B “PERSONAL INJURY”**
 - Commercial General Liability (CGL) Coverage** (this index)
- COVERAGE TRIGGER ISSUES**
 - Commercial General Liability (CGL) Coverage** (this index)
- COVID-19 PANDEMIC**
 - Force majeure and relief from disruption caused by, § 7:322
- CRACKS AND CRACKING**
 - Insurance exclusions, § 11:246.10
- CREDITORS**
 - Bankruptcy** (this index)
- CRIMINAL ACTIVITY**
 - False Claims Act (FCA)** (this index)
 - Termination for cause, § 18:28
- CRITICAL PATH METHOD**
 - Bar chart, § 15:4
 - Baseline schedule, § 15:8
 - Float concept, § 15:9
 - Schedule, generally, § 15:5-§ 15:10
 - Time Impact Evaluation** (this index)
 - Updating schedule during construction, § 15:10
- CROSS-LIABILITY EXCLUSION**
 - CGL coverage, § 11:141
- CROWDING**
 - Owner’s right to perform construction, § 5:129
- CURRENCY RISKS**
 - Risk Management** (this index)
- CURTAIN WALLS**
 - Technology Risks** (this index)
- CUSTOM AND USAGE**
 - Trade, Custom and Usage** (this index)
- CUTTING AND PATCHING**
 - American Institute of Architects Standard Forms** (this index)
- CYBER RISK**
 - Design and construction, § 7:90
 - Frequency and severity of cyber loss, § 7:91
 - Managing, § 7:93
 - Types of threats, § 7:92
- DAILY REPORTS**
 - Change order process, management of, § 4:54, 4:55

DAILY REPORTS—Cont'd

- Forces account work, § 6:111
- Time impact analysis, § 15:124

DAMAGES

- Acceptance of work, § 13:66
- Actual acceleration and incurrence of damages, of, § 15:100
- Agreed Remedies and Damage Measures** (this index)
- American Institute of Architects Standard Forms** (this index)
- Attorneys' fees and expenses, § 19:98
- Betterment, cost to repair reduced for, § 19:62
- Betterment defense, § 19:26-§ 19:29
- Bids** (this index)
- Breach of contract and common law damage measures
 - Generally, § 19:55-§ 19:99
 - Attorneys' fees and expenses, § 19:98
 - Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures, below
 - Completion damages, § 19:56
 - Contractor breach of contract, generally, § 19:55-§ 19:68
 - Cost accounting, art of construction of, § 19:70
 - Defective or nonconforming workmanship, below
 - Delayed completion, contractor's, below
 - Fraud or misrepresentation in computation of damage claims, § 19:99
 - Material breach, contract non substantially performed duty to contractor's, § 19:72
 - Misrepresentation in computation of damage claims, § 19:99
 - Owner breach of contract, generally, § 19:69-§ 19:99
 - Prejudgment interest, § 19:97

DAMAGES—Cont'd

- Breach of contract and common law damage measures—Cont'd
 - Workmanship, nonconforming, Defective or nonconforming workmanship, below
- Casual apportionment, principle of, § 19:32
- Changes and extras clauses, false claims based on, § 4:50, 4:55
- Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures
 - Generally, § 19:73-§ 19:96, 19:74-§ 19:92
- Bank credit or bonding capacity, impairment of bank credit or, § 19:90
- Bond costs, § 19:84
- Building segregated damage claim, § 19:92
- Business reputation, loss of, § 19:91
- Direct labor costs, § 19:75
- Direct material costs, § 19:80
- Equipment costs, § 19:81
- Financing costs, § 19:86
- Future profits, loss of, § 19:90
- General conditions overhead, § 19:83
- Indirect home overhead costs, § 19:85
- Indirect labor burden costs, § 19:79
- Insurance costs, § 19:84
- Interest as damages, § 19:86
- Job site and general conditions overhead, § 19:83
- Jury verdict, § 19:93, 19:96
- Lost anticipated profits on contract, § 19:88
- Lost labor efficiency, § 19:78
- Lost profits, § 19:88-§ 19:90
- Modified total cost, § 19:93, 19:95
- Overtime, § 19:76

INDEX

DAMAGES—Cont'd

- Changes resulting in extra work, time impacts and disruptions;
contractor's compensatory damage measures—Cont'd
- Profit on claim, § 19:87
- Segregated damage approach
 - Generally, § 19:74-§ 19:92
 - Bank credit or bonding capacity, impairment of bank credit or, § 19:90
 - Bond costs, § 19:84
 - Building segregated damage claim, § 19:92
 - Business reputation, loss of, § 19:91
 - Direct labor costs, § 19:75
 - Direct material costs, § 19:80
 - Equipment costs, § 19:81
 - Financing costs, § 19:86
 - Future profits, loss of, § 19:90
 - General conditions overhead, § 19:83
 - Indirect home overhead costs, § 19:85
 - Indirect labor burden costs, § 19:79
 - Insurance costs, § 19:84
 - Interest as damages, § 19:86
 - Job site and general conditions overhead, § 19:83
 - Lost anticipated profits on contract, § 19:88
 - Lost labor efficiency, § 19:78
 - Lost profits, § 19:88-§ 19:90
 - Overtime, § 19:76
 - Profit on claim, § 19:87
 - Small tool costs, § 19:82
 - Wage rate escalation, § 19:77
- Small tool costs, § 19:82
- Total cost, § 19:93, 19:94
- Unsegregated damage measure, § 19:93
- Wage rate escalation, § 19:77
- Collateral source rule, § 19:23

DAMAGES—Cont'd

- Commercial General Liability (CGL) Coverage** (this index)
- Consequential Damages** (this index)
- Contract damages
 - Generally, § 19:14-§ 19:34
 - Betterment defense, § 19:26-§ 19:29
 - Casual apportionment, principle of, § 19:32
 - Contribution, no right to, § 19:34
 - Disproportionality, principle of, § 19:31
 - Duty of damage avoidance and mitigation. Mitigation, below
 - Economic waste doctrine, § 19:30
 - Emotional distress, § 19:33
 - Foreseeability of consequential damages, § 19:16-§ 19:19
 - Limitation on, § 19:15-§ 19:34
 - Mitigation, below
 - Sevrin doctrine, § 19:25
 - Uncertainty, reasonable, § 19:15
- Contribution** (this index)
- Cost to repair rule, § 19:58-§ 19:62
- Defective or nonconforming workmanship
 - Generally, § 19:57-§ 19:62
 - Cost to repair rule, § 19:58-§ 19:62
 - Diminution of value rule, § 19:59-§ 19:61, 19:61.50
 - Stigma damages remaining after repair as element of diminution of value, § 19:61.50
 - Substantial completion, calculation of defective construction damages, § 8:37
- Delayed completion, contractor's
 - Generally, § 19:63-§ 19:68
 - Project use, delay damages for loss of
 - Generally, § 19:65-§ 19:68
 - Extended construction financing costs, § 19:66

DAMAGES—Cont'd

- Delayed completion, contractor's
 - Cont'd
 - Project use, delay damages for loss of—Cont'd
 - Extended project administration, § 19:68
 - Substitute facilities costs, § 19:67
 - Resale profits, delay damages for, § 19:64
- Diminution of value rule, § 19:59-§ 19:61, 19:61.50
- Disproportionality, principle of, § 19:31
- Duty of damage avoidance and mitigation. Mitigation, below
- Economic Loss** (this index)
- Economic waste doctrine, § 19:30
- Emotional distress, § 19:33
- Equitable adjustment damage measure, § 19:49-§ 19:52
- Expectation risks, § 7:263-§ 7:265
- Fraud or misrepresentation in computation of damage claims, § 19:99
- Implied warranties, § 9:5
- Interest as damages
 - Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures, § 19:86
 - Prejudgment interest, § 19:97
- Liquidated Damages** (this index)
- Misrepresentation in computation of damage claims, § 19:99
- Mitigation
 - Generally, § 19:20-§ 19:24
 - Bid repudiation, § 7:135
 - Collateral source rule, § 19:23
 - Reasonableness of mitigation effort, § 19:21
 - Replacement work, acquisition of, § 19:24
 - Subjectiveness of mitigation effort, § 19:22

DAMAGES—Cont'd

- Mitigation—Cont'd
 - Third parties, mitigation through recoveries from, § 19:23
- Modern construction of damage measures, § 19:54
- No Damages for Delay Clause** (this index)
- Nonconforming goods; damages available upon acceptance, rejection or revocation, § 13:75
- Nonconforming workmanship. Defective or nonconforming workmanship, above
- Performance bonds, § 12:35, 12:92
- Prejudgment interest, § 19:97
- Project risks, expectation, § 7:100 et seq.
- Project use, delay damages for loss of. Delayed completion, contractor's, above
- Punitive damages
 - Generally, § 19:4
 - Arbitration award, vacating, § 21:252
 - Payment bonds, § 8:202
- Quantum Meruit** (this index)
- Remediation costs, § 5:207
- Repudiation of damages limitation clause, § 5:238
- Resale profits, delay damages for, § 19:64
- Restitution** (this index)
- Sanctity of contract doctrine
 - Consequential damages, foreseeability of, § 19:16
 - Economic waste, § 19:30
- Segregated damage approach.
 - Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures, above
- Stigma damages remaining after repair as element of diminution of value, § 19:61.50
- Subrogation, damage award reduction due to insurance recoveries, § 11:205

INDEX

DAMAGES—Cont'd

- Termination for cause, wrongful,
§ 18:44
- Tort damages
 - Generally, § 19:3-§ 19:13
 - Avoidable consequences, rule of,
§ 19:7
 - Benefit concept, § 19:8
 - Contract constraint, § 19:9
 - Economic loss rule, § 19:10-
§ 19:13
 - Limitations, § 19:6-§ 19:13
 - Proximate cause principle, § 19:5
 - Punitive damages, § 19:4
- UNIDROIT Principles, § 20:7
- Uniform Commercial Code (UCC)**
(this index)
- Unjust enrichment. **Quantum Mer-
uit** (this index)
- Warranties** (this index)
- Workmanship, nonconforming.
Defective or nonconforming
workmanship, above

DAVIS-BACON ACT

- Challenges to, § 2:59

DBIA (DESIGN-BUILD INSTITUTE OF AMERICA)

- Standard form agreements, § 5:7

DEBRIS REMOVAL

- Insurance, § 11:253.10

DEBTORS

- Bankruptcy** (this index)

DECLARATIONS

- Insurance policies, § 11:10

DEDUCTIBLES

- Insurance** (this index)

DEFAMATION

- Absolute privilege, § 7:236
- Bidder nonresponsibility determina-
tion, defamation action based
on, § 2:96
- Communication risks, § 7:236

DEFAMATION—Cont'd

- Contract formation by competitive
negotiation, § 2:168
- Defenses, § 7:236
- Design professionals, § 17:28
- First Amendment concerns, § 7:236
- Malice, § 7:236
- Qualified privilege, § 7:236
- Risk management, § 7:236

DEFAULT

- Competitive sealed bidding, exemp-
tion from, § 2:33
- Design-build project delivery
method; effect of default on
right to use design documents,
§ 6:76
- Federal Acquisition Regulations
notice requirements, § 7:231
- Insurance, subcontractor default
insurance, § 11:317
- Material breach and termination of
contract. **Termination of
Contract** (this index)
- Performance Bonds** (this index)
- Subcontractor default insurance,
§ 11:317
- Termination of Contract** (this
index)
- Work stoppage due to owner's
default, § 5:258

DEFECT-FREE WORK

- Contractor express warranty, § 9:65-
§ 9:61
- Termination for cause for defective
work, § 18:25

DEFECTIVE PRODUCTS OR WORK

- Insurance** (this index)

DEFECTIVE TRADE PRACTICES ACT

- Consumer protection under, § 9:10

DEFECTIVE WORK EXCLUSIONS

- Commercial General Liability
(CGL) Coverage** (this index)

DEFENSE DEPARTMENT

Green contracting initiatives; project risks, § 7:99

DEFENSE OBLIGATION

Insurance (this index)

DEFENSES

Acceptance of work and defense to third-party liability, § 13:56

Betterment defense

Contract damages, limitation on, § 19:26-§ 19:29

Design professionals, § 17:99

Bid repudiation defense, § 7:130-§ 7:135

Changes and extras clauses; sovereign immunity defense, § 4:20

Commercial General Liability (CGL) Coverage (this index)

Conditional payment provision as defense for payment bond surety, § 8:57

Curtain walls

Economic waste, § 7:210

Implied warranty of design, § 7:209

Defamation, § 7:236

Design liability, government contractor defense and, § 6:56

Duress or coercion, § 21:148

Duty to defend. **Commercial General Liability (CGL) Coverage** (this index)

Earmarking defense; debtor's preference action, § 5:180

Economic Loss (this index)

Economic Waste Doctrine (this index)

Exterior Insulation Finish Systems (EIFS), § 7:215

Federal arbitration act preemption of state law

Mutuality of obligation, defense of lack of, § 21:147

DEFENSES—Cont'd

Federal arbitration act preemption of state law—Cont'd

Unconscionability defense, § 21:137

Force Majeure (this index)

Immunity (this index)

Implied warranties and fault-based defenses, § 9:5

Impossibility Doctrine (this index)

Impracticability Doctrine (this index)

Indemnity clause and duty to defend provision, § 10:40, 10:41, 10:64, 10:65

Lender defenses to equitable claims, § 8:147

Limitation of liability clause, statutory defenses to, § 19:52.71

Non-compliance with state law licensing, § 21:151

Overpayment defense, surety's, § 8:67

Payment bonds, § 8:206

Performance Bonds (this index)

Preference payments, affirmative defenses to. **Bankruptcy** (this index)

Sole discretion or unilateral power to elect arbitration, § 21:150

Sovereign Immunity (this index)

Statute of Limitations (this index)

Subrogation, volunteer defense, § 11:189.10

Substantial Completion (this index)

Superior knowledge doctrine as defense to patent ambiguity rule, § 6:53

Unilateral power to amend or terminate arbitration agreement, § 21:149

Volunteer defense, subrogation, § 11:189.10

Workmanship, contractor express warranties of materials and; misuse/abuse defense, § 9:62

INDEX

DEFINITIONAL PROVISIONS

AIA General Conditions of the Contract for Construction for Construction form A201 provisions, § 5:10

DELAWARE

False Claims Act (FCA), criminal, § 8:91

DELAY CLAIMS

American Institute of Architects Standard Forms, claims administration provisions in A201, § 5:161

DELAYS

Generally, § 15:29-§ 15:82

Abnormal weather, § 15:43

Acceleration distinguished, § 15:90

Acts of God, § 15:46

Alternative performances, remedies versus, § 15:82.52

American Institute of Architects Standard Forms (this index)

Apportioned delay, § 15:70

Bid repudiation defense, § 7:133

Change orders, § 15:64

Commencement of work, delay in, § 15:34

Compensable delay where delay within contractor's control

Generally, § 15:50-§ 15:66

Adequate design documents and timely correct deficiencies in document, compensable delay due to, § 15:60

Change orders, § 15:64

Delivery of owner-furnished materials, equipment or work, untimely, § 15:54

Differing site conditions, § 15:65

Direction, failure to provide, § 15:57

Excusable delay conversion into compensable delay, § 15:74

Inaccurate information, § 15:61

DELAYS—Cont'd

Compensable delay where delay within contractor's control—Cont'd

Inspection or rejection, unreasonable, § 15:59

Interference contractor's work force or work plan, § 15:63

Material information, untimely, § 15:62

Multiple contractors, failure to coordinate, § 15:55

No damages for delay clause, § 15:75-§ 15:80

Notice to proceed, untimely issue of, § 15:52

Otherwise noncompensable delay caused by earlier compensable delay, § 15:66

Participating owners, failure to coordinate, § 15:56

Payment and other material provisions, failure to property administer, § 15:53

Restricted access to site, § 15:51

Show drawings and submittals, untimely response to, § 15:58

Suspension (this index)

Untimely access to site, § 15:51

Withheld information, § 15:62

Completion of Project Risks (this index)

Concurrent delay

Generally, § 15:67-§ 15:69

Completion of project risks, § 7:286

Construction project management scheduling, importance of, § 15:68

Pacing, consequence of, § 15:69

Control principle, generally, § 15:29-§ 15:66

Damage measures. **Damages** (this index)

Defective or nonconforming work, § 15:38

DELAYS—Cont'd

- Delayed completion insurance, § 11:313
- Delivery of owner-furnished materials, equipment or work, untimely, § 15:54
- Design, defective or untimely, § 15:40
- Disruption distinguished, § 15:103
- Equipment, untimely availability of conforming, § 15:39
- Excusable causes of delays, § 12:55
- Excusable delay where delay outside control of both contracting parties
 - Generally, § 15:42-§ 15:49
 - Abnormal weather, § 15:43
 - Acts of God, § 15:46
 - Compensable delay, excusable delay conversion to, § 15:74
 - Inexcusable delay conversion to excusable delay, § 15:73
 - Materials, unavailability of, § 15:48
 - Pay for excusable delay clause, § 15:74
 - Public enemy, acts of, § 15:47
 - Sovereign acts of government, § 15:45
 - Strikes and labor problems, § 15:44
 - Unenumerated causes, delays due to, § 15:49
- Financial difficulty, § 15:35
- Force Majeure** (this index)
- Inaccurate information, § 15:61
- Inexcusable delay where delay within contractor's control
 - Generally, § 15:30-§ 15:41
 - Commencement of work, delay in, § 15:34
 - Construction problems, foreseeable, § 15:31
 - Conversion to excusable delay, § 15:73

DELAYS—Cont'd

- Inexcusable delay where delay within contractor's control—Cont'd
 - Defective or nonconforming work, § 15:38
 - Design, defective or untimely, § 15:40
 - Design problems, foreseeable, § 15:31
 - Financial difficulty, § 15:35
 - Liquidated damages, § 15:82
 - Materials or equipment, untimely availability of conforming, § 15:39
 - Nonconforming work, defective or, § 15:38
 - Site problems, foreseeable, § 15:31
 - Strikes and other labor problems, § 15:37
 - Subcontractors, § 15:33
 - Suppliers, § 15:33
 - Weather, foreseeable normal, § 15:36
- Inspection or rejection, unreasonable, § 15:59
- Insurance, delayed completion insurance, § 11:313
- Limitation on delay damages clause, § 15:81
- Liquidated damages, § 15:82, 15:82.51, 15:82.52
- Material information, untimely, § 15:62
- Materials or equipment, untimely availability of conforming, § 15:39
- Modification of common law allocation of delay risks, contractual, § 15:72-§ 15:82
- Multiple contractors, failure to coordinate, § 15:55
- No Damage for Delay Clause** (this index)
- Nonconforming work, § 15:38
- Notices
 - Proceed, untimely issue of notice of, § 15:52

INDEX

DELAYS—Cont'd

Notices—Cont'd

Timely notice of delay, § 15:71

Notice to proceed, untimely issue of, § 15:52

Participating owners, failure to coordinate, § 15:56

Pay for excusable delay clause, § 15:74

Payment and other material provisions, failure to properly administer, § 15:53

Payment bonds, § 8:201

Proceed, untimely issue of notice of, § 15:52

Public enemy, acts of, § 15:47

Sanctity of contract doctrine, § 15:71, 15:72

Show drawings and submittals, untimely response to, § 15:58

Sovereign acts of government, caused by, § 15:45

Strikes and labor problems, § 15:37, 15:44

Suspension of Work (this index)

Time extension, § 15:73

Timely notice of, § 15:71

Undercompensatory liquidated damages, § 15:82.51

Weather

Excusable delay where delay outside control of both contracting parties; abnormal weather, § 15:43

Inexcusable delay where delay within contractor's control, § 15:36

DELEGATION OF DUTIES

Design Professionals (this index)

Risk allocation distinguished, § 7:9

DELIVERY

Compensable delay where delay within contractor's control, § 15:54

UCC express warranties; promise of delivery of materials or equip-

DELIVERY—Cont'd

ment at specified time, § 9:27

DELIVERY OF PROJECT

Project Delivery Methods (this index)

DEMOLITION

Insurable interest in property slated for, § 11:220.30

DENIAL OF COVERAGE

CGL coverage, insurer's duty to promptly give notice of, § 11:58

DESIGN

Insurance (this index)

DESIGN ADEQUACY, IMPLIED WARRANTY OF

Warranties (this index)

DESIGN-ASSIST PROCESS

Project delivery methods, § 6:18 to § 6:21

DESIGN-BID-BUILD

Generally, § 6:2-§ 6:4, 6:42-§ 6:56

Advantages of approach, § 6:4, 6:42

Build phase, § 6:3

Design-build and, § 2:11

Design errors, design responsibility undertaken by failure to discover, § 6:54

Design responsibility

Generally, § 6:42-§ 6:56

Consequences of accepting, § 6:55

Coordination of responsibilities, § 6:50

Design errors, design responsibility undertaken by failure to discover, § 6:54

Express delegation via contract, § 6:44

Government contractor defense and design liability, § 6:56

Government furnished design, design delegation through disclaiming adequacy of, § 6:50

DESIGN-BID-BUILD—Cont'd

- Design responsibility—Cont'd
 - Liability, government contractor defense and, § 6:56
 - Limits on delegation, § 6:46
 - Patent ambiguity doctrine as vehicle for flowing design responsibility to contractor, § 6:52, 6:53
 - Performance specifications, delegation through, § 6:49
 - Shop drawings, delegation via, § 6:47, 6:48
 - Standard form agreements addressing design delegation, § 6:45
 - Superior knowledge doctrine as defense to patent ambiguity rule, § 6:53
- Disadvantages of approach, § 6:4
- Express delegation of design responsibility via contract, § 6:44
- Government furnished design, design delegation through disclaiming adequacy of, § 6:51
- Licensing design professionals, § 16:9
- Patent ambiguity doctrine as vehicle for flowing design responsibility to contractor, § 6:52, 6:53
- Performance specifications, design responsibility delegation through, § 6:49
- Procedures, § 6:2
- Responsibility, contractor's design. Design responsibility, above
- Shop drawings, design responsibility delegation via, § 6:47, 6:48
- Superior knowledge doctrine as defense to patent ambiguity rule, § 6:53
- Traditional approach, as, § 6:2

DESIGN-BID-MULTI-PRIME APPROACH

- Project delivery methods, § 6:14

DESIGN BUILD

- Spearin implied warranty of design adequacy, 6:80.50

DESIGN-BUILD INSTITUTE OF AMERICA (DBIA)

- Standard form agreements, § 5:7

DESIGN-BUILD PROJECT DELIVERY METHOD

- Generally, § 2:11, 2:12, 6:57-§ 6:79
- Advantages of approach, § 6:42
- Approval of design-builder's design submissions, owner's right of review and, § 6:68
- Arbitration of design-build contracts, § 21:173
- Best value procurement, § 6:64
- Bridging process, § 6:60
- Characteristics of, § 6:57-§ 6:79
- Communication failures with design-build team, § 6:70
- Contract formation by competitive two-step procedures, § 2:171
- Contractor formation risks, § 6:78, 6:79
- Control and ownership of design documents
 - Generally, § 6:71-§ 6:74
 - Copyrights, § 6:72
 - Default or termination on right to use design documents, effect of, § 6:76
 - Indemnification against loss resulting from use of design documents, § 6:77
 - Lanham Act, § 6:72
 - License granted to use design documents, scope of, § 6:75
 - Nature and extent of owner's rights, § 6:73
 - Team members, allocation among, § 6:74
- Termination on right to use design documents, effect of, § 6:76
- Trademarks, § 6:72

INDEX

DESIGN-BUILD PROJECT

DELIVERY METHOD—Cont'd

- Copyright to design documents, § 6:72
- Default or termination on right to use design documents, effect of, § 6:76
- Design-Bid-Build** (this index)
- Economic loss rule
 - Design-build firm is special purpose entity with few assets, § 6:62
- Federal procurement
 - Best value procurement, § 6:64
 - Past performance, evaluating, § 6:65
 - Procedures, § 6:64
- Inaccurate preliminary design information, liability for, § 6:61
- Indemnification against loss resulting from use of design documents, § 6:77
- Insurance, professional liability coverage, § 11:295
- Lanham Act and ownership of design documents, § 6:72
- Liability insurance, professional liability coverage, § 11:295
- Licenses
 - Control and ownership of design documents, § 6:75
 - State and local government procurement; licensing law restrictions, § 6:67
- Local government procurement, § 6:66, 6:67
- Ownership of design documents, control and. Control and ownership of design documents, above
- Past performance, evaluating, § 6:65
- Performance Bonds** (this index)
- Preliminary design data, restrictions through use of owner-furnished, § 6:63
- Procurement, federal. Federal procurement, above

DESIGN-BUILD PROJECT

DELIVERY METHOD—Cont'd

- Professional liability coverage, § 11:295
 - Project delivery methods, § 6:15
 - Proprietary rights to design documents, control and. Control and ownership of design documents, above
 - Restrictions through use of owner-furnished preliminary design data, § 6:63
 - Review and approval of design-builder's design submissions, owner's right of, § 6:68
 - Scope of work disputes and contractor formation risks, § 6:79
 - Sharing design responsibility between owner and design-builder, § 6:60
 - Source selection procedures, § 2:14
 - Spearin warranties, § 9:105, 9:106
 - Special purpose entity with few assets, design-build firm is; economic loss rule problem, § 6:62
 - Standard form agreement approaches, § 6:69
 - State and local government procurement, § 6:66, 6:67
 - Termination on right to use design documents, effect of, § 6:76
 - Traditional approach. **Design-Bid-Build** (this index)
 - 2004 AIA design-build document series, § 6:58
- ### DESIGN CONTRACTS
- Design-Bid-Build** (this index)
 - Design-Build Project Delivery Method** (this index)
 - Design-GMP-Build Project Delivery Method** (this index)
 - Design-negotiate-build, § 6:5
 - Insurance** (this index)
 - Price Arrangements** (this index)
- ### DESIGN-GMP-BUILD PROJECT DELIVERY METHOD
- Generally, § 6:6

**DESIGN-GMP-BUILD PROJECT
DELIVERY METHOD—Cont'd**

Advantages of approach, § 6:42
Defined, § 6:6
Hybrid approaches, § 6:17
Warranties and guarantees, § 6:80

DESIGN-NEGOTIATE-BUILD

Project delivery methods, § 6:5

DESIGN PROFESSIONALS

Generally, § 1:1, 17:1-§ 17:100
Abnormally dangerous activities,
§ 17:35
Accepted work doctrine, § 17:59
Aesthetics, liability for, § 17:80
Agent administrator, as, § 17:4, 17:6-
§ 17:8
American Institute of Architects'
arbitration clause
Aesthetic effect exception,
§ 21:130
Specific types of damages,
eliminating, § 21:132
Americans with Disabilities Act,
liability under, § 7:234, 17:37
Another professional's report, failing
to advise owner about flaws in,
§ 17:39.50
Arbiter, role as
Generally, § 17:4, 17:9, 17:79-
§ 18:84
Aesthetics, liability for, § 17:80
Immunity, § 17:82-§ 18:84
Arbitration, claim submission to
design professional as condition
precedent to, § 21:56
Boston Harbor project, § 6:40
Certificate of merit statutes,
§ 17:14.50
Certification, liability for negligent
Generally, § 17:62-§ 17:69
Front-end loading, § 17:64
Noncertification of contractor
claims, § 17:69
Owner, effect of designer certifica-
tion upon owner, § 17:68

DESIGN PROFESSIONALS

—Cont'd

Certification, liability for negligent
—Cont'd
Payment certification, withholding,
§ 17:65
Schedule of values, § 17:63
Substantial completion certifica-
tion, § 17:66
Third parties, certification for ben-
efit of, § 17:67
Collateral estoppel defense, § 21:274
Comparative fault, § 17:20
Consequential damages, waivers of,
§ 17:98.10
Construction budget services,
liability for negligent, § 17:43-
§ 17:47
Construction observation, negligent,
§ 17:52
Consultants, design team, § 17:71,
17:72
Contractual liability theory, § 17:17,
17:18
Contribution
Generally, § 17:21-§ 17:23
Delegation of duties, § 17:73
Joint and several liability, § 17:23
Malpractice liability and; New
York law, § 17:21.10
Settlements, effect of, § 17:22
Copyright protection of design
works, § 17:85-§ 17:87
Cost estimation liability, § 17:43-
§ 17:47
Curtain wall marketing information,
reliance on; technology risks,
§ 7:208
Damages theories limiting recovery.
Economic loss rule, below
Defamation liability, § 17:28
Defective plans and specifications,
liability for, § 17:40-§ 17:43
Delegation of duties
Generally, § 17:70-§ 17:78

INDEX

DESIGN PROFESSIONALS

—Cont'd

- Delegation of duties—Cont'd
 - AIA style, design delegation, § 17:77
 - Consultants, design team, § 17:71, 17:72
 - Contract team, delegation of responsibility to, § 17:74-§ 17:77
 - Contribution, § 17:73
 - Incorporation of outside design elements into plans and specifications, § 17:75
 - Indemnity and contribution, § 17:73
 - Nondelegable duties, § 17:71
 - Performance specifications, § 17:76
 - Plan stamping, liability for, § 17:78
 - Rights and responsibilities, § 17:73.10
 - Seal upon documents, liability following placement of designer's seal upon, § 17:75
- Duty of care. Standard of care, below
- Economic loss rule
 - Generally, § 17:88 et seq.
 - Betterment defense, § 17:99, 17:100
 - California, § 17:97
 - Consequential damages, waivers of, § 17:98.10
 - Exculpatory clauses
 - Fraud, in contracts procured through, § 17:98.35
 - Gross negligence, not enforcing in cases of, § 17:98.23
 - New York law, enforcement under, § 17:98.40
 - Statutory restrictions on enforcement of, § 17:98.50
 - Florida, § 17:91
 - Foreseeability, duty and, § 17:96

DESIGN PROFESSIONALS

—Cont'd

- Economic loss rule—Cont'd
 - Fraud, exculpatory clauses in contracts procured through, § 17:98.35
 - Gross negligence
 - Duty and damages; New York, § 17:98.22
 - Exculpatory clauses, not enforcing, § 17:98.23
 - Limitation of liability clauses; New York, § 17:98.20
 - Ordinary negligence, distinguishing; New York, § 17:98.21
 - Historical background, § 17:89
 - Immunizing design professionals from liability, contractual provisions, § 17:98.05
 - Liability under, § 19:13
 - Limitation of liability clauses, willful misconduct and, § 17:98.30
 - Limitation of liability provision, § 17:98
 - Mixed transactions, § 17:95
 - New York, § 17:97.50
 - No-damages-for-delay provisions, § 17:98.04
 - Origins of rule, § 17:89
 - Property damage, § 17:94
 - Services, application of rule to, § 17:90
 - Standard of care, § 17:12
 - Sudden and calamitous event exception, § 17:93
 - Tort duty arising from nature of parties' relationship, § 17:92
 - Willful misconduct and limitation of liability clauses, § 17:98.30
- Environmental injury, liability for, § 17:32, 17:33
- Exculpatory clauses. Economic loss rule, above
- Fraud liability, § 17:26
- Front-end loading, § 17:64

DESIGN PROFESSIONALS

—Cont'd

- Geotechnical exploration and reporting, owner and design professional liability for negligent, § 14:22
- Gross negligence and economic loss rule. Economic loss rule, above
- Imputing designer's actions to owner, § 17:7
- Indemnification by contractors
 - Actions for indemnity against design professionals, § 10:47
 - Consequences of, § 10:57
- Indemnity liability, § 17:31, 17:73
- Independent contractor, as, § 17:4, 17:5
- Inspection, negligent, § 17:52
- Inspection liability for death or bodily injury, § 13:28
- Insurance** (this index)
- Interpreter and arbiter, as. Arbiter, role as, above
- Interpreter of plans, role as, § 17:4, 17:9, 17:79, 17:80
- Liability, theories of
 - Generally, § 17:16-§ 17:38, 17:16-§ 17:69
 - Abnormally dangerous activities, § 17:35
 - Americans with Disabilities Act, § 17:37
 - Certification, liability for negligent, above
 - Comparative fault, § 17:20
 - Construction budget services, § 17:43-§ 17:47
 - Construction observation, negligent, § 17:52
 - Contractual liability, § 17:17, 17:18
 - Cost estimation liability, § 17:43-§ 17:47
 - Defamation, § 17:28
 - Defective plans and specifications, liability for, § 17:40-§ 17:43
 - Delegation of duties, above

DESIGN PROFESSIONALS

—Cont'd

- Liability, theories of—Cont'd
 - Economic loss rule, above
 - Environmental injury, liability for, § 17:32, 17:33
 - Fraud, § 17:26
 - Indemnity liability, § 17:31
 - Inspection, negligent, § 17:52
 - Material selection and substitutions, liability for, § 17:48-§ 17:50
 - Misrepresentation, § 17:27, 17:42, 17:46
 - Negligence liability, § 17:19, 17:20
 - Nuisance, liability for, § 17:34
 - Personal liability, § 17:38
 - Plans and specifications, liability for defective, § 17:40-§ 17:43
 - Poorly coordinated specifications, § 17:51
 - Privity defense, § 17:41
 - Restrictive specifications, § 17:49
 - Safe work site, responsibility for, below
 - Shop drawing review, negligent or untimely, § 17:61
 - Site visitations, negligent, § 17:52
 - Strict liability, § 17:25
 - Third-party beneficiaries, § 17:30
 - Tortious interference with contractual relations, § 17:29
 - Trespass, § 17:36
 - Warranty liability, § 17:24
- Liability issues, generally, § 17:3
- Licenses and Permits** (this index)
- Malpractice
 - Contribution and malpractice liability, New York law, § 17:21.10
 - Implied warranty of design adequacy distinguished, § 9:89
 - Negligence liability, § 17:19
- Master builder, § 17:1

INDEX

DESIGN PROFESSIONALS

—Cont'd

- Material breach of contract determination. **Termination of Contract** (this index)
- Material selection and substitutions, liability for, § 17:48-§ 17:50
- Mechanics' liens, right to assert, § 8:155
- Misrepresentation liability, § 17:27, 17:42, 17:46
- Negligence liability, § 17:19, 17:20
- Negligent liability. Liability, theories of, above
- Nuisance, liability for, § 17:34
- OHSA liability, § 17:60
- Ownership and use of design works, § 17:75-§ 17:86
- Payment certification
 - Generally, § 8:23
 - Binding effect, § 8:23
 - Expectation risks and disagreements over architect's, § 7:261
 - Withholding, § 17:65
- Personal liability, § 17:38
- Plan stamping, liability for, § 17:78
- Poorly coordinated specifications, liability for, § 17:51
- Primary design and construction team, assembling; risk management, § 7:117
- Privity defense, § 17:41, 17:88
- Professional Liability Insurance** (this index)
- Project delivery systems, § 17:2
- Proprietary rights to design works, § 17:75-§ 17:86
- Restrictive specifications, prohibitions against, § 17:49
- Role and responsibilities, generally, § 1:1
- Roles and responsibilities, generally, § 17:1-§ 17:99
- Safe work site, responsibility for
 - Generally, § 17:53-§ 17:60

DESIGN PROFESSIONALS

—Cont'd

- Safe work site, responsibility for
 - Cont'd
 - Accepted work doctrine, § 17:59
 - Illinois law, § 17:57
 - Knowledge of unsafe conditions, § 17:58
 - OHSA liability, § 17:60
 - Right to stop work, § 17:54
 - Stop work, right to, § 17:54
 - Temporary construction, § 17:55
 - Volunteering to undertake responsibility for safety, § 17:56
- Schedule of values, § 17:63
- Seal upon documents, liability following placement of designer's seal upon, § 17:75
- Shop drawing review, negligent or untimely, § 17:61
- Site visitations, negligent, § 17:52
- Standard form design agreements, § 17:18
- Standard of care
 - Generally, § 17:10-§ 17:15
 - Altering designer's standard of care via the scope, § 17:13.40
 - Building code, violating, § 17:15
 - Certificate of merit statutes, § 17:14.50
 - Conclusory and speculative opinions, § 17:14.35
 - Contract approaches to determining, § 17:11, 17:12
 - Economic loss, § 17:12
 - Effect of contract on duty owed to non-privity parties, § 17:13.50
 - Establishing, § 17:14
 - Establishing breach of duty without expert testimony, § 17:14.15
 - Evaluating expert opinions, § 17:14.25

DESIGN PROFESSIONALS

—Cont'd

- Standard of care—Cont'd
 - Expert opinion about licensed professional, § 17:14.20
 - Expert testimony, need for, § 17:14
 - Federal government's design-within-funding-limitations clause, § 17:13.10
 - Fiduciary relationship, § 17:13
 - Foreseeability and control as twin influences, § 17:11.70
 - Government standards, violating, § 17:15
 - Higher standard, contracting to, § 17:13
 - Incorporating standard of care language into contract, § 17:13.30
 - Laws directly addressing standard of care, § 17:13.70
 - Professional versus ordinary negligence, § 17:14.10
 - Satisfaction standard, § 17:13
 - Tort approaches to, § 17:12
 - Trial court as gatekeeper of expert testimony, § 17:14.30
 - Warranting end result or level of effort, § 17:13.20
 - To whom is duty owed, § 17:11.30
- Stop work, right to, § 17:54
- Strict liability, § 17:25
- Substantial completion certification, liability for negligent, § 17:66
- Temporary construction, § 17:55
- Third parties
 - Beneficiaries, liability for third-party, § 17:30
 - Certification for benefit of, liability for, § 17:67
- Tort liability. Liability, theories of, above
- Trespass, liability for, § 17:36
- Volunteering to undertake responsibility for safety, § 17:56

DESIGN PROFESSIONALS

—Cont'd

- Warranties
 - Certifications compared, § 9:9
 - Liability, theories of, § 17:24
 - Malpractice and implied warranty of design adequacy distinguished, § 9:89
- DIFFERING SITE CONDITIONS**
 - Actual conditions must differ materially, § 14:50
 - Additional compensation, implications of voluntary promise of, § 14:44
 - Affirmative misrepresentation
 - Generally, § 14:29-§ 14:40
 - Disclaimers, § 14:34-§ 14:40
 - Inducement to bid or enter into contract, § 14:32
 - Justifiable reliance on misrepresentation, § 14:33-§ 14:40
 - Materiality of misrepresentation, § 14:31
 - Misrepresentation defined, § 14:29
 - Policy considerations, § 14:34-§ 14:40
 - Positive misrepresentation, § 14:30
 - Sanctity of contract doctrine, § 14:29, 14:33, 14:34, 14:40
 - Changed conditions clause, § 14:45
 - Clauses, § 14:45-§ 14:59
 - Common law allocation risks, § 14:23-§ 14:44
 - Defective design, owner risk of, § 14:28
 - Delays, § 15:65
 - Differing site conditions, generally, § 14:1-§ 14:59
 - Erroneous indications in contract documents; Type I conditions, § 14:51, 14:52
 - Expectation risks, § 7:257
 - Extra work outside of scope of work, § 14:25, 14:26

INDEX

DIFFERING SITE CONDITIONS

—Cont'd

- Federal Acquisition Regulations, notice requirements under, § 7:231
- Inspection of site clauses, § 14:45
- Insurance, differently situated insureds and standard forms, § 11:7
- Justifiable reliance on contract terms and conditions, § 14:54
- Latent existing physical conditions, § 14:49
- Mistake, owner's risk of, § 14:42
- Mutual mistake regarding site conditions, § 14:43
- Nondisclosure, owner's risk of, § 14:41
- Notice of, § 14:57, 14:58
- Performance bonds, § 12:56, 12:93
- Promise, owner's risk of, § 14:43
- Sanctity of Contract Doctrine** (this index)
- Site investigation duties and disclaimers, § 14:54-§ 14:56
- Soil and Site Conditions** (this index)
- Soil Exploration for Design and Construction** (this index)
- Subsurface or latent existing physical conditions, § 14:49
- Type I conditions, § 7:257, 14:48-§ 14:52
- Type II conditions, § 7:257, 14:48-§ 14:50, 14:53
- Unit price contracts
 - Clauses, § 14:59
 - Extra work clause, § 14:27
- Unknown and of unusual nature; Type II conditions, § 14:53
- Wrongful withholding of information, § 14:41

DIRECT PHYSICAL LOSS

- Limitation on increased completion costs due to covered loss, § 11:223

DISABLED PERSONS

- Americans with Disabilities Act (ADA)** (this Index)

DISADVANTAGED BUSINESS ENTERPRISES (DBE)

- Bidder preferences, § 2:55, 2:55.50-§ 2:55.57, 2:102
- Commercially useful function responsibility, prime contractor/dbe, § 2:55.52, 2:55.53
- Constitutional challenges, § 7:137
- Credit toward DBE goals, determining, § 2:55.51
- DOT requirements, constitutionality of, § 2:55.50
- FCA liability for non-compliance with programs, § 8:79
- Good faith efforts required by prime contractors, § 2:55.54
- Penalties for noncompliance with requirements, § 2:55.57
- Terminating for convenience, § 2:55.56
- Waivers and modifications, requesting DBE contract, § 2:55.55

DISCLAIMERS

- Agreed Remedies and Damage Measures** (this index)
- Curtain walls, § 7:211
- Differing site conditions
 - Affirmative misrepresentation, § 14:34-§ 14:40
 - Site investigation duties and disclaimers, § 14:54-§ 14:56
- Performance bonds for design-builders, § 12:92
- Warranties** (this index)

DISCLOSURE

- Arbitration award, vacating
 - Generally, § 21:240-§ 21:244
 - Bias, failure to disclose information suggesting potential, § 21:240
- Inadequate or untimely arbitrator disclosure, § 21:244

DISCLOSURE—Cont'd
Arbitration award, vacating—Cont'd
Lawyer-arbitrator, § 21:241
Material facts, duty to investigate,
§ 21:243
Partiality, evident, § 21:245,
21:246
Prior relationships, non-disclosure
of, § 21:242
Differing site conditions, affirmative
misrepresentation, § 14:41
Mediation, § 21:316
Performance bonds surety's contract
defenses, § 12:50
Surety's general agreement of
indemnity, § 10:137
Warranties and implied duty of full,
§ 9:107

DISCOVERY

Arbitration (this index)
Insurance records, § 11:329
Risk management, § 7:38-§ 7:59
Vacating arbitration award, post-
award discovery, § 21:265

DISPUTE RESOLUTION

Generally, § 1:6
AIA General Conditions of the
Contract for Construction for
Construction form A201 provi-
sions, § 5:17
**American Institute of Architects
Standard Forms** (this index)
Arbitration (this index)
Insurance, choice of law issues in
disputes over coverage, § 11:38
et seq.
Integrated project delivery (IPD),
§ 6:37
Mediation (this index)
Performance bonds, § 12:68
Political risks where local courts or
administrative bodies failing to
recognize choices made by par-
ties, § 7:332
Risk management where inefficient
procedures for, § 7:319

DISPUTES REVIEW BOARD

Time impact evaluation, § 15:130

DISRUPTION CLAIM

Generally, § 15:102-§ 15:119
Abnormal disruption, measurement
of
Generally, § 15:114-§ 15:117
Baseline for disruption measure-
ment, § 15:115
Measured mile method, § 15:116
Acceleration distinguished, § 15:90,
15:104
Availability limitations, resource
vulnerabilities to, § 15:111
Capacity, resource vulnerabilities to,
§ 15:111
Causes of productivity variation, gen-
erally, § 15:105-§ 15:113
Changes resulting in extra work, time
impacts and disruptions;
contractor's compensatory dam-
age measures. **Damages** (this
index)
Compensable disruption, § 15:117
Completion of project risks, § 7:297
Cumulative impact, § 15:118
Delay distinguished, § 15:103
Environmental conditions, resource
vulnerable to
Generally, § 15:106-§ 15:110
Ground conditions, § 15:109
Humidity, § 15:107
Precipitation, § 15:109
Temperature, § 15:107
Wind, § 15:108
Project mismanagement, resource
vulnerabilities to, § 15:112
Quality, resource vulnerabilities to,
§ 15:111
Suspension distinguished, § 15:103
Wear and tear, resource vulner-
abilities to, § 15:113

**DIVISIBLE CONTRACTS
DOCTRINE**
Design-build project delivery
contract, § 6:81

INDEX

DOCTRINE OF REASONABLE EXPECTATIONS

Insurance (this index)

DRAINAGE

Poor drainage; site risks, § 7:160

DRAWINGS

American Institute of Architects Standard Forms (this index)

Building Information Modeling (BIM), effect of, § 7:84

Design professionals, licensing; regulations governing sealing drawings and other instruments of service, § 16:6.20

DUE PROCESS

Licensing board, administrative sanctions by, § 16:26

DURESS

Defense to arbitrability, § 21:148
Performance bond surety's defense, § 12:66

E. COLI BACTERIA-RELATED LOSS

CGL coverage, § 11:136

EARLY FINISH

Implication of scheduled early completion, § 15:21

EARMARKING DEFENSE

Debtor's preference action, § 5:180
Preference payments under bankruptcy, § 8:111

EARTH MOVEMENT EXCLUSION

Insurance (this index)

EASEMENTS

AIA General Conditions of the Contract for Construction for Construction form A201 provisions, § 5:40
Failure to obtain; site risks, § 7:154

ECONOMIC LOSS

CGL coverage, § 11:84, 11:85, 11:92.50

Contribution, § 10:160

Defined, § 19:10

Design-build firm is special purpose entity with few assets, § 6:62

Design Professionals (this index)

Exterior Insulation Finish Systems (EIFS), § 7:215

Indemnity and indemnification, § 10:69

Injury to person or damage to "other property" requirement, § 19:12

Inspection liability of owner agents to third parties for failing to discover another's breaches, § 13:31

Privity issues, § 19:10

Status of doctrine, § 19:13

Tort damages, § 19:10-§ 19:13

Warranties (this index)

ECONOMIC WASTE DOCTRINE

Acceptance of work, § 13:64

Curtain walls, § 7:210

Damages, limitation on, § 19:30

Inspections, § 18:13

Materiality of breach of contract, § 18:13

Performance bond surety's defense, § 12:63

EFFICACY INSURANCE

Generally, § 11:315

EFFICIENCY, LOSS OF

Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures, § 19:78

EFFICIENT PROXIMATE CAUSE DOCTRINE

Concurrent cause doctrine compared, § 11:225.10

Insurance, § 11:225, 11:225.10, 11:226, 11:235

EICBLEAY FORMULA

Home office overhead, § 5:272,
19:15

EIFS

**Exterior Insulation Finish Systems
(EIFS)** (this index)

EJCDC

**Engineers Joint Contract Docu-
ments Committee (EJCDC)**
(this index)

**ELECTRONICALLY STORED
INFORMATION**

Risk management and electronic
discovery, § 7:47

ELECTRONIC DATA

CGL coverage, property damage and,
§ 11:90
Indemnification, § 7:89

ELECTRONIC DISCOVERY

Risk management and project risks,
§ 7:38-§ 7:41

**ELECTRONIC SIGNATURES IN
GLOBAL AND NATIONAL
COMMERCE (E-SIGN) ACT**

Technology risks, § 7:196

**EMERGENCY PLANNING AND
COMMUNITY
RIGHT-TO-KNOW ACT**

Purpose of, § 5:207

EMERGENCY WORK

Competitive sealed bidding, exemp-
tion from, § 2:31

EMOTIONAL DISTRESS

Contract damages, § 19:33

EMPLOYEE EXCLUSION

CGL coverage, § 11:148, 11:149,
11:149.10

**EMPLOYEE RETIREMENT
INCOME SECURITY ACT
(ERISA) OF 1974**

Mechanics' liens, preemption of,
§ 8:154

**EMPLOYEE RETIREMENT
INCOME SECURITY ACT
(ERISA) OF 1974—Cont'd**

Union fringe benefit funds precluded
by preemption provision,
§ 8:154, 8:195

EMPLOYMENT

AIA General Conditions of the
Contract for Construction form
A201 provisions

Act of its employees, contractor's
obligations for, § 5:53

Strict discipline and employment
of fit personnel, contractor's
enforcement of, § 5:57

Arbitration

Prohibition for employment
disputes on federal projects,
§ 21:8

Scrutiny of arbitration as forum for
disputes, § 21:6

Arbitration, scrutiny of arbitration as
forum for disputes, § 21:6

Bids, statutory preferences. **Bids** (this
index)

Employer's liability insurance, draft-
ing considerations, § 11:17.24

Insurance, claims between employ-
ees, auto coverage, § 11:297

Workers' Compensation (this
index)

ENAA

**Engineering Advancement Associa-
tion of Japan (ENAA)** (this
index), § 5:7

ENDANGERED SPECIES

Environmental risks, § 7:186

Takings of endangered species, prohi-
bition against, § 5:207

ENDORSEMENTS

Insurance (this index)

**ENGINEERING ADVANCEMENT
ASSOCIATION OF JAPAN
(ENAA)**

Patents, § 7:217

INDEX

**ENGINEERING ADVANCEMENT
ASSOCIATION OF JAPAN**

(ENAA)—Cont'd

Standard form agreements, § 5:7

**ENGINEER-PROCURE-
CONSTRUCT**

Project delivery method, § 6:7

Warranties and guarantees, § 6:80

**ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE
(EJCDC)**

Standard forms, § 5:5

ENSUING LOSS EXCEPTION

Insurance, faulty workmanship exclusion, § 11:234

ENTIRE AGREEMENT CLAUSE

Merger Clause (this index)

ENTITY FORMATION RISKS

Risk Management (this index)

ENTITY MANAGEMENT RISKS

Risk Management (this index)

ENVIRONMENTAL LIABILITY

Commercial General Liability
(CGL) Coverage (this index)

Design professionals, liability for
environmental injury, § 17:32,
17:33

Indemnity clause, § 10:50

Risk management. **Environmental
Risks** (this index)

**ENVIRONMENTAL
REGULATIONS**

Occupational Safety and Health
Act (OSHA) (this index)

Risk management. **Environmental
Risks** (this index)

ENVIRONMENTAL RISKS

Generally, § 7:178-§ 7:195

Asbestos, § 7:179, 7:192

Brownfields, § 7:185

CERCLA, § 7:178, 7:182

ENVIRONMENTAL RISKS

—Cont'd

Clean Air Act, § 7:178

Coastal zone areas, § 7:184

Contaminated soil, § 7:182

Defense Department's green
contracting initiatives, § 7:99

Disposal of construction waste,
§ 7:188

Endangered species, § 7:186

Environmentally-friendly develop-
ment, government's role in

Generally, § 7:95

Challenges of green contracting,
§ 7:95

Defense Department's green
contracting initiatives, § 7:99

High performance and sustainable
buildings, guiding principles
for federal leadership in,
§ 7:97

Office of Federal Procurement
Policy (OFPP) "green"
contracting guidelines, § 7:96,
7:98

Policy letter on green procurement,
proposed, § 7:98

Formaldehyde, § 7:192

High performance and sustainable
buildings, guiding principles for
federal leadership in, § 7:97

Importation by construction team of
hazardous materials, § 7:190

Indoor polluting, growing risks from
Generally, § 7:178, 7:191-§ 7:193

Asbestos, § 7:192

Expert testimony admissibility on
sick buildings, § 7:193

Formaldehyde, § 7:192

Moisture levels, § 7:192

Mold and mildew, § 7:192

Radon, § 7:192

Sick-building syndrome, § 7:193

Tobacco smoke, environmental,
§ 7:192

ENVIRONMENTAL RISKS

—Cont'd

Indoor polluting, growing risks from

—Cont'd

Types of indoor pollution and their health effects, § 7:192

Volatile organic compound (VOC), § 7:192

Lead paint, § 7:181

Mold and mildew, § 7:192

Native American remains, § 7:195

Office of Federal Procurement Policy (OFPP) “green” contracting guidelines, § 7:96, 7:98

Polychlorinated biphenyls (PCBs), § 7:178, 7:189

Radon, § 7:192

Remediation contracts, § 7:194

Remodeling projects, § 7:178

Sedimentation and storm water runoff, § 7:187

Sick-building syndrome, § 7:193

Superfund Act, § 7:178

Tobacco smoke, environmental, § 7:192

Underground storage tanks, § 7:180

Wetlands, § 7:183

EQUIPMENT

Machinery and Equipment (this index)

EQUITABLE ESTOPPEL

Arbitration, § 21:101, 21:102

Lender liability, § 8:145

Pre-bid conferences, reliance on oral representations made at, § 2:65

Vacating arbitrator award, exceeding powers, § 21:259

EQUITABLE LIEN

Bankruptcy, § 5:180

Lender liability, § 8:142, 8:143

Mechanics' liens, § 8:178

Res requirement, § 8:178

Restitution, § 19:43

EQUITY LAW

Construction law and, § 1:3

ERISA

Employee Retirement Income Security Act (ERISA) of 1974 (this index)

ERRORS AND OMISSIONS

AIA General Conditions of the Contract for Construction form A201 provisions; contractor's notification obligations, § 5:50

ESTOPPEL

Acceptance of Work (this index)

Change order, authorization for, § 4:47

Collateral Estoppel (this index)

Defined, § 7:239

Equitable Estoppel (this index)

Final payment, waiver of claims through making, § 8:26

Intertwining or alternative estoppel, arbitration, § 21:103

Payment bonds, § 8:208

Pre-bid conferences, equitable estoppel and reliance on oral representations made at, § 2:65

Promissory Estoppel (this index)

Risk management. **Waiver, Estoppel and Release Risks** (this index)

EVIDENCE

Design professionals, expert testimony on standard of care, § 17:14

Disclosure (this index)

Discovery (this index)

Inspections authority and evidentiary significance of inspector's failure to object, § 13:51

Insurance (this index)

Mistake in bid, burden of proof for remediation of, § 2:131, 2:134

Parol Evidence (this index)

Time impacts, proof of. **Time Impact Evaluation** (this index)

INDEX

EXAMINATION UNDER OATH (EUO)

Pre-suit compliance, § 11:211.15

EXCEPTIONS

Insurance (this index)

EXCESS INSURANCE

Insurance (this index)

EXCLUSIONARY LANGUAGE

Insurance, interpretation of contracts,
§ 11:30

EXCLUSION J

CGL coverage, § 11:95-§ 11:101

EXCLUSIONS

Insurance (this index)

EXCULPATORY CLAUSES

Design professionals, economic loss
rule. **Design Professionals** (this
index)

Interpretation of agreements, § 3:9

Waiver and risk management issues,
§ 7:254

EXECUTORY CONTRACTS

Assumption or rejection of, § 7:273

Risk management, § 7:273

EXPECTATION RISKS

Generally, § 7:255-§ 7:269

Allocation of risk, unrealistic,
§ 7:268

Breach of contract damages, common
law limitations on, § 7:104

Claim pricing, unrealistic, § 7:270

Completion schedule, unreasonable,
§ 7:262

Costs

Contractor's failure to accurately
cost work, § 7:258

Estimates, owner's reliance upon
inaccurate, § 7:256

Course of dealing, role of, § 7:260,
7:261

Damages expectations, injured
party's, § 7:100 et seq.

EXPECTATION RISKS—Cont'd

Economic waste, § 7:106, 7:107

Excuse doctrines, § 7:105

Industry standards and course of
dealing, role of, § 7:260, 7:261

Payment certification, disagreements
over architect's, § 7:261

Profit motive, frustrated, § 7:267

Quality, disagreement over, § 7:260,
7:261

Site conditions, unanticipated,
§ 7:257

Stigma damages and the rule of
avoiding speculative recoveries,
§ 7:108

Strict compliance versus substantial
performance, § 7:259

Unusually high performance expecta-
tions, § 7:259

Value engineering expectations, dis-
appointed, § 7:269

EXPENSES

Generally. **Fees** (this index)

Insurance, extra expense loss,
§ 11:254

EXPERTS

Material breach of contract determi-
nation, § 18:11

EXPERT TESTIMONY

Daubert standard, § 7:193

Design professionals, standard of
care, § 17:14

Frye standard, § 7:193

Indoor pollution, § 7:193

EXPLOSIVES

Safety precautions, AIA standard
form A201 provisions, § 5:199

EXPOSURE TRIGGER

CGL coverage, § 11:183

EXPROPRIATION

Political risks, § 7:328

**“EXTENDED REPORTING”
PERIODS**

Insurance, claims-made policy forms,
§ 11:284

EXTENSION OF TIME

Time Extension (this index)

**EXTERIOR INSULATION FINISH
SYSTEMS (EIFS)**

CGL coverage exclusion, § 11:139

Defenses, § 7:215

Defined, § 7:214

Economic loss doctrine, application
of, § 7:215

Litigation, § 7:215

Quality control, § 7:214

Repose, statute of, § 7:215

Statute of limitations defense,
§ 7:215

Synthetic stucco cladding systems or,
§ 7:214, 7:215

EXTRA EXPENSE LOSS

Insurance, § 11:254

EXTRAS CLAUSES

Changes and Extras Clauses (this
index)

EXTRINSIC EVIDENCE

Insurance (this index)

FACT-BASED INQUIRIES

CGL coverage, “occurrence,”
§ 11:77

FAIR HOUSING ACT (FHA)

Indemnity and indemnification,
§ 10:124.10

FALSE CLAIMS

Changes and Extras Clauses (this
index)

False Claims Act (FCA) (this index)

FALSE CLAIMS ACT (FCA)

Generally, § 8:70-§ 8:85

FALSE CLAIMS ACT (FCA)

—Cont’d

Arbitration, prohibition for employ-
ment disputes on federal proj-
ects, § 21:8

Best efforts contract, § 8:71

Buy American Act, liability for viola-
tions of, § 8:80

Changes and extras clauses, false
claims based on, § 4:51

Claim defined, § 8:70

Claims certification process, liability,
§ 8:77

Constitutional concern over penalties
under, § 8:84

Contract Disputes Act, liability under,
§ 8:83

Contract formation process, liability
in, § 8:74

Contracting arrangements influencing
liability under, § 8:71

Cost reimbursement contract, § 8:71

Criminal FCA

Generally, § 8:86-§ 8:88

California, § 8:90

Delaware, § 8:91

Florida, § 8:92

Hawaii, § 8:93

Illinois, § 8:94

Massachusetts, § 8:95

Materiality, § 8:87

Montana, § 8:96

Nevada, § 8:98

New Jersey, § 8:97

Provisions, § 8:86

State statutes, § 8:88

Tennessee, § 8:99

Virginia, § 8:100

Washington D.C., § 8:101

Disadvantaged business programs,
non-compliance with, § 8:79

Federally funded state and local proj-
ects, § 8:75

Federal Rules of Civil Procedure,
Rule 9, § 8:70

Immunity, § 8:73

INDEX

FALSE CLAIMS ACT (FCA)

—Cont'd

- Materiality elements, § 8:76, 8:87
- Minority-owned business enterprise programs, non-compliance with, § 8:79
- Non-conforming work, § 8:78
- Pleading requirements, § 8:70
- Private suits, § 8:84
- Provisions, § 8:70
- Qui tam actions, generally, § 8:84
- Request for equitable adjustment, certifying, § 8:77
- Scienter requirement, § 8:70
- Sovereign immunity, § 8:73
- State and local projects, federally funded, § 8:75
- Women-owned business programs, non-compliance with, § 8:79

FAMILY-RUN CONSTRUCTION BUSINESS

- Risk management, § 7:152

FAR

- Federal Acquisition Regulations (FAR)** (this index)

FAST-TRACK CONSTRUCTION

- Advantages, § 6:95
- Design professionals, § 17:2
- Design work delays, § 7:281
- Disadvantages, § 6:95
- Project delivery methods, § 6:95

FAULTY WORKMANSHIP

- Insurance** (this index)

FCA

- False Claims Act (FCA)** (this index)

FEDERAL ACQUISITION REGULATIONS (FAR)

- Acceptance of work** (this index)
- American Association of State Highway Officials (AASHTO) forms, § 5:4
- Changes clause
 - Claim notice requirements, § 7:231

FEDERAL ACQUISITION REGULATIONS (FAR)

—Cont'd

- Changes clause—Cont'd
 - False claims, § 4:51
 - Mandating contracts exceeding § 100,000 must include, § 4:5
 - Competition in Contracting Act, § 6:64
 - Default notice, § 7:231
 - Design-build project delivery method, § 6:64, 6:65
 - Differing site conditions, notice of, § 7:231
 - Engineers Joint Contract Documents Committee (EJCDC) forms, § 5:5
 - Express warranties in federal procurement, § 9:119
 - Forms. Standard forms, below
 - Inspection authority, § 13:48-§ 13:51
 - Notice requirements, § 7:231
 - Office of Federal Procurement Policy (OFPP), standard forms updated by, § 5:3
 - Standard forms
 - Generally, § 5:3-§ 5:5
 - American Association of State Highway Officials (AASHTO) forms, § 5:4
 - ConsensusDOCS contract documents, § 5:5.10
 - Contract forms and allocation of cost uncertainty, § 5:8.30
 - Engineers Joint Contract Documents Committee (EJCDC) forms, § 5:5
 - Office of Federal Procurement Policy (OFPP), updated by, § 5:3
 - Suspension of work notice, § 7:231
 - Warranty of construction clause, § 9:119
- FEDERAL ARBITRATION ACT (FAA)**
- Arbitration** (this index)

**FEDERAL INSECTICIDE,
FUNGICIDE, AND
RODENTICIDE ACT**

Purpose of, § 5:207

FEDERAL PROCUREMENT

Federal Acquisition Regulations
(this index)

FEDERAL TORT CLAIMS ACT

Inspection liability of federal govern-
ment agencies under, § 13:24

FEES

AIA General Conditions of the
Contract for Construction form
A201 provisions, § 5:60, 5:86

Attorneys' Fees (this index)

Building Information Modeling
(BIM), § 7:87

Communication risks

Confusion over responsibility for
fees, § 7:227

Ill-defined costs, § 7:229

Completion of Project Risks (this
index)

Damages (this index)

Indemnity clause specifying recovery
of attorneys' fees. **Indemnity
Clause** (this index)

Integrated Project Delivery (IPD)

License fee payments; AIA General
Conditions of the Contract for
Construction form A201 provi-
sions, § 5:86

Price Arrangements (this index)

Risk Management (this index)

Waiver of impact costs, § 7:245

**FIDIC (INTERNATIONAL
FEDERATION OF
CONSULTING ENGINEERS)**

Standard form agreements, § 5:7

FIDUCIARIES

Bond, § 5:233

Design professionals, standard of
care, § 17:13

FIDUCIARIES—Cont'd

Disbursements of property process as
fiduciary for other insureds,
owner's, § 5:232

FIELD CONTROL

Implications of owner, § 13:8

FINAL INSPECTION

AIA standard form A201 provisions,
§ 5:190

FINAL PAYMENT

Waiver of claims

Acceptance of payment, through,
§ 8:25

Estoppel, § 8:26

Making final payment, through,
§ 8:26

FINANCE CHARGE

Mechanics' liens, § 8:160

FINANCIAL INFORMATION

AIA General Conditions of the
Contract for Construction form
A201 provisions, § 5:39

FINANCIAL RISKS

Loans (this index)

Risk Management (this index)

FINANCIAL SERVICES

**MODERNIZATION ACT OF
1999**

Enactment of, § 12:84

FINANCING

Payment process. **Payment** (this
index)

FINES AND PENALTIES

Clean, failure to keep premises; AIA
General Conditions of the
Contract for Construction form
A201 provisions, § 5:84

Criminal penalties for nonpayment,
§ 8:45

Disadvantaged business enterprises
(DBEs) requirements,
noncompliance with, § 2:55.57

INDEX

FINES AND PENALTIES—Cont'd

- False Claims Act (FCA)** (this index)
- Front-end loaded contracts, § **8:67**
- OSHA, § **7:148**
- Performance bonds, penal sum, § **12:22**
- Prompt payment act penalties, surety' liability for, § **8:66**

FIRE CODE INSPECTIONS

- Substantial completion issues, § **8:27**
- Uniform Building Code requirements, § **13:21**

FIRE INSURANCE

- Builder's risk coverage as, § **11:215**

FIRM BID RULE

- Bids** (this index)

FIRM-FIXED PRICE CONTRACT

- Generally, § **2:15**
- Formation of, § **2:15**
- Price adjustments, § **2:15**

FIRM-UNIT PRICE CONTRACT

- Generally, § **2:16**
- Formation of, § **2:16**

FIRST-PARTY DESIGN COVERAGE

- Insurance, § **11:314**

FIRST RESTATEMENT

- Insurance, choice of law issues in coverage disputes, § **11:39**

FITNESS FOR PARTICULAR PURPOSE

- Implied Product Warranties of Merchantability and Fitness for Particular Purpose** (this index)

FIXED PRICE CONTRACTS

- Lump Sum Contracts** (this index)

FLOAT CONCEPT

- Schedule, § **15:9**

FLORIDA

- CGL coverage, "occurrence," § **11:75**

FLOW DOWN CLAUSES

- AIA General Conditions of the Contract for Construction form A201 provision for flow down responsibilities to subcontractors, § **5:126**
- Communication risks, § **7:225**
- Contract interpretation, § **3:32**
- Indemnification and, § **10:25**

FORCE MAJEURE

- Generally, § **15:22**
- Agreed remedies and damage measures, § **19:60**
- Control concept, generally, § **15:22-15:28**
- COVID-19 pandemic, relief from disruption caused by, § **7:322**
- Defined, § **15:22**
- Foreseeability of performance at time contracting, implications of, § **15:23**
- Historical background, § **15:22**
- Insurance** (this Index)
- Pandemic events, assessing risk of, § **7:61**
- Remedies, § **15:28.5**
- Risk management
 - Generally, § **7:320, 7:321**
 - Terrorism, below
 - Unusually severe weather, below
- September 11, 2001 terrorist attacks, differing allocation responses to events of, § **7:60**
- Termination of contract, § **15:28.5, 18:21**
- Terrorism
 - Allocating risk through clauses, § **7:63**
 - Assessing risks of, § **7:61**
 - Biological agents, § **7:61**
 - Chemical agents, § **7:61**

FORCE MAJEURE—Cont'd

- Terrorism—Cont'd
 - Common law allocation of risks, § 7:62
 - Defined, § 7:61
 - Dirty bomb, § 7:61
 - Disruption of infrastructure development, § 7:61
 - Force majeure event, as, § 7:63
 - Hadley principle, § 7:63
 - Impossibility doctrine, § 7:62
 - Impracticability doctrine, § 7:62
 - Nuclear threats, § 7:61
 - SARS epidemic, § 7:61
 - September 11, 2001 terrorist attacks, differing allocation responses to events of, § 7:60
- Time extension, § 15:28.5
- UNIDROIT Principles, § 20:6
- Unusually severe weather
 - Generally, § 7:321
 - Pandemic events, assessing risk of, § 7:61
 - September 11, 2001, differing allocation responses to events of, § 7:60
 - Terrorism, above

FORCES ACCOUNT WORK

- Price arrangements, § 6:111

FORECLOSURE

- Mechanics' liens, time limitations for foreclosing on, § 8:171

FOREIGN CORPORATIONS

- Arbitration, service of notice to vacate, § 21:227
- Licensing and incorporation requirements, § 16:28, 16:29

FOREIGN CORRUPT PRACTICES ACT

- International anti-bribery initiatives, § 20:12
- Political risks, § 7:335

FORMALDEHYDE

- Environmental risks, § 7:192

FORMATION OF CONTRACTS

- Contract Formation** (this index)

FORMS

- Insurance** (this index)
- Standard Form Agreements** (this index)

FORTUITY DOCTRINE

- Insurance, § 11:28

FORTUITY REQUIREMENT

- Insurance, § 11:221

FORUM SELECTION

- Arbitration, § 21:39
- Governing law provision, AIA standard form A201, § 5:244

FRAGNET

- Time impact evaluation, § 15:129

FRAUD

- Agreed remedies and damage measures, § 19:52.70
- Anti-fraud acts, § 9:10
- Arbitration** (this index)
- Computation of damage claims, § 19:99
- Defective Trade Practices Act, § 9:10
- Design professionals; exculpatory clauses in contracts procured through fraud, § 17:98.35
- False Claims Act (FCA)** (this index)
- Insurance** (this index)
- Lender liability, § 8:137
- No damages for delay clause, fraud exception, § 15:76
- Parol evidence rule, exceptions to, § 3:18
- Performance bond surety's defense, § 12:66, 12:76
- Qui tam action. **False Claims Act (FCA)** (this index)
- Repose statute, tolling, § 7:35
- Statute of Frauds** (this index)

INDEX

FRAUD—Cont'd

- Statute of limitations, tolling, § 7:35
- Vacatur of arbitration award, basis for, § 21:238
- Warranty protection and economic loss recovery, § 9:56

FREEZE/THAW OF WATER EXCLUSION

- Insurance, § 11:239

FRINGE BENEFITS

- ERISA preemption provision, union benefit funds precluded by, § 8:154, 8:195
- Mechanics' liens, § 8:154

FRONT-END LOADING

- Design professionals liability for negligent certification, § 17:64
- Payment risks, § 7:314
- Penalties, civil and criminal, § 8:67
- Unbalanced bids and, § 8:67

FRONTING POLICIES

- Insurance, § 11:323

FRUSTRATION, DOCTRINE OF

- Termination of contract, § 18:21

FTCA

- Federal Tort Claims Act (this index)

GAPS

- Insurance, notice, claims-made policy forms, § 11:282, 11:283

GENERAL SUPERVISORY COVERAGE

- CGL coverage, additional insureds, § 11:157

GEOTECHNICAL ENGINEERING

- Generally, § 14:2

GOOD FAITH

- Contribution, good faith settlement bar to, § 10:166
- Implied duty of good faith and fair dealing, § 9:117

GOOD FAITH—Cont'd

- Lender's implied warranty liability, § 8:138
- Mediation, § 21:315
- Payment defense, owner's good faith, § 8:67
- Surety's general agreement of indemnity, § 10:138-§ 10:109
- Termination for cause, independence and good faith termination decision, § 12:40, 18:42

GOODS

- Uniform Commercial Code (UCC) (this index)

GOVERNING LAW

- Arbitration (this Index)

GROSS NEGLIGENCE

- Design professionals, economic loss rule. **Design Professionals** (this index)
- Subrogation, waiver of, § 11:197

GROUNDWATER

- Unanticipated conditions causing changes in construction means and methods, § 14:9

GUARANTEED MAXIMUM PRICE

- Generally, § 6:109
- Change orders exempt from, § 6:17
- Completion of project risks, § 7:293
- Design contracts, § 6:117
- Design-GMP-Build Project Delivery Method** (this index)
- Integrated project delivery (IPD) agreements, § 6:31, 6:36, 6:37
- Waiver of, § 7:253

GUARANTY

- Engineer-procure-construct contracting, § 6:80
- Suretyship distinguished, § 12:8

GUARANTY AND WARRANTY

- Insurance (this index)

**HABITABILITY, IMPLIED
WARRANTY OF**

Warranties (this index)

**HARMONIZATION OF
INTERNATIONAL
CONSTRUCTION LAW**

International Construction (this index)

HAZARDOUS MATERIALS

American Institute of Architects
Standard Forms (this index)

Environmental Risks (this index)

HEARD ACT

Payment Bonds (this index)

HEARINGS

Arbitration, locale for hearings,
§ 21:282-§ 21:284

Bidder request for pre-award
nonresponsibility hearing,
§ 2:104

Bid protests, § 2:143

HIGHWAYS

Alteration and extras clauses,
construction, § 4:8

Extras clauses, construction, § 4:8

HINDRANCES

Compensable delay where delay
within contractor's control,
§ 15:57

Cooperate, owner's failure to, § 4:31
Delays (this index)

Early completion, scheduled, § 15:21

Implied duty of cooperation, § 9:113,
15:54, 15:55

No Damage for Delay Clause (this index)

Remedies, § 19:1

Termination of contract for breach,
§ 18:2

Unexpected circumstances, § 4:1

HOMESTEAD PROPERTY

Mechanics' liens, § 8:179

HOUSEKEEPING PROVISIONS

AIA General Conditions of the
Contract for Construction for
Construction form A201 provi-
sions, § 5:10

ILLUSORY COVERAGE

Insurance, interpretation of contracts,
§ 11:34

IMMUNITY

Arbitral immunity, § 21:203

Design professional's role as arbiter,
§ 17:82-§ 18:84

False Claims Act (FCA), § 8:73

Sovereign Immunity (this index)

Workers' compensation, immunity to
implied-in-fact and implied-in-
law indemnity, § 10:72

IMPACT

Cumulative impact of changes as
cardinal changes, § 4:14

Time Impact Evaluation (this index)

IMPACT CLAIM

Cumulative impact of changes as
cardinal changes, § 4:14

Waiver of impact costs, § 7:245

**IMPAIRED PROPERTY
EXCLUSION**

CGL coverage, § 11:106

IMPLIED-IN-FACT CONTRACT

Formation of, § 2:5

Indemnity, § 10:72

Quantum meruit, § 19:38-§ 19:41

Unjust enrichment, as remedy for,
§ 19:38-§ 19:41

IMPLIED-IN-LAW CONTRACT

Formation of, § 2:6, 2:7

Indemnity, § 10:72

Promissory estoppel, § 2:7

Unjust enrichment, as remedy for,
§ 2:7, 19:37

INDEX

IMPLIED PRODUCT

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE

- Generally, § 9:36-§ 9:42
- Consequential damages, § 9:41, 9:49
- Course of dealing or usage of trade, arising from, § 9:39
- Disclaimers
 - Generally, § 9:40
 - Battle of forms, § 9:46
 - Integration clauses and parol evidence rule, § 9:45
 - Magnuson-Moss Warranty Act, § 9:43-§ 9:40, 21:170
 - Parol evidence rule, § 9:44, 9:45
 - Unconscionability, concept of, § 9:47
- Forgotten warranties, § 9:39
- Limitations of liability, § 9:41
- Magnuson-Moss Warranty Act, § 9:43-§ 9:40, 21:170
- Remedy limitations, § 9:48, 9:49
- Usage of trade, arising from course of dealing or, § 9:39

IMPLIED WARRANTY OF HABITABILITY

Warranties (this index)

IMPOSSIBILITY DOCTRINE

- Force Majeure (this index)
- Performance, of; warranties, § 9:112
- Performance bond surety's defense, § 12:62
- Site investigation, § 7:166
- Termination of contract, § 18:21
- Terrorism, § 7:62

IMPRATICABILITY DOCTRINE

- Bids (this index)
- Control concept and allocation of risks, § 15:28
- Performance bond surety's defense, § 12:62

IMPRATICABILITY DOCTRINE

—Cont'd

- Sanctity of contract doctrine and, § 15:28
- Site investigation, § 7:166
- Termination of contract, § 18:21
- Terrorism, § 7:62

INCENTIVES

- AIA General Conditions of the Contract for Construction form A201, risk allocation provisions, § 5:20
- Integrated project delivery (IPD), § 6:33

INCORPORATION BY REFERENCE

- AIA General Conditions of the Contract for Construction form A201, § 5:9
- Arbitration provisions, § 21:101
- Communication risks, § 7:225
- Contract interpretation, § 3:31
- Indemnification and, § 10:25

INCORPORATION DOCTRINE

- Assent to arbitrate, § 21:92

INCREASED COMPLETION COSTS

- Insurance, § 11:223, 11:276

INCREASED COST OF CONSTRUCTION

- Insurance coverage, § 11:223

INDEFINITE-DELIVERY/ INDEFINITE-QUANTITY CONTRACTS (IDIQ)

- Choosing delivery approach, § 6:16

INDEMNITY AND INDEMNIFICATION

- Generally, § 10:1-§ 10:166
- Accrual of right to, § 10:6
- Additional insured endorsements, § 10:94
- Agreed remedies and damage measures, § 19:52.53

INDEMNITY AND INDEMNIFICATION—Cont'd
American Institute of Architects Standard Forms (this index)
 Americans with Disabilities Act (ADA), § **10:124.10**
 Anatomy of indemnity provision.
 Indemnity Clause (this index)
 Anti-indemnity statutes
 Generally, § **10:99-§ 10:104**
 Atypical statutory prohibitions, § **10:124**
 Broad indemnity agreements, § **10:101**
 CGL coverage, additional insureds, § **11:163**
 Comparative fault, effect of injured worker's, § **10:125**
 Construction contract defined, § **10:101**
 Design contracts, § **10:103**
 Equipment leases, § **10:102**
 Innocent seller indemnity statutes, § **10:113**
 Limitation of liability agreements, § **10:115-§ 10:120**
 Miscellaneous agreements, § **10:104**
 One's own negligence, prohibitions against indemnity for, § **10:124**
 Product sellers and distributors, statutory restrictions on indemnity from, § **10:112**
 Public policy issues, § **10:120**
 Retroactive application, § **10:114**
 Risk management theory and limitation of liability clauses, § **10:119**
 Sole negligence, § **10:121, 10:121.10**
 Work-related clauses, § **10:123**
 Arbitrating third-party claims, § **21:166**
 Bankruptcy and completing surety; general indemnity agreement

INDEMNITY AND INDEMNIFICATION—Cont'd
 filed as financing statement, § **12:113**
 Blasting activities, § **5:87**
 Blue penciling indemnity covenants, § **10:24**
 Bonds
 Federal Standard 25 Performance Bond, § **12:19**
 Indemnity bonds, § **12:18, 12:19**
 Performance bonds, § **12:18, 12:19**
 Private indemnity bond, § **8:188**
 Underwriting, § **12:11**
 Building Information Modeling (BIM), § **7:89**
 Business interruption insurance, indemnity period, § **11:265**
 Causation requirement, § **10:82**
 Choice of law provisions, § **10:24**
 Clause. **Indemnity Clause** (this index)
 Collateral, surety's right to secure, § **10:131**
Commercial General Liability (CGL) Coverage (this index)
 Common law, § **10:3**
 Common surety indemnity agreement provisions, § **10:134.10**
 Comparative fault, § **10:96, 10:125**
 Comparative implied indemnity, § **10:4**
 Construction and interpretation of indemnity language. Interpretation of indemnity language, below
 Construction defect litigation, § **10:126.10**
 Construction management, § **10:59**
 "Construed against the drafter" rule, § **10:20**
 Contemplation of parties, § **10:83**
 Contribution, indemnity compared, § **10:5, 11:190**
 Derivative liability test, § **10:150**

INDEX

INDEMNITY AND

INDEMNIFICATION—Cont'd

- Design documents, indemnification against loss resulting from use of; design-build project, § 6:77
- Design professionals, indemnity liability, § 17:31, 17:73
- Distinction of insurance from indemnity agreements, § 11:3
- Economic loss recovery, § 10:69
- Electronic data, use of, § 7:89
- Equipment leases and anti-indemnity statutes, § 10:102
- Equitable indemnity
 - Generally, § 10:146-§ 10:155
 - Active/passive test, § 10:148
 - Authority to act versus acting with authority; New York's version, § 10:149
 - Derivative liability test, § 10:150
 - Express indemnity clause, effect of, § 10:151
 - Implied contractual indemnity compared, § 10:142
 - New York's version; authority to act versus acting with authority, § 10:149
 - Product manufacturers, claims by, § 10:155
 - Proportional indemnity, § 10:153
 - Special relationship giving rise to, § 10:147
 - Tort reform, effect of, § 10:152
 - Vicarious liability test, § 10:150
- Express agreement, surety's indemnity rights in absence of, § 10:130
- Express indemnity, types of, § 10:2
- Extent of insurance coverage, scope of indemnity determined by, § 10:68
- Fair Housing Act (FHA), § 10:124.10
- Fault-free
 - Provisions, § 10:2
 - Triggers, § 10:90, 10:91
- Flow-down clauses, § 10:25

INDEMNITY AND

INDEMNIFICATION—Cont'd

- Implied contractual indemnity and equitable indemnity compared, § 10:142
- Imputing negligence of injured employee to employer, § 10:92
- Incorporation by reference clauses, § 10:25
- Innocent seller indemnity statutes, coverage, § 10:113
- Interpretation of indemnity language
 - Generally, § 3:9, 10:16-§ 10:31
 - Clear and unequivocal language, § 10:17, 10:18
 - "Construed against the drafter" rule, § 10:20
 - Contractually agreeing to standard of interpretation, § 10:23
 - Express negligence approach, § 10:18
 - Fair construction rule, § 10:21
 - Liberal construction rule, § 10:21, 10:22
 - Parol evidence, § 10:19, 10:22
 - Strict construction, § 10:17, 10:18
 - Stricter than strict construction, § 10:18
- Judicial treatment of public policy arguments, § 10:15
- Liberal construction rule, § 10:21, 10:22
- No Damages for Delay Clause** (this index)
- Obligation of indemnification, property insurer's indemnification, § 11:218
- One's own negligence, prohibitions against indemnity for, § 10:124
- Parol evidence, § 10:19, 10:22
- Partially at fault. Wholly or partially at fault, indemnitor, below
- Performance bonds, § 12:18, 12:19, 12:99
- Personal injury liability, surety's duty to indemnify obligee for, § 10:139

INDEMNITY AND INDEMNIFICATION—Cont'd
 Policy considerations
 Anti-indemnity statutes, § 10:120
 Judicial treatment of public policy arguments, § 10:15
 Restricting use of indemnity considerations, § 10:13
 Risk transference through express indemnity, § 10:12
 Presence-type clauses, § 10:85
 Product manufacturers, claims by, § 10:155
 Proportional indemnity, § 10:153
 Restricting use of indemnity considerations, policy considerations in favor of, § 10:13
 Retroactive application of anti-indemnity statutes, § 10:114
 Rewriting of indemnity provision by courts, § 10:26
 Ripeness doctrine, § 10:7
 Risk management; time limitations governing indemnity, § 7:31
Risk Management (this index)
 Risk management theory and limitation of liability clauses, § 10:119
 Risk transference through express indemnity, policy considerations in favor of, § 10:12
 Scope of indemnity obligation
 Generally, § 10:73-§ 10:65
 Causation requirement, § 10:82
 Contemplation of parties, § 10:83
 Duty to defend, as determinative of, § 10:65
 Extent of insurance coverage, determined by, § 10:68
 Fault concept, § 10:80
 Presence-type clauses, § 10:85
 Space and time limitations, § 10:81
 Time limitations, § 10:81
 Work-related indemnity provisions, § 10:79

INDEMNITY AND INDEMNIFICATION—Cont'd
 Scope of indemnity obligation—Cont'd
 Work-related language, grafting negligence requirement onto, § 10:84
 Sole negligence
 Generally, § 10:93-§ 10:94
 Additional insured endorsements, § 10:94
 Anti-indemnity statutes, § 10:121, 10:121.10
 Carving out sole negligence from coverage, § 10:91
 Comparative fault issues, § 10:96
 Fault-free triggers versus, § 10:90
 Proximate cause issue, § 10:97
 Sovereign immunity, § 10:14
 Space and time limitations, § 10:81
 Surety bond underwriting, § 12:11
 Survival clause, § 10:9
 Time limitations, § 10:10, 10:81, 11:265
 Underlying action, effect of settling, § 10:132.10
 Unjust enrichment issues, § 10:16
 Vicarious liability test, § 10:150
 Vouching-in process, § 10:121-§ 10:128
 Wholly or partially at fault, indemnitor
 Generally, § 10:86-§ 10:88
 Fault-free triggers, § 10:90, 10:91
 Imputing negligence of injured employee to employer, § 10:92
 Sole negligence versus fault-free triggers, § 10:90
 “To the extent” ambiguity, § 10:87
 Workers’ compensation and, § 10:70-§ 10:57, 10:124.20
 “Work itself” exception, § 10:68.10
 Work-related indemnity provisions, § 10:79

INDEX

**INDEMNITY AND
INDEMNIFICATION—Cont'd**

Work-related language, grafting
negligence requirement onto,
§ 10:84

INDEMNITY CLAUSE

Generally, § 10:36-§ 10:59

“All claims” provision, scope of,
§ 10:49

Anti-indemnity statutes and work-
related clauses, § 10:123

Attorneys’ fees, recovery of
Generally, § 10:60-§ 10:72

Allocating attorney’s fees,
§ 10:67.10

Duty to defend arising from differ-
ent time than duty to
indemnify, § 10:64

Indemnitor’s obligation separate
from indemnity, § 10:63

Prosecuting indemnity claims, fees
incurred in, § 10:66

Reasonable fees requirement,
§ 10:67

Resisting underlying claim, fees
incurred in, § 10:66

Ripeness, attorney’s fees and issue
of, § 10:62

Scope of indemnity obligation as
determinative of duty to
defend, § 10:65

Specifying costs and expenses
recoverable, § 10:67.10

Tender, issue of, § 10:61

When obligation to pay arises,
§ 10:61

Class of persons to whom indemnity
runs

Generally, § 10:41-§ 10:47

Joint ventures, § 10:42

Parents and subsidiaries, § 10:44

Subsidiaries, § 10:44

Third party beneficiary theories,
§ 10:43

Construction manager, § 10:59

Core undertaking, § 10:39

INDEMNITY CLAUSE—Cont'd

Defective construction claims,
§ 10:55

Defend, duty to, § 10:40, 10:41,
10:64, 10:65

Design professionals

Actions for indemnity against,
§ 10:47

Consequences of contractors
indemnifying, § 10:57

Duty to defend arising from different
time than duty to indemnify,
§ 10:64

Economic loss recovery, § 10:69

Environmental liability, § 10:50

Equitable indemnity

Generally, § 10:146-§ 10:155

Implied contractual indemnity
compared, § 10:142

Extent of insurance coverage, scope
of indemnity determined by,
§ 10:68

General scope language, § 10:37

Hold harmless, § 10:39

Implied contractual indemnity and
equitable indemnity compared,
§ 10:142

Intentional torts, § 10:52

Items from which indemnitor agrees
to protect indemnitee

Generally, § 10:48-§ 10:59

“All claims” provision, scope of,
§ 10:49

Defective construction claims,
§ 10:55

Design professionals

Actions for indemnity against,
§ 10:47

Consequences of contractors
indemnifying, § 10:57

Environmental liability, § 10:50

Intentional torts, § 10:52

Judgments, significance of use of
term, § 10:48

Liabilities, significance of use of
term, § 10:48

INDEMNITY CLAUSE—Cont'd

- Items from which indemnitor agrees to protect indemnitee—Cont'd
 - Loss, significance of use of term, § 10:48
 - Mechanics' liens, § 10:57
 - Non-third-party claims, § 10:54
 - Strict liability, § 10:51
 - Subrogation claims, § 10:53
 - Joint ventures, § 10:42
 - Judgments, significance of use of term, § 10:48
 - Liabilities, significance of use of term, § 10:48
 - Loss, significance of use of term, § 10:48
 - Mechanics' liens, § 10:57
 - Mutual indemnity clauses, § 10:57
 - Non-third-party claims, § 10:54
 - Notice, § 10:38
 - Own fraud, willful conduct, or violation of law, § 11:28
 - Parents and subsidiaries, § 10:44
 - Save harmless, § 10:39
 - "Savings" clause language, § 10:36
 - Strict liability, § 10:51
 - Subrogation claims, § 10:53
 - Subsidiaries, § 10:44
 - Surety's general agreement of indemnity
 - Generally, § 10:129-§ 10:141
 - Bad faith, § 10:139
 - Disclose information, surety's obligation to, § 10:137
 - Events triggering indemnitor's liability, § 10:135
 - Good faith, § 10:138-§ 10:109
 - Indemnity language, § 10:134
 - Obligations to obligee and principal, surety's obligations to, § 10:140
 - Reasonableness versus good faith standards, § 10:138
 - Specific performance, surety's right to, § 10:136

INDEMNITY CLAUSE—Cont'd

- Third party beneficiary theories, § 10:43
- "To the fullest extent permitted by law" clause language, § 10:36
- Vouching-in process, § 10:121-§ 10:128
- To whom indemnity obligation runs.
 - Class of persons to whom indemnity runs, above
 - "Work itself" exception, § 10:68.10

INDEPENDENT CONTRACTORS

- Classification as, § 2:56
- Commercial general liability (CGL) coverage, independent contractor exclusion, § 11:148.10
- Design professionals, § 17:4, 17:5

INDOOR POLLUTION

- Commercial General Liability (CGL) Coverage** (this index)
- Environmental Risks** (this index)

INDUCEMENT

- Differing site conditions, affirmative misrepresentation, § 14:32

INFLATION

- Financial risks, § 7:278

INFRINGEMENT

- Patent and copyright infringement;
 - AIA General Conditions of the Contract for Construction form A201 risk allocation provisions, § 5:86

INGRESS/EGRESS COVERAGE

- Business interruption insurance, § 11:268

INHERENT AUTHORITY DOCTRINE

- Scope of authority, confusion over, § 7:232

INHERENT DEFECTS

- INSURANCE**
 - Generally, § 11:316

INDEX

INHERENT VICE EXCLUSION

Insurance, § 11:244

INJUNCTIONS

Automatic stay. **Bankruptcy** (this index)

Bid, improper award of, § 2:150

Costs incurred by insured to comply with an injunction as damages, 11:232.70

INJURY-IN-FACT TRIGGER

CGL coverage, § 11:184

INLAND MARINE INSURANCE

Generally, § 11:213

INSOLVENCY

Generally. **Bankruptcy** (this index)

Insurance, excess insurer's responsibilities upon insolvency of primary insurer, § 11:302

INSPECTIONS

Generally, § 13:1 et seq.

Acceptance of Work (this index)

Actual authority, § 13:44

Agents of owner, liability of

Economic loss doctrine, § 13:31

Failure to catch defects, § 13:29

Privity issues, § 13:31

Third parties, liability to, § 13:30-§ 13:32

American Institute of Architects

Standard Forms (this index)

Apparent authority, § 13:45

Assuring conformance, § 13:1-§ 13:9

Authority

Generally, § 13:43-§ 13:51

Actual authority, § 13:44

Apparent authority, § 13:45

Evidentiary significance of inspector's failure to object, § 13:51

Federal procurement, § 13:48-§ 13:51

Nonconforming work, inspector's authority to accept, § 13:47

INSPECTIONS—Cont'd

Authority—Cont'd

Ratifying inspector's actions, § 13:46

Silence, contractual significance of inspector's approval or, § 13:50

Bid preparation and submission, § 2:64, 2:82

Change of contract terms based on testing procedures. Hypertechnical inspection and constructive change doctrine, below

Compensable delay where delay within contractor's control, § 15:59

Constructive change doctrine. Hypertechnical inspection and constructive change doctrine, below

Constructive waiver, § 13:4

Contractor's responsibility to inspect work, § 13:33

Death or bodily injury, inspection liability of design professionals for, § 13:28

Design inadequacy, implication of owner, § 13:7

Design professional's liability for negligent site inspection, § 17:52

Differing Site Conditions (this index)

Economic waste doctrine, § 13:3

Equipment, implications of owner approval of, § 13:5

Existing structure, inspector liability in determining suitability of, § 13:27

Federal procurement, inspection authority in, § 13:48-§ 13:51

Federal procurement, inspection rights in, § 13:10

Federal Tort Claims Act, inspection liability of federal government agencies under, § 13:24

Field control, implications of owner, § 13:8

INSPECTIONS—Cont'd

- Fire code inspections, § 13:21
- Goods inspection under UCC, § 13:52
- Hazardous risk, implications of degree of, § 13:9
- Hypertechnical inspection and constructive change doctrine
 - Generally, § 13:36-§ 13:42
 - Constructive change defined, § 13:36
 - Delays caused by inspection, § 13:42
 - Field tests, § 13:38
 - Hypertechnical inspection defined, § 13:39
 - Laboratory versus field tests, § 13:38
 - Performance bond surety's defenses, § 12:65
 - Reasonableness standard, § 13:41
 - Unduly strict inspection and performance of extra work, § 13:40
 - Unspecified testing procedures for determining conformance, § 13:37
- Insurance** (this Index)
- International building code. Uniform Building Code (UBC) requirements, below
- Lender liability, § 8:139
- Lenders, inspection liability of, § 13:25
- Materials, implications of owner approval of, § 13:6
- Mitigation; implications of owner observation of work, § 13:4
- Negligent inspections, liability of public building officials for, § 13:22
- Nonconforming work, inspector's authority to accept, § 13:47
- Occupational Safety and Health Act (OSHA)** (this index)
- OSHA. Occupational Safety and Health Act (OSHA)** (this index)

INSPECTIONS—Cont'd

- Owner observation of work, implications of, § 13:4
- Payment, owner's inspection for purposes of determining, § 13:34, 13:35
- Plant, implications of owner approval of, § 13:5
- Private construction, inspection rights in, § 13:11
- Public duty doctrine, § 13:22
- Quality control and quality assurance compared, § 13:2
- Ratifying inspector's actions, § 13:46
- Risk management and owner's duty to select inspect work, § 7:19
- Soil and Site Conditions** (this index)
- Soil Exploration for Design and Construction** (this index)
- Sovereign immunity and inspection liability, § 13:23
- Strict compliance doctrine, § 13:3
- Structural work, special inspections of, § 13:20
- Tests
 - AIA General Conditions of the Contract for Construction form A201 provisions, § 5:250-§ 5:252
 - Change of contract terms based on. Hypertechnical inspection and constructive change doctrine, above
 - Completion of project risks and Overly burdensome requirements; cost issues, § 7:299
 - Quality, § 7:309
 - Untimely inspection and testing, § 7:288
 - Owner's failure to conduct required, § 13:36
- Uniform Building Code (UBC) requirements
 - Generally, § 13:17-§ 13:23
 - Building Official Inspections under, § 13:19, 13:20
 - Fire code inspections, § 13:21

INDEX

INSPECTIONS—Cont'd

- Uniform Building Code (UBC) requirements—Cont'd
 - International building code Building Official Inspections, § 13:19
 - Fire code inspections, § 13:21
 - Requirements, § 13:18
 - Structural work, special inspections of, § 13:20
 - Negligent inspections, liability of public building officials for, § 13:22
 - Public duty doctrine, § 13:22
 - Sovereign immunity and inspection liability, § 13:23
 - Structural work, special inspections of, § 13:20
- Uniform Commercial Code (UCC)** (this index)
- Work plan, implications of owner approval of, § 13:5

“INSURABLE INTEREST”

- Generally, § 11:220

INSURANCE

- Generally, § 11:1 et seq.
- Actual cash value, § 11:270, 11:271, 11:271.10, 11:271.50, 11:273
- Actual loss sustained, business interruption insurance, § 11:264
- Additional insureds
 - Commercial General Liability (CGL) Coverage** (this index)
 - Drafting considerations, § 11:17.19
 - Endorsements, § 10:94
 - Excess insurance, § 11:307
 - Professional liability coverage, § 11:293
- Adhesion contracts, § 3:27
- Agent or broker
 - Liability, § 11:327
 - Liability of agent and coverage defense, § 11:327.10
 - Status influencing coverage, § 11:328

INSURANCE—Cont'd

- Agreements, insuring, generally, § 11:12
- AIA Document A201 Insurance Article as guide, § 11:17.10
- AIA standard form provisions.
 - American Institute of Architects Standard Forms** (this index)
- Allocation issues. **Commercial General Liability (CGL) Coverage** (this index)
- American Institute of Architects
 - Avoiding overreaching requirements, § 11:36.30
 - Growing complexity and diversity, § 11:36.20
 - Information expressly required to be provided, § 11:36.50
 - Insurance exhibit, § 11:36.10
 - Prompting parties to discuss coverage, § 11:36.30
 - Requirements contained in general conditions, § 11:36.70
 - Summary of major changes, § 11:36.80
 - Tailoring coverage by exercising options and specifying limits, § 11:36.60
 - Types and extent of coverage, defining more specificity, § 11:36.40
- American Institute of Architects Standard Forms** (this index)
- Analytical conflict, interpretation of contracts, § 11:33
- Another, agreeing to provide insurance for
 - Generally, § 11:206-§ 11:210
 - Failure to secure coverage for another, coverage for, § 11:210
 - Language giving rise to obligation, § 11:207
 - Noncontributory coverage, § 11:208

INSURANCE—Cont'd

- Another, agreeing to provide insurance for—Cont'd
 - Primary coverage, § 11:208, 11:209
 - Sharing loss or recovery among carriers where procured coverage is not primary, § 11:209
- Anti-assignment clauses, § 11:25, 11:25.10, 11:300.20
- Anti-concurrent causation clauses, § 11:227, 11:227.10
- Anti-subrogation rule. **Subrogation** (this index)
- Antitrust laws, insurance industry exemption from, § 12:6
- Apportionment of loss between covered and noncovered causes, § 11:228
- Appraisal process
 - Generally, § 11:277 et seq.
 - Authority of appraisers, § 11:278
 - Challenging appraisal awards, § 11:278.10
 - Contractors, insurer recommended repair contractors, § 11:280
 - Insurer recommended repair contractors, § 11:280
 - Qualifications of appraiser, § 11:279
 - Scope of appraisers' authority, § 11:278
 - State regulation, § 11:279.50
 - Umpire authority, § 11:278.0§ 5
- Area-wide disruption due to massive infrastructure failure, business interruption insurance, § 11:262
- Assignment of policy benefits, insured's duties, § 11:25, 11:25.10
- Associations, insurance guaranty, § 11:326
- Attorneys' fees
 - Damages "because of" bodily injury or property damage, 11:232.30

INSURANCE—Cont'd

- Attorneys' fees. **Commercial General Liability (CGL) Coverage** (this index)
- Authority of appraisers, § 11:278
- Auto coverage, § 11:296, 11:297
- Backup of water exclusion, § 11:240
- Binders, securing coverage under, § 11:9.10
- Bodily injury. **Commercial General Liability (CGL) Coverage** (this index)
- Boiler and machinery insurance, § 11:214
- Borrowed equipment, insurance for, § 11:319
- Broker liability, § 11:327
- Broker status influencing coverage, § 11:328
- Builder's risk coverage
 - Checklist, § 11:17.17
 - As fire insurance, § 11:215
 - Overview, § 11:211.10
 - Soft cost coverage, § 11:253
- "Build first" requirement, valuation, § 11:274
- Burdens of proof and persuasion in coverage disputes, shifting, § 11:29.20
- Business Interruption Insurance** (this index)
- Cancellation of policy, § 11:324
- Carrier financial thresholds, § 11:17.27
- Causation clauses, anti-concurrent, § 11:227, 11:227.10
- Causation element in light of area-wide disruption due to massive infrastructure failure, business interruption insurance, § 11:262
- "Cause of loss" must cause physical damage, business interruption insurance, § 11:260
- CGL coverage. **Commercial General Liability (CGL) Coverage** (this index)

INDEX

INSURANCE—Cont'd

- Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures, § 19:84
- Choice of law issues in coverage disputes, § 11:38 et seq.
- Civil authority coverage, business interruption insurance, § 11:267
- Claims-made coverage
 - Generally, § 11:281-§ 11:285
 - Commercial General Liability (CGL) Coverage** (this index)
 - Duty of notification, § 11:282
 - "Extended reporting" periods, § 11:284
 - Gaps, notice, § 11:282, 11:283
 - Limits of liability, § 11:285
 - Notice, § 11:19.70, 11:282 et seq.
 - Policy forms, § 11:281-§ 11:285
 - Retroactive date and "gaps," § 11:283
 - "Tails," § 11:284
 - Time, § 11:283, 11:284
- Clauses
 - Generally, § 11:24-§ 11:28
 - Anti-assignment clauses, § 11:25, 11:25.10, 11:300.20
 - Consent clauses, § 11:26
 - Duties of insured, assignment of policy benefits, § 11:25, 11:25.10
 - Fortuity doctrine, § 11:28
 - Fraud, clauses indemnifying for, § 11:28
 - Indemnifying for own fraud, willful conduct, or violation of law, § 11:28
 - No-action clauses, § 11:24
 - No voluntary payments clauses, § 11:27
 - Own fraud, clauses indemnifying for, § 11:28
 - Violation of law, clauses indemnifying for, § 11:28

INSURANCE—Cont'd

- Clauses—Cont'd
 - Willful conduct, clauses indemnifying for, § 11:28
- Collapse
 - Generally, § 11:234.50
 - Competing definitions and public policy approaches to collapse coverage, § 11:230
 - Endorsement, § 11:230.10
 - Various policy approaches to, § 11:229
- Commercial General Liability (CGL) Coverage** (this index)
- Common law, insured's duty to mitigate loss, business interruption insurance, § 11:257
- Completed operations work. **Commercial General Liability (CGL) Coverage** (this index)
- Completion costs, direct physical loss limitation on increased completion costs due to covered loss, § 11:223
- Concurrent cause doctrine and efficient proximate cause doctrine compared, § 11:225.10
- Conditions in insurance policy, § 11:16
- Conflict, interpretation of contracts, § 11:33
- Consent clauses, § 11:26
- Consent judgments, duties of insured, § 11:22
- Consequential loss exclusion, § 11:237
- Construction management services, professional liability coverage, § 11:294
- Contingent business interruption coverage, § 11:266
- Contracting out of "efficient proximate cause" doctrine, § 11:226
- Contractor design insurance, § 11:287

INSURANCE—Cont'd

- Contractor's equipment floater coverage, § 11:17.18
- Contractor's rework endorsement, § 11:322
- Contractual liability exclusion. **Commercial General Liability (CGL) Coverage** (this index)
- Corporations, § 11:13.50
- Corrosion exclusion, § 11:246
- Cost elements within actual cash value, § 11:273
- Costs incurred by insured to comply with an injunction as damages, 11:232.70
- Coverage B "personal injury." **Commercial General Liability (CGL) Coverage** (this index)
- Coverage disputes, choice of law issues in, § 11:38 et seq.
- Coverage limits, § 11:17.21
- Coverages, description of, § 11:17.11
- Coverage trigger issues. **Commercial General Liability (CGL) Coverage** (this index)
- Covered peril or cause of loss, defective construction as, § 11:231
- Covered property, generally, § 11:219 et seq.
- Cracking exclusion, § 11:246.10
- Damages expectation, failed; increased insurance premiums, § 7:264
- Debris removal, § 11:253.10
- Declarations in insurance policy, § 11:10
- Deductibles
 - Generally, § 11:11
 - Loss within, responsibility for, § 11:11.20
 - Percentages, interpreting deductibles expressed in, § 11:11.30
- Default, subcontractor default insurance, § 11:317
- Defective products or work
 - Commercial General Liability (CGL) Coverage** (this index)

INSURANCE—Cont'd

- Defective products or work—Cont'd
 - Coverage for defective work, generally, § 11:221
 - Covered peril or cause of loss, defective construction as, § 11:231
 - "Efficient proximate cause" doctrine, faulty work coverage and, § 11:235
 - Exclusion, faulty workmanship, § 11:232 et seq.
 - Inherent defects insurance, § 11:316
 - Latent defects exclusion, § 11:245, 11:246
 - "Product" or "process," faulty work as, § 11:233
- Defense obligation
 - Affirmative defenses, § 11:51.10
 - Commercial General Liability (CGL) Coverage** (this index)
 - Excess insurance, § 11:301
 - Joint ventures, § 11:42.40
 - Loan receipt agreements, § 11:41.10
 - Multiple insurers, § 11:63.10
 - Ripeness issue, § 11:50.10
- Definitions, descriptions and distinctions
 - Generally, § 11:2-§ 11:5
 - Commercial General Liability (CGL) Coverage** (this index)
 - Competing definitions and public policy approaches to collapse coverage, § 11:230
 - Insured, § 11:13.50
 - Policy, definitions in, § 11:13
 - Professional liability coverage, § 11:291
 - Subrogation** (this index)
- Delayed completion insurance, § 11:313
- Demanding cooperation, loss of right, § 11:22.50
- Demolition, insurable interest in property slated for, § 11:220.30

INDEX

INSURANCE—Cont'd

- Design
 - Design-build projects, § 11:295
 - First-party design coverage, § 11:314
 - Professional liability coverage, § 11:287, 11:295
- Design-build projects, professional liability coverage, § 11:295
- Design coverage, first-party, § 11:314
- Deviation from policy language, interpretation of contracts, § 11:37
- Differently situated insureds and standard forms, § 11:7
- Direct physical loss limitation on increased completion costs due to covered loss, § 11:223
- Discovery of insurance records, § 11:329
- Disputes over coverage, choice of law issues in, § 11:38 et seq.
- Disputes over value, § 11:277 et seq.
- Doctrine of reasonable expectations. Reasonable expectations doctrine, below
- Drafting considerations, § 11:17.10-§ 11:17.28
- Drop down coverage, excess insurance, § 11:302.10
- Duties
 - Claims-made policy forms, duty of notification, § 11:282
 - Defense obligation, above
 - Indemnification, property insurer's duty of, § 11:218
 - Insured's. Duties of insured, below
- Duties of insured
 - Generally, § 11:18-§ 11:23
 - Appeal of favorable rulings, § 11:23.50
 - Assignment of policy benefits, § 11:25, 11:25.10
 - Consent judgments, § 11:22
 - Emergence of prejudice as required showing, § 11:19

INSURANCE—Cont'd

- Duties of insured—Cont'd
 - Inspection of damaged property, availability, § 11:21.10
 - New York and notice, § 11:19
 - Notice, § 11:18, 11:18.50, 11:19, 11:19.70
 - Prejudice, § 11:19, 11:20.10
 - Proof of loss, timely submission, § 11:18.10
 - Protection of insurer's subrogation rights, § 11:23
 - Safeguarding covered property, § 11:21
 - Settlement, § 11:22
 - Subrogation rights of insurer, protection of, § 11:23
 - Timely notice, § 11:18
 - Timely submission of proof of loss, § 11:18.10
 - Truthfulness, § 11:20, 11:20.10
- Duty to defend. Defense obligation, above
- Earth movement exclusion
 - Generally, § 11:247
 - CGL coverage, § 11:142
- Efficacy insurance, § 11:315
- Efficient proximate cause doctrine, § 11:225, 11:225.10, 11:226, 11:235
- Employees, claims between, auto coverage, § 11:297
- Employer's liability insurance, drafting considerations, § 11:17.24
- Employment status, workers' compensation coverage, § 11:298, 11:299
- Endorsements
 - Generally, § 11:15
 - Additional insureds, § 10:94
 - CGL coverage, blanket and scheduled endorsements, additional insureds, § 11:153
 - Collapse coverage, § 11:230.10
 - Law or ordinance endorsements, § 11:238.10

INSURANCE—Cont'd

- Endorsements—Cont'd
 - Ordinance or law endorsements, § **11:238.10**
- Ensuing loss exception to faulty workmanship exclusion, § **11:234**
- Environmental coverage. **Commercial General Liability (CGL) Coverage** (this index)
- Equipment. **Machinery and Equipment** (this index)
- Evidence. Extrinsic evidence, below
- Examination under oath, § **11:211.15**
- Exceptions
 - CGL coverage, contractual liability exclusion, § **11:110, 11:111**
 - Ensuing loss exception to faulty workmanship exclusion, § **11:234**
 - Mold exclusion and ensuing loss exception, § **11:236**
- Excess insurance
 - Generally, § **11:300-§ 11:309**
 - Additional insured coverage, § **11:159, 11:307**
 - CGL coverage, § **11:48, 11:159**
 - Defense obligations, § **11:301**
 - Drafting considerations, § **11:17.22**
 - Drop down coverage, § **11:302.10**
 - Duty to defend, § **11:48, 11:301**
 - Full tendering of policy limits, duties of excess insurer where primary limits “exhausted” through something less than, § **11:304**
 - Insolvency of primary insurer, excess insurer’s responsibilities upon, § **11:302**
 - Language of policy, role of, § **11:305**
 - Liability checklist, § **11:17.23**
 - No-action provision of excess policy, § **11:308**
 - Role of policy language, § **11:305**
 - Settlement, rights and obligations regarding, § **11:303**

INSURANCE—Cont'd

- Excess insurance—Cont'd
 - Umbrella coverage, § **11:309**
 - Vertical vs. horizontal exhaustion doctrine, § **11:306**
- Exclusionary language, interpretation of contracts, § **11:30**
- Exclusions
 - Generally, § **11:14**
 - Commercial General Liability (CGL) Coverage** (this index)
 - Common exclusions to covered property, § **11:219.10**
 - Consequential loss exclusion, § **11:237**
 - Earth movement exclusion, above
 - Exclusion J, CGL coverage, § **11:95-§ 11:101**
 - Faulty workmanship exclusion, § **11:232 et seq.**
 - Freeze/thaw or pressure/weight of water exclusion, § **11:239**
 - Inherent vice exclusion, § **11:244**
 - Latent defects exclusion, § **11:245, 11:246**
 - Miscellaneous exclusions, § **11:251**
 - Mold exclusion and ensuing loss exception, § **11:236**
 - Ordinance or law exclusion, § **11:238**
 - Policy exclusions, generally, § **11:14**
 - Professional liability coverage, § **11:291**
 - Roof damage, water without, § **11:241**
 - Rotting exclusion, § **11:243**
 - Rust and corrosion exclusion, § **11:246**
 - Shrinking and cracking exclusion, § **11:246.10**
 - Sinkhole exclusion, § **11:250**
 - Surface water exclusion, § **11:242**
 - Theft exclusion, § **11:248, 11:248.10**

INDEX

INSURANCE—Cont'd

- Exclusions—Cont'd
 - Vacancy exclusion, § **11:249**
 - Water exclusions, below
 - Wind exclusions, § **11:251.10**
 - Workmanship exclusion, § **11:232 et seq.**
- Exhaustion of
 - Primary coverage, of; interpretation issues, § **11:304.10**
 - Self-insured retentions, § **11:304.20**
- Expense loss, extra, § **11:254**
- “Extended reporting” periods, claims-made policy forms, § **11:284**
- Extra expense loss, § **11:254**
- Extrinsic evidence
 - CGL coverage, duty to defend
 - Allegations of complaint, § **11:43**
 - Texas versus California, § **11:43.10**
 - Drafting considerations, § **11:17.28**
 - Interpretation of contracts, § **11:33**
- Faulty workmanship
 - Generally. Defects and defective work, above
 - Commercial General Liability (CGL) Coverage** (this index)
 - Exclusion, § **11:232 et seq.**
- Federal court sitting in diversity applying state law, § **11:30.0§ 5**
- Financial thresholds of carrier, § **11:17.27**
- Fire insurance, builder's risk coverage as, § **11:215**
- First-party design coverage, § **11:314**
- First Restatement, choice of law issues in coverage disputes, § **11:39**
- Follow form
 - Anti-assignment provisions and, § **11:300.20**
 - Defined, § **11:300.10**
- Force majeure, generally, § **11:313**

INSURANCE—Cont'd

- Forms
 - Standard forms and differing coverages, § **11:7**
- Fortuity doctrine, § **11:28**
- Fortuity requirement, § **11:221**
- Forum selection provisions, § **11:39.10**
- Fraud
 - Commercial general liability (CGL) coverage, additional insureds, certificate of insurance, § **11:171.30**
 - Indemnifying for own fraud, willful conduct, or violation of law, § **11:28**
- Freeze/thaw of water exclusion, § **11:239**
- Fronting policies, § **11:323**
- Gaps, notice, claims-made policy forms, § **11:282, 11:283**
- General liability checklist, drilling down, § **11:17.15**
- Guaranty and warranty
 - Distinction from insurance, § **11:5**
 - Endorsements, subcontractor, § **11:23.10**
 - Professional liability coverage, § **11:292**
- Illusory coverage, interpretation of contracts, § **11:34**
- Imputing agent's knowledge to insured or insurer, § **11:328**
- Increased completion costs, § **11:223, 11:276**
- Increased cost of construction coverage, § **11:238.50**
- Indemnity and Indemnification** (this index)
- Indemnity Clause** (this index)
- Ingress/egress coverage, business interruption insurance, § **11:268**
- Inherent defects insurance, § **11:316**
- Inherent vice exclusion, § **11:244**
- Inland marine coverage, § **11:213**

INSURANCE—Cont'd

- Insolvency of primary insurer, excess insurer's responsibilities upon, § 11:302
- Inspection of damages, making property available, § 11:21.10
- Inspections by insurers, § 13:26
- Installation floater checklist, § 11:17.17
- "Insurable interest," concept of, § 11:220
- Insurance guaranty associations, § 11:326
- Insured
 - Additional insureds, above
 - Commercial General Liability (CGL) Coverage** (this index)
 - Duties of insured, above
 - Duty to mitigate loss under common law, business interruption insurance, § 11:257
 - Imputing agent's knowledge to, § 11:328
 - Obligations to insurer, § 11:16
 - Subrogation, insured's right to be "made whole," § 11:202
- Insurer
 - Imputing agent's knowledge to, § 11:328
 - Insured's obligations to, § 11:16
 - Repair contractors recommended by, § 11:280
 - Subrogation, protection of insurer's subrogation rights, § 11:23
- Insuring agreement, generally, § 11:12
- Interpretation of insurance contracts
 - Generally, § 3:9, 11:29-§ 11:37
 - Ambiguous language, § 11:29.10
 - Analytical conflict, § 11:33
 - Burdens of proof and persuasion in coverage disputes, shifting, § 11:29.20
 - Commercial General Liability (CGL) Coverage** (this index)

INSURANCE—Cont'd

- Interpretation of insurance contracts
 - Cont'd
 - Conflict, analytical, § 11:33
 - Deviation from policy language, § 11:37
 - Evidence, extrinsic, § 11:33
 - Exclusionary language, § 11:30
 - Extrinsic evidence, § 11:33
 - Headings and titles within policies, role of, § 11:32.50
 - Illusory coverage, § 11:34
 - Negotiations on policy interpretation, effect of, § 11:33.10
 - Plain and ordinary meaning, § 11:31
 - Policy endorsements, interpretation, § 11:30.10
 - Punctuation, importance of, § 11:32
 - Reasonable expectations doctrine, § 11:35
 - Reforming policy terms, § 11:36
 - Rules, generally, § 11:29.0§ 5
- Interruption of business. Business interruption insurance, above
- ISO additional insured endorsement revisions, 2013, 11:338.50
- Joint ventures, duty to defend, § 11:42.40
- Katrina effect, business interruption insurance, § 11:262
- Labor clause, § 11:217
- Language of policies
 - Drafting, generally, § 11:29.0§ 6
 - Interpretation of insurance contracts, above
 - Standardization of, § 11:6-§ 11:8
- Latent defects exclusion, § 11:245, 11:246
- Law
 - Endorsements, § 11:238.10
 - Exclusion, § 11:238
- Leased equipment, insurance for, § 11:319

INDEX

INSURANCE—Cont'd

- Liability insurance
 - Commercial General Liability (CGL) Coverage** (this index)
 - Contractor's, § **11:17.12**
 - Pollution liability coverage, § **11:318**
 - Professional liability coverage, below
 - "Like kind and quality" provision, valuation, § **11:275**
- Limitations
 - Claims-made policy forms, limits of liability, § **11:285**
 - Confusion over policy limits, interpretive approaches, § **11:29.50**
 - Direct physical loss limitation on increased completion costs due to covered loss, § **11:223**
 - Professional liability coverage, § **11:290, 11:292**
 - Property policy terms, valuation, § **11:272**
 - Suit limitation provisions, § **11:39.50**
- Loss of use
 - AIA standard form A201 provisions, § **5:227**
 - Business Interruption Insurance** (this index)
 - Commercial General Liability (CGL) Coverage** (this index)
 - Extra expense, § **11:254**
- Machinery and Equipment** (this index)
- Management services, professional liability coverage, § **11:294**
- Massive infrastructure failure, business interruption insurance, § **11:262**
- McCarran-Ferguson Act, exemption from antitrust laws under, § **12:6**
- Mechanics' liens, § **8:160**
- Miscellaneous exclusions, § **11:251**
- Misrepresentation by insured, establishing prejudice, § **11:20.10**

INSURANCE—Cont'd

- Missing policies, standardization of policy language, § **11:8**
- Mold and mildew
 - Generally, § **13:26**
- Commercial General Liability (CGL) Coverage** (this index)
 - Exclusion and ensuing loss exception, § **11:236**
- Mortgages, property coverage, standard mortgage clause, § **11:216**
- Multiple causes of loss, § **11:224**
- Named insured. **Commercial General Liability (CGL) Coverage** (this index)
- National Association of Insurance Commissioners (NAIC), § **12:6**
- "Negligent acts, errors or omissions," professional liability coverage, § **11:288**
- Negotiations on policy interpretation, effect of, § **11:33.10**
- New York, notice, duties of insured, § **11:19**
- No-action
 - Clauses, § **11:24**
 - Excess policy provision, § **11:308**
- Noncovered causes, apportionment of loss between covered and, § **11:228**
- Notice
 - Claims-made policy forms, § **11:19.70, 11:282 et seq.**
 - Commercial General Liability (CGL) Coverage** (this index)
 - Duties of insured, § **11:18, 11:18.50, 11:19, 11:19.70**
- No voluntary payments clauses, § **11:27**
- "Occurrence." **Commercial General Liability (CGL) Coverage** (this index)
- Ordinance or law
 - Endorsements, § **11:238.10**
 - Exclusion, § **11:238**
- Overflow of water exclusion, § **11:240**

INSURANCE—Cont'd

Owner's Protective Professional Indemnity coverage, § 11:314

Own fraud, clauses indemnifying for, § 11:28

Partnerships, § 11:13.50

Performance bonds for design-builders, § 12:94

Personal injury. **Commercial General Liability (CGL) Coverage** (this index)

Persons insured, generally, § 11:220.10

Physical damage, business interruption insurance, § 11:259, 11:261

Physical loss requirement, § 11:222

Plain and ordinary meaning, interpretation of contracts, § 11:31

Policies, generally, § 11:6 et seq.

Policy, generally, § 11:9-§ 11:17

Policy endorsements, interpretation, § 11:30.10

Political risk insurance, § 7:340, 11:320

Pollution-related injuries
Commercial General Liability (CGL) Coverage (this index)

Liability coverage, § 11:318

Liability insurance, § 11:17.26

Property coverage for, § 11:252

Poor workmanship as covered peril or cause of loss, § 11:231

Prejudice

Duties of insured, § 11:19, 11:20.10

Misrepresentation by insured, establishing prejudice, § 11:20.10

Pressure/weight of water exclusion, § 11:239

"Product" or "process," faulty work as, § 11:233

Professional Liability Insurance (this index)

Property coverage

Generally, § 11:211-§ 11:280

INSURANCE—Cont'd

Property coverage—Cont'd

Achieving insured status under, § 11:220.20

Commercial General Liability (CGL) Coverage (this index)

Drafting considerations, § 11:17.13

Drilling down, § 11:17.16

Real property vs. personal property, § 11:219.20

Property damage. **Commercial General Liability (CGL) Coverage** (this index)

Protection of insurer's subrogation rights, duties of insured, § 11:23

Public policy approaches to collapse coverage, § 11:230

Punctuation, interpretation of contracts, § 11:32

Qualifications of appraiser, § 11:279

Rating system for insurers, § 7:279

Reasonable expectations doctrine

CGL coverage, pollution exclusion, § 11:122

Contract interpretation, § 11:35

Sick buildings, § 11:122

Records, discovery of insurance records, § 11:329

Recovery of business losses, business interruption insurance, § 11:257

Reforming policy terms, interpretation of contracts, § 11:36

Regulation of appraisal process, § 11:279.50

Regulation of wrap-up programs, § 11:311

Rented equipment, insurance for, § 11:319

Repair contractors, insurer recommended, § 11:280

Replacement cost value, § 11:270, 11:271.50, 11:274

Requirement of physical loss, § 11:222

Restatement of laws, choice of law issues in coverage disputes, § 11:39

INDEX

INSURANCE—Cont'd

- Retentions, self-insured, § 11:11
- Retroactive date and “gaps,” claims-made policy forms, § 11:283
- Rework endorsement, contractor’s, § 11:322
- Risk Management** (this index)
- Risk of builder soft cost coverage, § 11:253
- Roof damage exclusion, water without, § 11:241
- Rotting exclusion, § 11:243
- Rust and corrosion exclusion, § 11:246
- Safeguarding covered property, duties of insured, § 11:21
- Schedules in insurance policies
 - Generally, § 11:17
 - CGL coverage, additional insureds, scheduled endorsements, § 11:153
- Second Restatement, choice of law issues in coverage disputes, § 11:39
- Self-insured retentions
 - Generally, § 11:11
 - Duty to defend, effect of limit on, § 11:42.20
 - Duty to procure insurance, effect on, § 11:206.10
 - Exhaustion of limits, § 11:304.20
- Sequential loss provisions, § 11:226
- Settlement
 - Duties of insured, § 11:22
 - Rights and obligations, excess insurance, § 11:303
- Shrinking and cracking exclusion, § 11:246.10
- Sick buildings. **Commercial General Liability (CGL) Coverage** (this index)
- Sinkhole exclusion, § 11:250
- SIR obligation, satisfying insured’s, § 11:11.50
- Soft cost coverage, builder’s risk, § 11:253

INSURANCE—Cont'd

- Standard form agreements
 - Differing coverages, § 11:7
 - Mortgage clause, property coverage, § 11:216
 - Policy language, § 11:6-§ 11:8
- Statutory limitations on property policy terms, valuation, § 11:272
- Stop-loss coverage, § 11:321
- Subcontractor default insurance, § 11:317
- Subrogation** (this index)
- Successor liabilities, coverage for, § 11:325
- Sue and labor clause, § 11:217, 11:257
- Suit limitation provisions, § 11:39.50
- Supplementary payments, § 11:12.50
- Suretyship distinguished, § 11:4, 12:9
- Surface water exclusion, § 11:242
- Systems performance coverage, § 11:315
- “Tails,” claims-made policy forms, § 11:284
- Termination for cause based on failure to maintain, § 18:30
- Terrorism insurance, § 11:312
- Testing and commissioning coverage, § 11:253.20
- Theft exclusion, § 11:248, 11:248.10
- Third parties. Another, agreeing to provide insurance for, above
- Time
 - Claims-made policy forms, § 11:283, 11:284
 - Duties of insured, above
- Traditional business interruption coverage, § 11:258
- Triggering. **Commercial General Liability (CGL) Coverage** (this index)
- Truthfulness, duties of insured, § 11:20, 11:20.10

INSURANCE—Cont'd

- Types of property insurance relevant to construction, generally, § 11:212 et seq.
- Umbrella coverage, excess insurance, § 11:17.22, 11:17.23, 11:309
- Undamaged work, valuation, increased cost to complete, § 11:276
- Vacancy exclusion, § 11:249
- Valuation
 - Generally, § 11:269 et seq.
 - Actual cash value, § 11:270, 11:271, 11:271.10, 11:271.50, 11:273
 - Appraisal, above
 - Blanket vs. scheduled policies, § 11:269.50
 - “Build first” requirement, § 11:274
 - Cost elements within actual cash value, § 11:273
 - Dispute resolution, § 11:277 et seq.
 - Increased cost to complete undamaged work, § 11:276
 - “Like kind and quality” provision, § 11:275
 - Limitations on property policy terms, statutory, § 11:272
 - Replacement cost value, § 11:270, 11:271.50, 11:274
 - Statutory limitations on property policy terms, § 11:272
 - Undamaged work, increased cost to complete, § 11:276
- Vertical vs. horizontal exhaustion doctrine, excess insurance, § 11:306
- Violation of law, clauses indemnifying for, § 11:28
- Waiver, subrogation, § 11:17.20
- Warranty. Guaranty and warranty, above
- Water exclusions
 - Backup or overflow exclusion, § 11:240

INSURANCE—Cont'd

- Water exclusions—Cont'd
 - Continuous seepage or leakage of water exclusion, § 11:240.10
 - Freeze/thaw or pressure/weight of water exclusion, § 11:239
 - Without roof damage exclusion, § 11:241
- Willful conduct, clauses indemnifying for, § 11:28
- Wind exclusions, § 11:251.10
- Workers' Compensation Insurance** (this index)
- Workmanship exclusion, § 11:232 et seq.
- Wrap-up insurance, § 11:310, 11:310.10, 11:311

INSURANCE CLAUSES

Insurance (this index)

INSURANCE GUARANTY ASSOCIATIONS

Generally, § 11:326

INSUREDS

Insurance (this index)

INSURERS

Insurance (this index)

INTEGRATED PROJECT DELIVERY (IPD)

- Generally, § 6:24 to § 6:37
- Advantages and disadvantages, § 6:26
- Agreements, § 6:31
- AIA agreement, § 6:31, 6:34, 6:36, 6:37
- Building Information Modeling (BIM), § 6:36
- Collective Project Delivery team (CPD), § 6:27
- ConsensusDOCS, § 6:31, 6:34, 6:36, 6:37
- Cost integrity
 - Incentives, through, § 6:33
 - Processes, through, § 6:34
 - Transparency, through cost, § 6:35

INDEX

INTEGRATED PROJECT

DELIVERY (IPD)—Cont'd

- Detailed Design phase, § 6:36
- Disadvantages and advantages, § 6:26
- Dispute resolution process, § 6:37
- Economic model, § 6:32
- Fees. Cost integrity, above
- Guaranteed Maximum Price, § 6:31, 6:36, 6:37
- Incentive work, § 6:33
- Liability model; risk control, § 6:37
- Limited liability structure, § 6:37
- Management model, § 6:36
- Managing team, § 6:27
- Motivating team, § 6:33
- Processes, cost integrity through, § 6:34
- Project control, § 6:36
- Project Target Cost Estimate, developing, § 6:34
- Relational contracting, § 6:29
- Requirements for successful collaborative undertakings, § 6:30
- Risk control; liability model, § 6:37
- Single Purpose Entity (SPE), § 6:27, 6:31
- Successful collaborative undertakings, requirements for, § 6:30
- Target cost, establishing, § 6:34
- Target Value Design, § 6:34
- Team selection, § 6:26
- Transitional, § 6:31
- Transparency, cost integrity through cost, § 6:35
- Types of agreements, § 6:29

INTEGRATION CLAUSE

- Merger Clause** (this index)

INTELLECTUAL PROPERTY

- Copyright** (this index)
- Design-build project and control and ownership of design documents.
Design-Build Project Delivery Method (this index)
- Patents** (this index)

INTELLECTUAL PROPERTY

—Cont'd

- Trademarks; design-build project and control and ownership of design documents, § 6:72

INTENTIONAL TORTS

- CGL coverage, § 11:69, 11:70, 11:93
- Indemnity clause, § 10:52

INTEREST

- Arbitration award, vacating, § 21:252
- Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures, § 19:86
- Contract Disputes Act, prejudgment interest under, § 8:62
- Inflation, increased interest or financing costs, § 7:278
- Payment due, on; AIA standard form A201 provision, § 5:253
- Prejudgment interest
 - Contract Disputes Act, under, § 8:62
 - Damages, § 19:97
 - Liquidated claims, § 8:63
 - Payment bonds, § 8:203
 - State law, right to interest under, § 8:63
 - Unliquidated claims, § 8:63
- Prompt payment acts, effect of, § 8:64
- Risk management
 - Inflation, increased interest or financing costs, § 7:278
 - Late payment and liability for interest, § 7:313
- Substantial completion, § 8:39

INTERFERENCE

- AIA General Conditions of the Contract for Construction form A201 provisions, § 5:144
- Cooperate, owner's failure to, § 4:31
- Hindrances** (this index)
- Unexpected circumstances, § 4:1

**INTERNATIONAL CONFERENCE
BUILDING OFFICIALS**

Uniform codes, publication of,
§ 13:17

**INTERNATIONAL
CONSTRUCTION**

Generally, § 20:1-§ 20:13

Dispute adjudication procedures,
harmonization influence of com-
monly accepted, § 20:11

Ethical business practices, § 20:12

Foreign Corrupt Practices Act and
international anti-bribery initia-
tives, § 20:12

Globalizations of construction, § 20:1

Harmonization of international law,
trends toward, § 20:3-§ 20:13

Dispute adjudication procedures,
commonly accepted, § 20:11

Ethical business practices, § 20:12

Foreign Corrupt Practices Act and
international anti-bribery
initiatives, § 20:12

Standardized international
construction contract forms,
§ 20:10

Technical standards, § 20:13

UNCITRAL model laws and
guides, § 20:8

UNIDROIT Principles, below
United Nations Convention on
Contracts for the International
Sale of Goods (CISG), § 20:9

Risks, § 20:2

Standardized international construc-
tion contract forms, harmoniza-
tion influence of, § 20:10

Technical standards, harmonization
of, § 20:13

UNCITRAL model laws and guides,
§ 20:8

UNIDROIT Principles

Generally, § 20:4-§ 20:7

Contract damage, § 20:7

Enforcement of contract and
excuse, § 20:5

**INTERNATIONAL
CONSTRUCTION—Cont'd**

UNIDROIT Principles—Cont'd

Force majeure, § 20:6

Hardship, § 20:6

United Nations Convention on
Contracts for the International
Sale of Goods (CISG), § 20:9

**INTERNATIONAL FEDERATION
OF CONSULTING
ENGINEERS (FIDIC)**

Standard form agreements, § 5:7

INTERNET

Auction bidding, reverse, § 7:124

Bid submission by e-mail, § 2:72

INTERPRETATION

Construction and Interpretation
(this index)

INTERRUPTION OF BUSINESS

Business Interruption Insurance
(this index)

INTERSTATE COMMERCE

Federal Arbitration Act (FAA) juris-
diction, § 21:16 to 21:18

INVESTIGATIONS

Payment bond surety's duty to
investigate, § 8:209

**IPD INTEGRATED PROJECT
DELIVERY (IPD)**

Integrated Project Delivery (IPD)

**ISO ADDITIONAL INSURED
ENDORSEMENTS**

2013, § 11:338.50

CGL coverage. 2004, § 11:167

JOBSITE OVERHEAD

Changes resulting in extra work, time
impacts and disruptions;
contractor's compensatory dam-
age measures, § 19:83

INDEX

JOINT AND SEVERAL LIABILITY

Design professionals, contribution,
§ 17:23

JOINT CHECK ARRANGEMENTS

Generally, § 8:59
Bankruptcy-related issues, § 8:59
Endorsing, effect of, § 8:59
Joint check rule, § 8:60
Lender liability, § 8:134
Mechanics' lien rights, waiver of,
§ 8:180
Miller Act, § 8:59, 8:60
Payees, consequences for, § 8:60
Payment bond, § 8:59
Purpose of, § 8:59
Remote payees, § 8:60
Supplier with direct contractual relationship with general contractor,
§ 8:59

JOINTLY OWNED PROPERTY

Mechanics' liens, § 8:166

JOINT VENTURES

Arbitration agreement's effect on,
§ 21:97
CGL coverage, joint venture exclusion, § 11:145, 11:146
Contracting with government as small business, 7:146.50
Indemnity clause, § 10:42
Lender as co-venturer, § 8:131
Risk management, § 7:146
Taxation as partnerships, § 7:146

JUDGMENTS

Indemnitee, preclusive effect of judgments and settlements incurred by, § 10:121

JURISDICTION

Federal Arbitration Act, § 21:16
Implied warranties, § 9:5

KATRINA EFFECT

Business interruption insurance,
§ 11:262

LABOR CLAUSE

Insurance, § 11:217

LANDSCAPE ARCHITECTURES

Licensing, § 16:6

LANHAM ACT

Design-build project and control and ownership of design documents,
§ 6:72

LATENT DEFECTS

Acceptance of work, § 13:53 et seq.,
13:66-§ 13:68
Differing site conditions, § 14:49
Insurance coverage exclusions,
§ 11:245, 11:246

LAW EXCLUSION

Insurance, § 11:238

LEAD PAINT

CGL coverage, lead paint claims,
§ 11:138
Environmental risks, § 7:181

LEASES AND LEASING

Equipment leases
Anti-indemnity statutes, § 10:102
Insurance for, § 11:319
UCC application to, § 9:15
Insurance for leased equipment,
§ 11:319
Mechanics' liens, § 8:165

“LEGALLY OBLIGATED TO PAY”

CGL coverage, § 11:91

LEGISLATION

Competitive sealed bidding, special legislative exemption, § 2:34

LENDER LIABILITY

Loans (this index)

LETTERS OF CREDIT

Preference payments under bankruptcy, § 8:112

LETTERS OF INTENT

Purpose of, § 2:3

**LIABILITY IN ANY EVENT
EXCEPTION**

CGL coverage, contractual liability
exclusion, § 11:111

LIABILITY INSURANCE

Insurance (this index)

LIBEL

Defamation (this index)

LICENSES AND PERMITS

Generally, § 16:1-§ 16:29

Administrative sanctions, § 16:24-
§ 16:26

AIA General Conditions of the
Contract for Construction form
A201 provisions, § 5:60

Arbitration, as condition precedent
to, § 21:55

Architecture versus engineering,
§ 16:9

Bidder responsibility, evaluation of,
§ 2:98

Building codes, regulatory role of,
§ 16:2

Civil sanctions

Generally, § 16:1, 16:17-§ 16:21

Absence of express statutory pro-
hibition, § 16:19

“No harm, no foul theory,”
§ 16:19

Quantum meruit recovery theory,
§ 16:21

Recovery theories, § 16:21

Substantial compliance versus
strict compliance, § 16:20

Construction professionals, licensing

Generally, § 16:11-§ 16:16

Bonds, § 16:12

Construction managers, § 16:15

Exemptions, § 16:14

Home improvements, § 16:13

Policy and purpose, § 16:12

Prequalification requirements,
§ 16:16

Regulatory scope, § 16:13, 16:14

LICENSES AND PERMITS—Cont'd

Construction professionals, licensing
—Cont'd

Unlicensed construction profes-
sional, right to recover money
back from, § 16:22, 16:23

Corporate practice by licensed
professionals, § 16:7

Criminal sanctions, § 16:1, 16:27

Design-build project delivery method
Control and ownership of design
documents, § 6:75

State and local government
procurement, § 6:67

Design professionals, licensing

Generally, § 16:1, 16:4-§ 16:10

Architecture versus engineering,
§ 16:9

Building codes, regulatory role of,
§ 16:2

Corporate practice, § 16:7

Design-bid-build project, § 16:9

Design-build practice, § 16:8

Drawings and other instruments of
service, regulations governing
sealing, § 16:6.20

Engineering versus architecture,
§ 16:9

Exemptions, § 16:6

Holding out jurisdictions, § 16:5

Landscape architectures, § 16:6

Preparatory work, § 16:6

Regulated acts, § 16:5

Responsible charge

Defined, § 16:6.15

Sealing engineering documents,
state requirements for,
§ 16:6.10

Sealing documents

Drawings and other instruments
of service, regulations
governing sealing,
§ 16:6.20

Engineering documents, state
requirements for sealing;

INDEX

LICENSES AND PERMITS—Cont'd

- Design professionals, licensing
 - Cont'd
 - Sealing documents—Cont'd responsible charge, § 16:6.10
 - Improper sealing, establishing causation and damages for, § 16:6.30
 - Statutory schemes, § 16:5-§ 16:7
- Engineering versus architecture, § 16:9
- Entity formation risks and doing business without proper license, § 7:145
- Fee payments; AIA General Conditions of the Contract for Construction form A201 provisions, § 5:86
- Foreign incorporation requirement, § 16:28, 16:29
- Governmental regulation
 - When is licensure status triggered?, § 16:16.50
- Mechanics' lien asserted by unlicensed claimant, § 8:162
- National Building Code, § 16:2
- Negligence per se, building code non-compliance and, § 16:2.1
- Noncompliance, consequences of
 - Generally, § 16:17-§ 16:26
 - Civil sanctions, above
 - Sanctions for noncompliance, below
- OSHA, regulatory role of, § 16:3
- Police power laws, sanctions for violation of, § 16:1
- Political risks where government refusal to issue, § 7:327
- Safety laws, regulatory role of, § 16:2
- Sanctions for noncompliance
 - Generally, § 16:1, 16:17
 - Administrative sanctions, § 16:24-§ 16:26
 - Civil sanctions, above
 - Criminal sanctions, § 16:1, 16:27

LICENSES AND PERMITS—Cont'd

- Sanctions for noncompliance
 - Cont'd
 - Unlicensed construction professional, right to recover money back from, § 16:22, 16:23
- Sealing documents. Design professionals, licensing, above
- Standard of care, building code compliance and, § 16:2.2
- Taxing power, § 16:1
- Termination for cause based on failure to maintain, § 18:30
- Unlicensed construction professional, right to recover money back from, § 16:22, 16:23

LIENS

- Change orders, lien waivers and releases arising out of, § 4:48
- Equitable lien, § 5:180
- Lien Waiver** (this index)
- Mechanics' Liens** (this index)
- Merger of title, barred under, § 4:48
- No lien clauses in construction contracts, § 8:180
- Preference payments, statutory lien exception to, § 8:118
- Substantial completion and lien rights, § 8:31
- Uniform Construction Lien Act (UCLA), § 8:152

LIEN WAIVER

- Generally, § 8:180
- Change orders, lien waivers and releases arising out of, § 4:48
- Execution of, § 5:194
- Final, § 8:180
- Final payment and, § 5:191
- Joint check arrangements and, § 8:180
- Mechanics' liens, § 8:168
- Partial, § 8:180
- Payment bond rights, § 8:208
- Payment submission process, § 5:165
- Releases, § 7:239

LIEN WAIVER—Cont'd

Suppliers, § 5:171

**“LIKE KIND AND QUALITY”
PROVISION**

Insurance, valuation, § 11:275

**LIMITATION OF LIABILITY
CLAUSE**

**Agreed Remedies and Damage
Measures** (this index)

Curtain walls, § 7:211

Interpretation of provisions, § 3:9,
19:52.67

LIQUIDATED DAMAGES

Completion of project risks, § 7:196

Delays, § 15:82, 15:82.51, 15:82.52

Substantial completion, § 8:30

Undercompensatory, § 15:82.51,
19:52.64, 19:52.65

LIQUIDATION AGREEMENTS

Defined, § 8:58

Payment, § 8:58

LIS PENDENS

Bankruptcy, § 8:173

LOAN RECEIPT AGREEMENTS

Insurance, § 11:41.10

Settlements, § 10:163

LOANS

Agreements, generally, § 8:127-
§ 8:129

Approving design or construction,
lender liability for negligence in,
§ 8:139

Assignment to lenders; AIA standard
for A201 provisions, § 5:246

Construction documents and loan
agreement, generally, § 8:127

Construction Lender liability

Quantum meruit, § 8:144

Unjust enrichment, § 8:144

Co-venturer, lender as, § 8:131

Drafting loan documents, § 8:127

LOANS—Cont'd

Dual-obligee bond, recourse against,
§ 8:148

Equitable estoppel and lender
liability, § 8:145

Equitable lien, § 8:143

Fraud, lender liability for, § 8:137

Inspecting or approving design or
construction, lender liability for
negligence in, § 8:139

Inspections by lenders, § 13:25

Joint check agreement, § 8:134

Lender liability

Generally, § 8:125-§ 8:149

Adequate remedy at law defense,
§ 8:147

All loan funds disbursed defense,
§ 8:147

Approving design or construction,
negligence in, § 8:139

Assumption of risk defense,
§ 8:147

Completion money sources after
owner default, § 8:129

Constructive trust, § 8:142, 8:143

Cost overruns, duty to fund where
substantial, § 8:149

Defenses to equitable claims,
§ 8:147

Direct contract or guarantee,
lender's, § 8:135

Disbursement, negligent, § 8:140

Dual-obligee bond, recourse
against, § 8:148

Equitable estoppel, § 8:145

Equitable lien, § 8:142, 8:143

Equitable principles, § 8:129

Equitable theory and unjust enrich-
ment, § 8:141

Fraud, for, § 8:137

Implied warranty liability, § 8:138

Inspecting or approving design or
construction, negligence in,
§ 8:139

Joint check agreement, § 8:134

INDEX

LOANS—Cont'd

- Lender liability—Cont'd
 - Misrepresentation or fraud, for, § 8:137
 - Obligatory advance rule, § 8:128
 - Optional disbursements, § 8:128
 - Ownership theory, below
 - Privity issues, § 8:129
 - Quantum meruit, § 8:141
 - Savings clause in bond, § 8:147
 - Statutory remedies, contractor's failure to pursue, § 8:147
 - Subordination, equitable, § 8:146
 - Third-party beneficiary, contractor as, § 8:133
 - Tortious interference, for, § 8:136
 - Underwriting loans, § 8:126
 - Unjust enrichment, § 8:141
- Misrepresentation or fraud, lender liability for, § 8:137
- Obligatory advance rule, § 8:128
- Optional disbursements, § 8:128
- Ownership theory
 - Generally, § 8:130-§ 8:132
 - Assignment of and subrogation to owner's position under owner-contractor contract, lender, § 8:130
 - Control and domination of owner, lender, § 8:132
 - Co-venturer, lender as, § 8:131
- Performance bond, lender third-party rights against subcontractor's, § 12:34
- Quantum meruit and lender liability, § 8:141, 8:144
- Risk management and lender insolvency, § 7:279
- Subordination, equitable; lender liability, § 8:146
- Third-party beneficiary, contractor as, § 8:133
- Tortious interference, lender's liability for, § 8:136
- Types of loan documents, § 8:127

LOANS—Cont'd

- Unjust enrichment and lender liability, § 8:141, 8:144
- ### LOSS OF USE INSURANCE
- Insurance (this index)
- ### LOST LABOR PRODUCTIVITY
- Disruption Claim (this index)
- ### LOST OR DESTROYED INSTRUMENTS
- Insurance policies, § 11:8
- ### LUMP SUM CONTRACTS
- Generally, § 6:98
 - Allowances, § 5:8
 - Cost plus fee contract compared, § 6:108
 - Design contracts, § 6:116
 - Standard form agreements, conditions in, § 5:8
 - Unit price contracts and, § 6:99, 6:106, 8:8
- ### MACHINERY AND EQUIPMENT
- AIA standard form A201 provisions
 - Insurance coverage for contractor's equipment, § 11:17.18
 - Storage of equipment, § 5:133
 - Completion of project risks and cost escalation of, § 7:292
 - Delays
 - Delivery of owner-furnished materials, equipment or work, untimely, § 15:54
 - Inexcusable delay where delay within contractor's control, § 15:39
 - Force account work, § 6:111
 - Implied Product Warranties of Merchantability and Fitness for Particular Purpose (this index)
 - Inexcusable delay where delay within contractor's control, § 15:39
 - Inspections, § 13:5
 - Insurance
 - Generally, § 11:214

MACHINERY AND EQUIPMENT

—Cont'd

- Insurance—Cont'd
 - Contractor's equipment, § 11:17.18
 - Leased, rented, or borrowed equipment, § 11:319
- Leases
 - Anti-indemnity statutes, § 10:102
 - UCC application to, § 9:15
- Mechanics' liens, § 8:158
- Performance bonds surety's contract defenses based on owner's approval of, § 12:52
- Resource risks, § 7:170, 7:177
- Storage of, § 5:133
- UCC application to equipment leases, § 9:15
- Warranties
 - Fitness of purpose, implied product warranty of. **Implied Product Warranties of Merchantability and Fitness for Particular Purpose** (this index)
 - Merchantability and fitness for particular purpose, implied product warranties of
 - Implied Product Warranties of Merchantability and Fitness for Particular Purpose** (this index)
 - Plant, equipment or work plan, implied warranty implications of approval of, § 9:109

MAGNUSON-MOSS WARRANTY ACT

- Arbitration of claims, § 21:170
- Implied product warranties of merchantability and fitness for particular purpose, § 9:43-§ 9:40

MAINTENANCE AND REPAIR

- Affiliated equipment companies, § 19:81
- American Institute of Architects Standard Forms** (this index)

MAINTENANCE AND REPAIR

—Cont'd

- CGL coverage. **Commercial General Liability (CGL) Coverage** (this index)
- Contract interpretation, § 3:24, 3:26
- Cost to repair rule, § 19:58-§ 19:62
- Damage measures, § 19:51, 19:70
- Design-build project delivery method, § 2:12, 6:81
- Elevator maintenance services, § 3:24, 4:33, 6:53
- Implied product warranties of merchantability and fitness for particular purpose; remedy limitations, § 9:49
- Indemnity provisions, § 10:40, 10:80, 10:104
- Insurer recommended repair contractors, § 11:280
- Lead paint, removing, § 7:181
- Limitation of liability, § 10:120
- Mechanics' liens, § 8:159
- Other construction damaged by contractor's correction efforts, repair of; AIA standard for A201 provisions, § 5:241
- Payment bonds, § 8:197
- Records, § 4:55
- Repose statute, tolling, § 7:35
- Sealed bids
 - Catch all exemption, public interest, § 2:39
 - Exclusions, statutory public works, § 2:27
 - Public forces exemptions, § 2:37
 - Reclassification of work to fit exemption, § 2:44
- Statute of limitations, tolling, § 7:35
- Stigma damages remaining after repair as element of diminution of value damage, § 19:61.50
- Warranties
 - Express warranties of materials and workmanship, § 9:61, 9:62, 9:119
 - Retainage, § 8:21

INDEX

MALPRACTICE

- Design professionals
 - Contribution and malpractice liability, New York law, § 17:21.10
 - Negligence liability, § 17:19
 - Warranty of design adequacy, malpractice distinguished from, § 9:89
- Professional Liability Insurance** (this index)

MANAGEMENT SERVICES

- Professional liability coverage, § 11:294

MANDAMUS

- Arbitration, use of review orders to compel, § 21:294

MANIFESTATION TRIGGER

- CGL coverage, § 11:182

MANUALS

- AIA General Conditions of the Contract for Construction form A201 provisions, § 5:28, 5:43

MARKUP

- Overhead, percentage markup for, § 12:35, 18:3
- Time and materials, and force account, § 2:20

MARY CARTER AGREEMENTS

- Settlements, § 10:163

MASSIVE INFRASTRUCTURE FAILURE

- Business interruption insurance, § 11:262

MATERIAL ALTERATION RULE

- Uniform Commercial Code, arbitration agreements subject to, § 21:113

MATERIAL DEVIATIONS FROM BID SPECIFICATIONS

- Bids (this index)

MCCARRRAN-FERGUSON ACT

- Exemption from antitrust laws under, § 12:6

MEANS AND METHODS

- Soil and site conditions causing changes in construction. **Soil and Site Conditions** (this index)

MECHANICS' LIENS

- Generally, § 8:150-§ 8:180
- Accrual of lien, determining, § 8:176
- Arbitration, § 21:133, 21:169, 21:276
- Arbitration, waiver of right, § 21:190
- Bankruptcy** (this index)
- Calculating amount of, § 8:168
- Commencing improvement, work qualifying as, § 8:156
- Condominiums, § 8:167
- Constitutional challenges, § 8:153
- Constitutional liens, § 8:179
- Construction and interpretation of statutes, § 8:152
- Design professionals' rights to assert, § 8:155
- D'Oench Duhme doctrine, § 8:177
- Effect of subordination agreements on lien priority, § 8:175.50
- Equipment, § 8:158
- Equitable liens, § 8:178
- ERISA issues, § 8:154
- Extra work, for, § 8:168
- Filing requirements, § 8:170
- Finance charge, § 8:160
- Fixtures, § 8:157
- Forum selection clauses, § 8:151
- Fringe benefits claims, § 8:154
- Home office overhead, § 8:160
- Homestead property, § 8:179
- Improvement defined, § 8:159
- Indemnity clause, § 10:57
- Insufficient unencumbered value in project for recovery of, § 7:274
- Insurance premiums, § 8:160
- Joint check arrangements, effect of, § 8:180

MECHANICS' LIENS—Cont'd

- Jointly owned property, § 8:166
- Leasehold interest, § 8:165
- Materials, for, § 8:157
- Miscellaneous costs, § 8:160
- No lien clauses in construction contracts, § 8:180
- Notices
 - Filing requirements, § 8:170
 - Stop notice legislation, § 8:172
- Payment bonds, § 8:187
- Perfection of, § 5:180
- Preference payments, statutory lien exception to, § 8:118
- Priority issues
 - Generally, § 8:175-§ 8:177
 - Accrual of lien, determining, § 8:176
 - D'Oench Duhme doctrine, § 8:177
- Profits, § 8:160
- Public improvement lien, § 8:164
- Public property, § 8:163
- Remote claimants, § 8:161
- State legislation, § 8:150
- Stop notice, § 8:172, 8:173
- Strict and liberal construction of statutes, § 8:152
- Subcontractor liens, § 8:168
- Substantial completion and lien rights, § 8:31
- Taxes, § 8:160
- Time limitations for foreclosing on, § 8:171
- Town homes, § 8:167
- Uniform Construction Lien Act (UCLA), § 8:152
- Union contribution claims, § 8:154
- Unlicensed claimants, § 8:162
- Waiver of lien rights, § 8:180

MEDIATION

- Generally, § 21:312-§ 21:316
- Arbitration, as condition precedent to, § 21:54
- Arbitration, form of, § 21:11

MEDIATION—Cont'd

- Confidentiality of communications, § 21:314
- Disclosure requirements, § 21:316
- Good faith, failure to mediate in, § 21:315
- Precondition to litigation, § 21:312.50
- Preparation of mediated settlement agreements, § 21:317
- Uniform Mediation Act, § 21:313

MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE, IMPLIED PRODUCT WARRANTIES OF

- Implied Product Warranties of Merchantability and Fitness for Particular Purpose** (this index)

MERGER CLAUSE

- Parol evidence rule, § 3:16

MERGER DOCTRINE

- Arbitration, effect on prior understandings, § 21:89

MILDEW

- Mold and Mildew** (this index)

MILLER ACT

- Payment Bonds** (this index)

MINORITY-OWNED BUSINESS ENTERPRISES (MBE)

- Bids, statutory preferences, § 2:55, 2:89, 2:102
- FCA liability for non-compliance with programs, § 8:79

MISREPRESENTATIONS

- Generally, § 14:29
- Changes in contract. **Changes and Extras Clauses** (this index)
- Computation of damage claims, § 19:99
- Curtain walls, § 7:212
- Design professionals, § 17:27, 17:42, 17:46

INDEX

MISREPRESENTATIONS—Cont'd

- Differing Site Conditions** (this index)
- False Claims Act (FCA)** (this index)
- Insurance, misrepresentation by insured, establishing prejudice, § **7:35**
- Lender liability, § **8:137**
- No damages for delay clause, fraud exception, § **15:76**
- Performance bond surety's defense, § **12:66, 12:76**
- Repose statute, tolling, § **7:35**
- Statute of limitations, tolling, § **7:35**
- Unauthorized practice of law in arbitration, effects, § **21:297-21:299**
- Warranty protection and economic loss recovery, § **9:56**

MISSING POLICIES

- Insurance, standardization of policy language, § **11:8**

MISTAKE IN BID

- Generally, § **2:117-2:134**
- Burden of proof for mistake remediation, § **2:118, 2:134**
- Clear and convincing evidence standard of proof for remediation of, § **2:118, 2:134**
- Contract formation risks, § **7:128, 7:130**
- Fact, mistake of, § **2:119**
- Firm bid rule, § **2:117**
- Judgment, mistake of, § **2:120**
- Law, mistake of, § **2:121**
- Mutual mistake
 - Generally, § **2:132-2:134**
 - Assumption of risk, § **2:133**
 - Defined, § **2:132**
 - Reformation of contract, § **3:57**
 - Relief from, § **2:134**
- Preponderance of evidence standard of proof for remediation of, § **2:118**

MISTAKE IN BID—Cont'd

- Prime bid, subcontractor's mistake affecting, § **2:122**
- Reformation of contract, § **3:57**
- Remediation, burden of proof for, § **2:118**
- Sub-bids, enforcement of, § **2:112**
- Unilateral mistakes
 - Generally, § **2:117, 2:123-2:131**
 - Breach of duty, § **2:126**
 - Constructive knowledge of mistake from disparity in bids and estimates, § **2:129**
- Defined, § **2:123**
- Inducement of
 - Accepting party's, § **2:128**
 - Misrepresentation, inducement of mistake by, § **2:130**
- Innocence of bid recipient, § **2:123**
- Knowledge of, accepting party's, § **2:128**
- Materiality, § **2:125**
- Misrepresentation, inducement of mistake by, § **2:130**
- Negligence or breach of duty, § **2:126**
- Prejudice, lack of, § **2:127**
- Relief from, § **2:134**
- Unconscionability, § **2:124**
- Waiver of rights to relief, § **2:131**

MISTAKES

- Bids. **Mistake in Bid** (this index)
- Correction of Work** (this index)
- Design errors, design responsibility undertaken by failure to discover, § **6:54**
- Mutual mistakes in bids. **Mistake in Bid** (this index)

MITIGATION

- Damages** (this index)
- Materiality of breach of contract, § **18:14**

MOLD AND MILDEW

- Commercial General Liability (CGL) Coverage** (this index)

MOLD AND MILDEW—Cont'd

Indoor polluting, growing risks from,
§ 7:192

Insurance (this index)

MOOTNESS

Bid award, mootness of protesting
improper, § 2:144

MORTGAGES

AIA General Conditions of the
Contract for Construction form
A201 provisions, § 5:158

Insurance, property coverage, stan-
dard mortgage clause, § 11:216

MOTOR VEHICLES

CGL coverage, automobile exclusion,
§ 11:144

**MULTI-FAMILY HOUSING
DEVELOPMENTS**

Risk management, § 7:116

MULTIPLE CAUSES OF LOSS

Insurance, § 11:224

MULTI-PRIME CONTRACTING

Design-bid-multi-prime approach,
§ 6:14

Wicks law, § 6:14

MUTUAL MISTAKES

Bids. **Mistake in Bid** (this index)

Site conditions, § 14:43

NAMED INSURED

**Commercial General Liability
(CGL) Coverage** (this index)

**NATIONAL ASSOCIATION OF
ATTORNEYS GENERAL
(NAAG)**

Standard form agreements, § 5:7

**NATIONAL ASSOCIATION OF
INSURANCE
COMMISSIONERS (NAIC)**

Generally, § 12:6

**NATIONAL ENVIRONMENTAL
POLICY ACT OF 1969**

Environmental impact statement
requirement under, § 5:207

NATIVE AMERICANS

Arbitration, § 21:286

Communication risks and doing busi-
ness with Indian tribes, § 7:222

Remains; environmental risk issues,
§ 7:195

Sovereign immunity of Indian tribes,
§ 7:222

NEGLIGENCE

Indemnity and Indemnification
(this index)

Torts (this index)

**“NEGLIGENT ACTS, ERRORS OR
OMISSIONS”**

Insurance, professional liability
coverage, § 11:288

NEW YORK

Arbitration (this index)

Notice, duties of insured, § 11:19

Subrogation, New York anti-subroga-
tion rule, § 11:199

NO-ACTION CLAUSES

Insurance (this index)

**NO DAMAGES FOR DELAY
CLAUSE**

Generally, § 1:2

Active interference exception,
§ 15:77

Agreed remedies and damage
measures, § 19:52.55

AIA General Conditions of the
Contract for Construction form
A201, risk allocation provisions,
§ 5:20, 5:162

Bad faith exception, § 15:76

Compensable delay conversion to
excusable delay, § 15:75-
§ 15:80

Exceptions, § 15:76-§ 15:80

INDEX

NO DAMAGES FOR DELAY

CLAUSE—Cont'd

- Fraud exception, § 15:76
- Interpretation of provisions, § 3:9
- Misrepresentation exception, § 15:76
- Not contemplated by the parties exception, § 15:79
- Purpose of, § 1:2
- Unreasonable delay exception, § 15:78
- Waiver of, § 7:254, 15:80
- Weather-related events, § 7:321

NONCOVERED CAUSES

- Insurance, apportionment of loss between covered and, § 11:228

NON-DISCLOSURE

- Prior relationships, vacating arbitration award, § 21:242

NO PAY FOR ACCELERATION CLAUSE

- Generally, § 15:93

NOTICE

- AIA General Conditions of the Contract for Construction form A201 provisions, § 5:60, 7:230, 7:231
- Bids, § 2:61, 2:71
- Changes, timeliness of notice of, § 4:35
- Claim notice requirements and compliance problems, § 7:231
- Claim submission timeliness requirements; notice and waiver
 - Minnesota-style, § 4:36.50
 - New York-style, § 4:36.60
- Commercial General Liability (CGL) Coverage** (this index)
- Constructive acceleration
 - Claim for, notice of, § 15:99
 - Delaying event and request for extension of time, § 15:96
- Cure of breach of contract notice, § 12:42, 18:15, 18:41

NOTICE—Cont'd

- Delays
 - Proceed, untimely issue of notice of, § 15:52
 - Timely notice of delay, § 15:71
- Differing site conditions, § 14:57, 14:58
- Federal Acquisition Regulations, § 7:231
- Indemnity clause, § 10:38
- Insurance** (this index)
- Mechanics' liens
 - Requirements, § 8:170
 - Stop notice legislation, § 8:172
- Performance bonds
 - Cure of breach of contract notice, § 12:42
 - Timely notice of default, obligee's failure to give, § 12:74
- Stop Notice** (this index)
- Subrogation and notice, waivers of, § 11:192.20
- Termination of contract, § 5:257, 18:15, 18:41
- UCC express warranties; buyer's notification obligations, § 9:35
- Untimely issue of notice to proceed, compensable delay where, § 15:52
- Waiver of notice requirements, § 7:251

NO VOLUNTARY PAYMENTS CLAUSES

- Insurance, § 11:27

NUISANCE

- Design professionals, liability of, § 17:34

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

- Generally, § 13:12-§ 13:16
- Appeals from OSHA citations, § 13:14
- Application of, § 7:148
- Asbestos standard, § 7:180
- Criminal and civil penalties, § 7:148

OCCUPATIONAL SAFETY AND HEALTH ACT (OSHA)

—Cont'd

- Design professionals, liability of, § 17:60
- Enforcement proceedings, § 13:12-§ 13:16
- Erection of safeguards and posting warnings, safety precautions, § 5:198
- Lead paint regulation, § 7:181
- Licensing and permitting under, § 16:3
- Penalties under, § 7:148
- Permits under, § 16:3
- Regulatory role of, § 16:3
- Related civil litigation, effect of OSHA violations on, § 13:15
- Responsibility of contractor for giving notices and complying with safety regulations, § 5:197
- Risk management, § 7:148
- Vicarious liability, § 13:16
- Workplace laws, regulatory role of, § 16:3

OCCUPIED PROPERTY EXCLUSION

- CGL coverage, § 11:96

“OCCURRENCE”

- Commercial General Liability (CGL) Coverage** (this index)

ODORLESS GAS

- CGL coverage for injury to tangible property, § 11:85.10

OFFER

- Contract formation, § 2:4
- Firm bid rule, § 2:4
- Withdrawing, § 2:4

OIL POLLUTION ACT OF 1990

- Purpose of, § 5:207

ONGOING OPERATIONS

- CGL coverage, additional insureds Completed operations compared, § 11:168

ONGOING OPERATIONS—Cont'd

- CGL coverage, additional insureds —Cont'd
- “Out of” ongoing operations defined, § 11:168.10

ORAL AGREEMENT

- Arbitrate, duty to, § 21:51

ORDINANCE OR LAW EXCLUSION

- Insurance, § 11:238

OSHA

- Occupational Safety and Health Act (OSHA)** (this index)

“OTHER INSURANCE” PROVISIONS

- CGL coverage, § 11:173 et seq.

OUT-OF-SEQUENCE WORK

- Completion of project risks, § 7:298

OVERFLOW OF WATER EXCLUSION

- Insurance, § 11:240

OVERHEAD

- Changes resulting in extra work, time impacts and disruptions; contractor's compensatory damage measures
- Indirect home overhead costs, § 19:85
- Job site and general conditions overhead, § 19:83
- Communication risks, § 7:229
- Deductive change, § 18:48
- Differing site conditions; extra work clause, § 14:27
- Early completion of project, § 15:21, 15:101
- Eichleay formula, § 5:272, 19:15
- Extended field office and home office damages, § 15:21
- Field office damages, extended, § 15:21
- General conditions overhead, § 19:83

INDEX

OVERHEAD—Cont'd

- Home office overhead, § 5:272, 8:160, 12:77, 19:85
- Indirect home office overhead costs, § 19:85
- Mechanics' liens, § 8:160
- Percentage markup for, § 12:35, 18:3
- Reasonable overhead, recovery of, § 18:46
- Substantial completion, § 8:35
- Time impact evaluation and total time claim, § 15:133

OWNED PROPERTY EXCLUSION

- CGL coverage, § 11:96

OWNER CONTROLLED INSURANCE PROGRAM

- CGL coverage, duty to defend, § 11:53

OWNER'S AND CONTRACTOR'S PROTECTIVE (OCP) LIABILITY

- CGL coverage, comparison, additional insureds, § 11:166

OWNERSHIP OF INJURED PROPERTY

- CGL coverage, coverage triggers and, § 11:179

OWNER'S PROTECTIVE PROFESSIONAL INDEMNITY INSURANCE

- Generally, § 11:314

OWN FRAUD

- Insurance, clauses indemnifying for, § 11:28

OWN NEGLIGENCE OF ADDITIONAL INSURED

- CGL coverage, § 11:155

PAROL EVIDENCE RULE

- Generally, § 3:11-§ 3:20
- Change orders, § 3:20
- Exceptions to application, § 3:18

PAROL EVIDENCE RULE—Cont'd

- Fraud exception to application of, § 3:18
- Implied product warranties of merchantability and fitness for particular purpose; disclaimers, § 9:44, 9:45
- Implied terms, § 3:15
- Indemnity, § 10:19, 10:22
- Integration, § 3:14, 3:16, 3:17
- Meaning, extrinsic evidence used to determine, question of, § 3:19
- Merger or integration clauses, § 3:16
- Missing and implied terms, § 3:15
- Partial payment clause, § 3:18
- Pre-bid discussions and, § 3:19
- Releases, § 3:20
- Settlements, § 3:20
- Statute of frauds, § 3:13
- Substantive rule of law, § 3:12
- Uniform Commercial Code application, § 3:13
- Unit price terms, altering, § 8:10

PARTIALITY OF ARBITRATOR

- Waiver of right to object, § 21:236

PARTIAL OCCUPANCY OF PROJECT

- AIA standard form A201 provisions, § 5:187-§ 5:189

PARTIAL PAYMENT CLAUSE

- Parol evidence rule, exceptions to, § 3:18

PARTIAL RELEASE

- Settlements, § 4:48

PARTNERING AGREEMENTS

- Project delivery methods, § 6:22

PARTNERSHIPS

- Arbitration agreement's effect on, § 21:97
- Insurance, § 11:13.50

**PASS-THROUGH CLAIMS
ARRANGEMENTS**

Payment, § 8:58

PAST PERFORMANCE

Design-build project, federal procurement, § 6:65

PATCHING, CUTTING AND

Cutting and Patching (this index)

PATENT AMBIGUITY

Contract interpretation, § 3:8, 3:11-§ 3:20

Design responsibility to contractor, patent ambiguity doctrine as vehicle for flowing, § 6:52, 6:53

PATENTS

Engineering Advancement Association of Japan (ENAA), § 7:217

Infringement; AIA General Conditions of the Contract for Construction form A201 risk allocation provisions, § 5:86, 7:217

Technology risks, § 7:217

PAY IF PAID CLAUSE

Generally, § 8:52-§ 8:58

Agreed remedies and damage measures, § 19:52.56

Effect of enforcement of, effect of, § 8:52

Express condition precedent language, enforceability of clause containing, § 8:55

Interpretation of agreements, § 3:9

Risk management, § 8:53

PAYMENT

Acceptance of Work (this index)

American Institute of Architects Standard Forms (this index)

Anti-Deficiency Act, § 8:44

Assignment of payment rights, § 8:68

Bankruptcy (this index)

Bonds. **Payment Bonds** (this index)

PAYMENT—Cont'd

Building Information Modeling (BIM), § 7:87

Compensable delay where delay within contractor's control, § 15:53

Conditional payment arrangements
Generally, § 8:55-§ 8:57

Agreed remedies and damage measures, § 19:52.56

Express condition precedent language, enforceability of clause containing, § 8:55

Liquidation agreements, § 8:58

Pay If Paid Clause (this index)

Payment bond surety, as defense for, § 8:57

Pay When Paid Clause (this index)

Risk management, § 8:53

Construction trust fund obligation, creation by implication, § 8:47

Contract Disputes Act

FCA liability under, § 8:83

Prejudgment interest under, § 8:62

Sovereign immunity, § 8:102

Contractor recovery fund statutes, § 8:51.50

Contractual limitation on right to receive payment

Generally, § 8:52-§ 8:58

Conditional payment arrangements, above

Construction manager's failure to pay trade contractors, owner's liability for, § 8:52.50

No Damages for Delay Clause (this index)

Pay If Paid Clause (this index)

Pay When Paid Clause (this index)

Criminal penalties for nonpayment, § 8:45

Design professional's certificates for payment

Generally, § 8:23

INDEX

PAYMENT—Cont'd

- Design professional's certificates for payment—Cont'd
 - Binding effect, § 8:23
 - Liability for withholding payment certification, § 17:65
- Eleventh Amendment's bar against federal court actions, § 8:107
- Equitable application of payment doctrine, § 8:69
- False Claims Act (FCA)** (this index)
- Final payment and waiver of claims
 - Acceptance of payment, through, § 8:25
 - Estoppel, § 8:26
 - Making final payment, through, § 8:26
- Financing, securing and making. Process, below
- Freedom of application rule, § 8:69
- Front-end Loading** (this index)
- Good faith payment defense, owner's, § 8:67
- Identical source rule, § 8:69
- Inspections by owner for purposes of determining, § 13:34, 13:35
- Joint Check Arrangements** (this index)
- Judgment Fund, § 8:44
- Lender liability. **Loans** (this index)
- Limitation on right to receive payment, contractual. Contractual limitation on right to receive payment, above
- Liquidation agreements, § 8:58
- Loans** (this index)
 - Making. Process, below
- Mechanics' Liens** (this index)
- Misapplication, § 8:69
- New Jersey Trust Fund Act, § 8:46
- No Damages for Delay Clause** (this index)
- Overpayment defense, surety's, § 8:67
- Pass-through claims arrangements, § 8:58

PAYMENT—Cont'd

- Pay If Paid Clause** (this index)
- Pay When Paid Clause** (this index)
- Performance bond surety's defense based on nonpayment, § 12:56, 12:72
- Prejudgment interest
 - Contract Disputes Act, under, § 8:62
 - State law, right to interest under, § 8:63
- Process
 - Generally, § 8:1-§ 8:209
 - Assignment of payment rights, § 8:68
- Bankruptcy** (this index)
- Bonds. **Payment Bonds** (this index)
- False Claims Act (FCA)** (this index)
- Lender liability. **Loans** (this index)
- Loans** (this index)
- Mechanics' Liens** (this index)
- Progress Payment** (this index)
- Prompt Payment Acts** (this index)
- Retainage** (this index)
 - Sovereign immunity, below
- Substantial Completion** (this index)
- Unit Price Contracts** (this index)
- Progress Payment** (this index)
- Prompt Payment Acts** (this index)
- Punch list work, § 8:42
- Quality assessments, payment measurements based upon, § 8:17
- Qui tam action. **False Claims Act (FCA)** (this index)
- Retainage** (this index)
- Risk Management** (this index)
- Sale of accounts, § 8:68
- Securing. Process, above
- Sovereign immunity
 - Administrative Procedure Act's waiver of, § 8:104

PAYMENT—Cont'd

- Sovereign immunity—Cont'd
 - Contract Disputes Act, § 8:102
 - Eleventh Amendment's bar against federal court actions, § 8:107
 - Federal Tort Claims Act, waiver of immunity through, § 8:103
 - Tucker Act, § 8:102
 - Waiver of immunity
 - Administrative Procedure Act, § 8:104
 - Federal Tort Claims Act, under, § 8:103
 - State and local government, § 8:105, 8:106
- Stored materials, § 8:4
- Substantial Completion** (this index)
- Termination for cause based on nonpayment, § 18:26
- Trust fund statutes
 - Generally, § 8:46-§ 8:46
 - Construction trust fund obligation, creation by implication, § 8:47
 - Contract provisions, § 8:48
 - Dischargeability of trust fund debts, § 8:50, 8:51
 - Individual liability for trust fund violations, § 8:49
 - New Jersey Trust Fund Act, § 8:46
 - Scienter requirement, § 8:49
- Unauthorized contracts
 - Generally, § 8:43
 - Appropriations, inadequate, § 8:44
- Unit Price Contracts** (this index)

PAYMENT BONDS

- Generally, § 8:181-§ 8:178
- AIA standard form provisions, § 8:186, 12:15
- Assignment of bond rights, § 8:207
- Attorneys' fees, § 8:204
- Class of covered items
 - Generally, § 8:194-§ 8:202
 - Assignment of bond rights, § 8:207

PAYMENT BONDS—Cont'd

- Class of covered items—Cont'd
 - Attorneys' fees, § 8:204
 - Defenses, surety's, § 8:206
 - Delay damages, § 8:201
 - Equipment, § 8:197
 - Insurance premiums, § 8:198
 - Labor, § 8:195
 - Loans, § 8:199
 - Lost profits for breach of contract, § 8:200
 - Materials, § 8:196
 - Prejudgment interest, § 8:203
 - Suit, notice and commencement of, § 8:205
 - Tortious conduct, recovery for principal's, § 8:202
 - Waiver of bond rights, § 8:208
- Common law bond, § 8:181, 8:185
- Common law versus statutory bonds, § 8:189
- Conditional payment provision as defense for payment bond surety, § 8:57
- Contract formation risks, § 7:128
- Defenses, surety's, § 8:206
- Defined, § 8:181
- Delay damages, § 8:201
- Double jeopardy, § 8:193
- Equipment, § 8:197
- Estoppel, § 8:208
- Heard Act, generally, § 8:181, 8:183
- Indemnity bond, private, § 8:188
- Insurance premiums, § 8:198
- Investigate, surety's duty to, § 8:209
- Joint check arrangements, § 8:59
- Labor, § 8:195
- Loans, § 8:199
- Lost profits for breach of contract, § 8:200
- Materials, § 8:196
- Mechanics' lien bond, private, § 8:187
- Miller Act, generally, § 8:181, 8:183
- Overpayment defense, surety's, § 8:67

INDEX

PAYMENT BONDS—Cont'd

- Performance bond compared, § 8:181
- Prejudgment interest, § 8:203
- Private bond, § 8:181, 8:185
- Private combined payment-performance bond, § 8:183
- Prompt payment act penalties, surety's liability for, § 8:66
- Protected claimants, § 8:192
- Public and private bond distinguished, § 8:189
- Public owner's liability
 - Generally, § 8:189
 - Statutory bond, failure to obtain, § 8:190
 - Sufficiency and solvency of bond surety, failure to verify, § 8:191
- Purpose of, § 8:181
- Salvage, surety, § 12:106
- Sovereign immunity, § 8:181
- Statutory bond, § 8:184
- Statutory or private combined payment-performance bond, § 8:183
- Sufficiency and solvency of bond surety, public owner's liability for failure to verify, § 8:191
- Suit, notice and commencement of, § 8:205
- Surety's duty to investigate, § 8:209
- Tortious conduct, recovery for principal's, § 8:202
- Types of obligations, § 8:182-§ 8:188
- Waiver of bond rights, § 8:208

PAY WHEN PAID CLAUSE

- Generally, § 8:52-§ 8:58
- Agreed remedies and damage measures, § 19:52.56
- Express condition precedent language, enforceability of clause containing, § 8:55
- Interpretation as timing provision, § 8:52
- Risk management, § 8:53

PENALTIES

- Fines and Penalties** (this index)

PERFORMANCE

- American Institute of Architects Standard Forms** (this index)
- Bonds. **Performance Bonds** (this index)
- Completion of project risks and failure to achieve performance requirements, § 7:308
- Risk management
 - Completion of project risks and failure to achieve performance requirements, § 7:308
 - Technology risks, § 7:216
- Substantial Completion** (this index)
- Suretyship** (this index)
- Technology risks, § 7:216
- Warranties** (this index)

PERFORMANCE BONDS

- Generally, § 12:13-§ 12:96
- Adjacent business or property owners as beneficiaries, § 12:33
- Administer contract, owner's failure to property administer, § 12:57-§ 12:61
- AIA's performance bond, § 12:16
- Assignees of obligees, § 12:27
- Beneficiaries
 - Generally, § 12:24-§ 12:34
 - Adjacent business or property owners, § 12:33
 - Assignees of obligees, § 12:27
 - Named obligee, § 12:25
 - Personal injury claimants, § 12:32
 - Subrogees of obligees, § 12:28
 - Successor obligee, § 12:26
- Third party beneficiary claimants
 - Generally, § 12:29-§ 12:33
 - Adjacent business or property owners, § 12:33
 - Personal injury claimants, § 12:32
 - Prime contractors, other, § 12:31

PERFORMANCE BONDS—Cont'd

- Beneficiaries—Cont'd
 - Third party beneficiary claimants—Cont'd
 - Subcontractors and suppliers, unpaid, § 12:30
 - Unpaid subcontractors and suppliers, § 12:30
 - Wrongful death claimants, § 12:32
 - Unpaid subcontractors and suppliers, § 12:30
 - Wrongful death claimants, § 12:32
- Bond penalty, § 12:22
- Buy back of bond, surety's, § 12:82
- Cardinal changes defense, § 12:60
- CGL coverage, liability policy as bond, § 11:78
- Changes and Extras Clauses** (this index)
- Compensable delays, § 12:55
- Completion bond, § 12:20
- ConsensusDOCS performance bond, § 12:17
- Contract defenses, § 12:44-§ 12:67
- Contract formation risks, § 7:128
- Contribution and surety's equitable rights, § 12:101
- Cooperation defense, owner's implied duty of, § 12:55
- Co-suretyship and sub-suretyship, § 12:101
- Damages recoverable, § 12:35, 12:92
- Declination option, § 12:83
- Default triggering surety's obligations to perform, § 12:37
- Defenses, surety's
 - Administer contract, owner's failure to property administer, § 12:57-§ 12:61
 - Blended design and performance specifications, owner's, § 12:51
 - Bond defenses, § 12:69-§ 12:77
 - Cardinal changes, § 12:60
 - Change order resolution, § 12:58

PERFORMANCE BONDS—Cont'd

- Defenses, surety's—Cont'd
 - Contract defenses, § 12:44-§ 12:67
 - Cooperation, owner's implied duty of, § 12:55
 - Differing site conditions, owner's responsibility for, § 12:56
 - Direction, owner's failure to give, § 12:61
 - Disclosure duty, owner's, § 12:50
 - Duress, § 12:66
 - Economic waste, owner's insistence upon strict compliance in face, § 12:64
 - Equipment, owner's approval of contractor, § 12:52
 - Exoneration defenses, statutory, § 12:73
 - Extension of time, § 12:77
 - Fraud, § 12:76
 - Government contractor defenses, § 12:49
 - Hypertechnical inspection, § 12:65
 - Impossibility of performance, § 12:62
 - Impracticability of performance, § 12:62
 - Latent ambiguities in design, owner's responsibility for, § 12:54
 - Material alteration of bonded contract, § 12:70
 - Misrepresentation, § 12:66, 12:76
 - Nonpayment, owner, § 12:59, 12:72
 - Obligee or principal, changes in, § 12:71
 - Owner's implied warranty of design versus contractor's warranty of materials, § 12:53
 - Payment or nonpayment of contract funds, improper, § 12:72
 - Plant, owner's approval of contractor, § 12:52
 - Principal obligor, releasing, § 12:69

INDEX

PERFORMANCE BONDS—Cont'd

- Defenses, surety's—Cont'd
 - Project design, owner's duties incident to
 - Generally, § 12:46-§ 12:49
 - Government contractor's defenses, § 12:49
 - Special construction material, owner's implied warranty of commercial availability of, § 12:48, 12:53
 - Warranty of design adequacy, owner's implied, § 12:47, 12:53
 - Release of claims, § 12:67
 - Secondary obligor, discharging, § 12:69
 - Settlement of claims, § 12:67
 - Substantial performance, § 12:45
 - Time limitations on commencement of suit, § 12:75
 - Timely notice of default, obligee's failure to give, § 12:74
 - Underlying obligation, release of, § 12:71
 - Waiver of contract requirements, owner of implied, § 12:63
 - Warranty of design adequacy, owner's implied, § 12:47, 12:53
 - Work plan, owner's approval of contractor, § 12:52
- Defined, § 12:13
- Design-build contracts, surety industry's attitude toward bonding
 - Generally, § 12:84-§ 12:96
 - "Brand name or equal" specification, § 12:90
 - Construction conformance risks, § 12:91
 - Differing site conditions, § 12:93
 - Disclaimers, § 12:92
 - Inadequacy of design, § 12:89
 - Insurance gaps, conflicts and coverage deficiencies, § 12:94

PERFORMANCE BONDS—Cont'd

- Design-build contracts, surety industry's attitude toward bonding—Cont'd
 - Miscoordination risks, design inadequacy and, § 12:89
 - Organization of bond principal to limit surety's exposure, § 12:95
 - "Raceway" requirement, § 12:90
- Risk analysis
 - Generally, § 12:85-§ 12:94
 - Bond coverage analysis, § 12:87
 - "Brand name or equal" specification, § 12:90
 - Construction conformance risks, § 12:91
 - Damages, § 12:92
 - Differing site conditions, § 12:93
 - Disclaimers, § 12:92
 - First level of analysis, § 12:86, 12:87
 - Inadequacy of design, § 12:89
 - Insurance gaps, conflicts and coverage deficiencies, § 12:94
 - Levels of analysis, § 12:86-§ 12:94
 - Liability, limitations of, § 12:92
 - Miscoordination risks, design inadequacy and, § 12:89
 - "Raceway" requirement, § 12:90
 - Scope of design and performance risks, § 12:90
 - Seamless insurance policy, § 12:94
 - Second level of analysis, § 12:86, 12:88-§ 12:94
 - Underwriting concerns, § 12:85-§ 12:94
 - Unique design-build considerations, § 12:88
- Scope of design and performance risks, § 12:90
- Seamless insurance policy, § 12:94

PERFORMANCE BONDS—Cont'd

Design-build contracts, surety industry's attitude toward bonding—Cont'd
 Setting, surety's rights in, § 12:96
 Underwriting concerns, § 12:85-§ 12:92
 Differing site conditions, § 12:56, 12:93
 Dispute resolution rights against owner, contractor's, § 12:68
 "Do nothing" option, surety's, § 12:83
 Duration of obligation, § 12:23
 Duress defense, § 12:66
 Equitable rights, surety's
 Generally, § 12:97-§ 12:101
 Contribution, § 12:101
 Co-suretyship and sub-suretyship, § 12:101
 Exoneration, § 12:98
 Indemnification, § 12:99
 Quia timet, exoneration and, § 12:98
 Reimbursement, § 12:99
 Restitution, § 12:99
 Specific performance, § 12:98
 Subrogation, § 12:100
 Excusable causes of delays, § 12:55
 Exoneration defenses, statutory, § 12:73
 Financial limit of obligation, § 12:22
 Financing the principal as surety's option upon triggering of its bond obligation, § 12:79
 Fraud defense, § 12:66, 12:76
 Impossibility of performance defense, § 12:62
 Impracticability of performance defense, § 12:62
 Indemnity bond, § 12:18, 12:19, 12:99
 Insurance, CGL coverage, liability policy as bond, § 11:78
 Latent ambiguities in design defenses, owner's responsibility for, § 12:54

PERFORMANCE BONDS—Cont'd

Lender third-party rights against subcontractor's performance bond, § 12:34
 Manuscript bond, § 12:21
 Material alteration of bonded contract defense, § 12:70
 Material breach triggering surety's obligations to perform, § 12:37
 Misrepresentation defense, § 12:66, 12:76
 Named obligee, § 12:25
 Nonpayment defense, owner, § 12:59
 Notices
 Cure of breach of contract notice, § 12:42
 Timely notice of default, obligee's failure to give, § 12:74
 Obligations under, types of, § 12:14-§ 12:21
 Options available to surety upon triggering of its bond obligations, § 12:78-§ 12:83
 Overpayment defense, surety's, § 8:67
 Owner and lender third-party rights against subcontractor's performance bond, § 12:34
 Payment bond compared, § 8:181
 Penal sum, § 12:22
 Personal injury claimants as third party beneficiaries, § 12:32
 Post-completion warranty clauses, § 12:23
 Principal obligor, releasing, § 12:69
 Principal's default, surety's options upon its
 Generally, § 12:15
 AIA's performance bond, § 12:16
 Private combined payment-performance bond, § 8:183
 Project design, owner's duties incident to. Defenses, surety's, above
 Retainage and other contract funds, surety's rights to, § 12:102-§ 12:107

INDEX

PERFORMANCE BONDS—Cont'd

- Salvage, surety, § 12:103-§ 12:107
- Secondary obligor, discharging, § 12:69
- Statutory or private combined payment-performance bond, § 8:183
- Subcontractors
 - Owner and lender third-party rights against subcontractor's performance bond, § 12:34
 - Unpaid subcontractors as beneficiaries, § 12:30
- Subrogation** (this index)
- Substantial performance
 - Defense, surety's, § 12:45
 - Duration of obligations, § 12:23
- Sub-suretyship, § 12:101
- Successor obligee, § 12:26
- Suppliers as beneficiaries, unpaid, § 12:30
- Surety's obligation to perform, triggering, § 12:36-§ 12:43
- Take over and complete, surety's option to, § 12:80
- Tender of completing contractor, surety's tender of, § 12:81
- Termination of contract for default
 - Generally, § 12:38-§ 12:43
 - Cure notice, importance of proper, § 12:42
 - Good faith motive, importance of, § 12:40
 - Independent discretion by contractually authorized representative, requirement for, § 12:41
 - Material breach, § 12:37
 - Validity of termination clause, § 12:39
 - Waiver of right to terminate, obligee's, § 12:43
- Third party beneficiary claimants. Beneficiaries, above
- Timely notice of default, obligee's failure to give, § 12:74

PERFORMANCE BONDS—Cont'd

- Triggering surety's obligation to perform, § 12:36-§ 12:43
 - Types of obligations, § 12:14-§ 12:21
 - Underlying obligation, release of, § 12:71
 - Underwriting, § 12:13
 - Unpaid subcontractors and suppliers as beneficiaries, § 12:30
 - Wrongful death claimants as beneficiaries, § 12:32
- ### **“PERFORMING OPERATIONS”**
- CGL coverage, pollution-related injury, § 11:118
- ### **PERIODIC PAYMENTS**
- Progress Payment** (this index)
- ### **PERMITS**
- Licenses and Permits** (this index)
- ### **PERSONAL INJURIES**
- Commercial General Liability (CGL) Coverage** (this index)
 - Indemnity and Indemnification** (this index)
 - Risk Management** (this index)
 - Torts** (this index)
- ### **PERSONAL LIABILITY INSURANCE**
- CGL coverage, § 11:188
- ### **PERSONAL SERVICES**
- Competitive sealed bidding, exemption from, § 2:30
- ### **PHYSICAL DAMAGE**
- Business interruption insurance, § 11:259, 11:261
- ### **PHYSICAL INJURY TO TANGIBLE PROPERTY**
- CGL coverage, § 11:85, 11:85.105
 - Odorless gas; CGL coverage, § 11:85.10
- ### **PHYSICAL LOSS REQUIREMENT**
- Insurance, § 11:222

PIERCING CORPORATE VEIL

Risk management and entity formation risks, § 7:142

PLAIN MEANING RULE

Contract Interpretation (this index)

PLANNING AND SELECTION RISKS

Risk Management (this index)

POINT OF NO RETURN CONCEPT

Completion of project risks and cost issues, § 7:298

POLICIES

Insurance (this index)

POLITICAL RISKS

Generally, § 7:323-§ 7:335

Choice of law, failure to recognize, § 7:332

Dispute resolution choices made by parties, failure to recognize, § 7:332

Export restriction, § 7:331

Expropriation, § 7:328

Foreign Corrupt Practices Act, § 7:335

Governmental orders and penalties adversely impacting construction, § 7:330

Hostilities, § 7:324

Import and export restriction, § 7:331

In-country management, threats to, § 7:334

Insurance, § 7:340, 11:320

Key personnel, inability to gain entry for, § 7:333

Law, changes in, § 7:326

Licenses necessary for project, government refusal to issue, § 7:327

Lockout or other industrial action by workers, § 7:325

Penalties by government adversely impacting construction, § 7:330

POLITICAL RISKS—Cont'd

Permits or licenses necessary for project, government refusal to issue, § 7:327

Regulatory out clause, § 7:326

Repudiation of necessary governmental approvals or agreements, § 7:329

Role of anti-SLAPP

Legislation to development and construction undertakings, § 7:327.50

Strike or lockout or other industrial action by workers, § 7:325

Taxation, international, § 7:336

Venue, failure to recognize, § 7:332

War or hostilities, § 7:324

POLLUTION PREVENTION ACT OF 1990

Purpose of, § 5:207

POLLUTION-RELATED INJURIES

Insurance (this index)

POLYCHLORINATED BIPHENYLS (PCBS)

Environmental risks, § 7:178, 7:189

Toxic Substances Control Act regulation of, § 7:189

POOR WORKMANSHIP

CGL coverage, § 11:68, 11:74

Defective products or work. **Insurance** (this index)

Insurance, covered peril or cause of loss, § 11:231

POST-LOSS WAIVERS

Subrogation distinguished, § 11:194

PREDICTIVE CODING

Electronic discovery risks, § 7:42

PREEMPTION OF STATE LAW

ERISA preemption of mechanics' lien rights, § 8:154

Federal Arbitration Act. **Arbitration** (this index)

Prevailing wage laws, § 2:59

INDEX

PREEMPTION OF STATE LAW

—Cont'd

UCC damage measures, § 19:46

PREFERENCES

Bankruptcy (this index)

Bids (this index)

PREJUDGMENT INTEREST

Interest (this index)

PREJUDICE

Insurance (this Index)

PRESSURE/WEIGHT OF WATER EXCLUSION

Insurance, § 11:239

PRE-TENDER DEFENSE COSTS

CGL coverage, duty to defend,
§ 11:47

PRICE ARRANGEMENTS

Generally, § 6:96-§ 6:117

Arbitration, § 21:134

Cost plus fee contracts, § 6:108

Design contracts

Generally, § 6:112-§ 6:117

Fixed price, § 6:116

Guaranteed maximum price,
§ 6:117

Hourly rates, § 6:115

Multiple direct personnel expense,
§ 6:114

Percentage of construction cost,
§ 6:113

Fixed price contracts. **Lump Sum Contracts** (this index)

Force account work, § 6:111

Guaranteed maximum price, § 6:109

Lump Sum Contracts (this index)

Risk management, § 7:114

Time and materials contract, § 6:110

Types of, § 6:97-§ 6:111

Unit Price Contracts (this index)

PRIMARY COVERAGE DETERMINATION

CGL coverage, additional insureds,
§ 11:159, 11:170.10

PRIME CONTRACTS

Performance bond beneficiaries,
prime contractors as, § 12:31

PRIOR INJURY EXCLUSIONS

CGL coverage, § 11:150

PRIVILEGE

Inadvertent production of electronic
discovery, preserving privilege,
§ 7:51

Maintaining with electronic
discovery, § 7:52

PRIVITY

CGL coverage, privity between
named insured and additional
insureds, § 11:152.20

Design professionals, liability of,
§ 17:41, 17:88

Economic loss, § 19:10

Inspection liability of owner agents to
third parties for failing to
discover another's breaches,
§ 13:31

Lender liability, § 8:129

Warranties (this index)

PRODUCT DEFECT LIABILITY

Breach of express warranty
compared, § 9:7

Fitness of purpose, implied product
warranty of. **Implied Product
Warranties of Merchantability
and Fitness for Particular
Purpose** (this index)

“PRODUCT” OR “PROCESS”

Insurance, faulty work as product or
process, § 11:233

PROFESSIONAL LIABILITY INSURANCE

Generally, § 11:286-§ 11:295

Additional insured coverage under,
§ 11:293

CGL coverage, § 11:286, 11:286.10

Claims-made policies, § 11:286.10

PROFESSIONAL LIABILITY

INSURANCE—Cont'd

- Construction management services, § 11:294
- Contract claims, protection against, § 11:289
- Contractor design insurance, § 11:287
- Definitions and exclusions, § 11:291
- Design-build projects, § 11:295
- Design insurance, contractor, § 11:287
- Drafting considerations, § 11:17.25
- Elimination of professional risks from CGL coverage form, § 11:286
- Exclusions, § 11:291
- Guaranty, liability based on, § 11:292
- Insuring agreement of, § 11:291.10
- Legally obligated pay under, § 11:291.20
- Limitations, § 11:290, 11:292
- Lost fees from setoff as “damages” analysis, § 11:291.30
- Management services, § 11:294
- “Negligent acts, errors or omissions,” § 11:288
- Protection against contract claims, § 11:289
- Risk management, § 7:15
- Setoff, lost fees from; “damages” analysis, § 11:291.30
- Warranty or guaranty, liability based on, § 11:292

PROFESSIONAL SERVICES

- CGL coverage, “professional services” exclusion, § 11:147
- Competitive sealed bidding, exemption from, § 2:30
- Design Professionals** (this index)
- Liability insurance. **Professional Liability Insurance** (this index)

PROGRESS PAYMENTS

- Generally, § 8:2

PROGRESS PAYMENTS—Cont'd

- AIA General Conditions of the Contract for Construction form A201 provisions, § 5:174, 8:3
- Calculation methodologies, § 8:3
- Project delivery methods
 - Alliance agreements, § 6:23
 - Withholding, consequences of, § 8:18

PROJECT DELIVERY METHODS

- Agency construction management, § 6:12
- AIA’s design assist agreement form, 6:21.50
- Alliancing, integrated agreement and lean delivery methods, § 2:13.5
- Boston Harbor project, § 6:40
- Building Future’s Council report, § 6:41
- Build-operate-transfer, § 6:9
- Build-own-lease approach, § 6:10
- Build-own-operate approach, § 6:10
- Completion of project risks, § 7:281
- Construction management at risk, § 6:13
- Construction Management** (this index)
- Contextual contract, § 2:13.5
- Contract Formation** (this index)
- Design-assist process, § 6:18 to § 6:21
- Design-Bid-Build** (this index)
- Design-bid-multi-prime, § 6:14
- Design-build and, § 6:15
- Design-build and the Spearin implied warranty of design adequacy, 6:80.50
- Design-Build Project Delivery Method** (this index)
- Design-GMP-Build Project Delivery Method** (this index)
- Design-negotiate-build, § 6:5
- Engineer-procure-construct, § 6:7
- Factors affecting selection of, § 6:38-§ 6:42
- Fast-track construction, § 6:95

INDEX

PROJECT DELIVERY METHODS

—Cont'd

- Fixed price contracts. **Lump Sum Contracts** (this index)
- Importance of delivery method, § 6:40
- Inappropriate or inefficient delivery system, choosing; risk management, § 7:112
- Indefinite-delivery/indefinite-quantity contracts (IDIQ), § 6:16
- Indefinite delivery/indefinite-quantity contracts (IDIQ), § 6:16
- Integrated agreement and lean delivery methods, § 2:13.5
- Lean delivery methods, § 2:13.5
- Lump Sum Contracts** (this index)
- Partnering agreements, § 6:22
- Price Arrangements** (this index)
- Project management, § 6:11
- Selecting delivery approach, § 6:1-§ 6:17
- Turnkey, § 6:8
- Unit Price Contracts** (this index)

PROJECT LABOR AGREEMENTS

- Bids, § 2:58

PROJECT MANAGEMENT

- Defined, § 6:11
- Project delivery methods, § 6:11

PROJECT RISKS

- Risk Management** (this index)

PROMISSORY ESTOPPEL

- Contract formation risks and subcontractor's refusal to honor their bids, § 7:129
- Firm bid rule, § 2:4, 2:7, 2:106
- Implied-in-law contract, § 2:7
- Offer, § 2:4
- Purpose of, § 2:7
- Sub-bidders, § 2:7, 2:107, 2:116

PROMPT PAYMENT ACTS

- Generally, § 7:313, 8:64-§ 8:67
- Federal legislation, § 8:64

PROMPT PAYMENT ACTS

—Cont'd

- Interest rates, effect on, § 8:64
- Payment bond surety' liability for penalties, § 8:66
- State acts, § 8:65, 8:66

PROPERTY BEING WORKED ON EXCLUSION

- CGL coverage, § 11:100

PROPERTY COVERAGE

- Insurance** (this index)

PROPERTY DAMAGE

- Commercial General Liability (CGL) Coverage** (this index)

PROPERTY INSURANCE

- Insurance** (this index)

PROPERTY LOANED TO NAMED INSURED EXCLUSION

- CGL coverage, § 11:98

PROPERTY OWNED, RENTED OR OCCUPIED EXCLUSION

- CGL coverage, § 11:96

PROPRIETARY RIGHTS

- AIA General Conditions of the Contract for Construction form A201 risk allocation provisions, § 5:86
- Design-build project and control and ownership of design documents. **Design-Build Project Delivery Method** (this index)

PROXIMATE CAUSE DOCTRINE

- Inspection liability of owner agents to third parties for failing to discover another's breaches, § 13:32

PUBLIC AUTHORITIES

- Arbitration with, § 21:285

PUBLIC POLICY

- Arbitration agreement, challenges to enforcement of, § 21:136

PUBLIC POLICY—Cont'd

- Bid with material mistake of fact, prohibition against enforcement of, § 2:128
- Illegal contract, § 7:120
- Insurance, public policy approaches to collapse coverage, § 11:230
- Limitation of liability clause violating, § 5:238
- Vacating arbitration award, grounds, § 21:264

PUBLIC WORKS

- Bids** (this index)
- Construction Law** (this index)
- Formation of public construction contracts, § 2:21
- Privatization, implications of, § 2:25
- Public/private partnership initiatives, implications of, § 2:25

PUNCH LIST

- AIA standard form A201 provisions, § 5:183, 5:185
- Defined, § 8:42
- Disputes over, § 7:259
- Payment for punch list work, § 8:42
- Substantial completion, § 8:27

PUNCTUATION

- Insurance, interpretation of contracts, § 11:32

PURCHASE ORDER

- American Institute of Architects Standard Forms** (this index)
- Arbitration, § 21:111
- Battle of forms under UCC, § 9:46
- Bids** (this index)
- Consequential damages, foreseeability of, § 19:19
- Contract Formation** (this index)
- Control over, § 15:24
- Course of dealing and trade usage, relevance of, § 21:114
- Curtain wall manufactures, risk management techniques practiced by, § 7:211

PURCHASE ORDER—Cont'd

- Implied product warranties of merchantability and fitness for particular purpose; disclaimers, § 9:44
- Indemnity, § 10:105
- Offer, buyer's purchase order submitted in response to price quotation as, § 21:111
- Payment** (this index)
- Representations in manufacturer's, § 9:55
- Retainage provisions, § 8:19
- Unit price contracts, § 8:12

QUALIFICATIONS

- Insurance appraiser, § 11:279

QUALITY ASSURANCE AND QUALITY CONTROL

- American Institute of Architects Standard Forms** (this index)
- Comparison, § 13:2
- Completion of Project Risks** (this index)
- Inspections, § 13:2
- Payment measurements based upon quality assessment, § 8:17

QUANTUM MERUIT

- Generally, § 19:36-§ 19:41
- AIA General Conditions of the Contract for Construction form A201 provisions
- Generally, § 5:144
- Construction Lender liability, § 8:144
- Contract formation risks, § 7:120
- Implied-in-fact contract, § 19:38-§ 19:41
- Implied-in-law contract, § 19:37
- Indemnity language, interpretation of, § 10:16
- Lender liability, § 8:141
- Licensing and permit noncompliance, sanctions for, § 16:21
- Permit noncompliance, sanctions for, § 16:21

INDEX

- QUI TAM ACTION**
False Claims Act (FCA) (this index)
- RAPID RESOLUTION
ALTERNATIVE DISPUTE
RESOLUTION**
Arbitration, problems with, § 21:4
- RATIFICATION**
Change order, authorization for, § 4:46
Inspector's actions, § 13:46
- REASONABLE EXPECTATIONS
DOCTRINE**
Insurance (this index)
- RECITALS**
Contract interpretation, § 3:10
Defined, § 3:10
- RECORD DRAWINGS**
Scope of work provisions, § 5:12
- RECORDS AND
RECORD-KEEPING**
Administration of project risks, § 7:317
Insurance records, discovery of, § 11:329
- RECOUPMENT**
Bankruptcy, § 8:120, 8:123
- RECOVERY**
Business interruption insurance, recovery of business losses, § 11:257
CGL coverage, duty to defend, recovery of attorney's fees in coverage actions, § 11:64
Subrogation, extent of recovery, § 11:191
- REDUCTION IN EXPECTED
PRODUCTIVITY**
Disruption Claim (this index)
- REDUCTION OF DAMAGE
AWARD**
Subrogation, due to insurance recoveries, § 11:205
- REFORMATION OF CONTRACT**
Insurance policy terms, interpretation of contracts, § 11:36
Interpretation of contract versus, § 3:57
- REIMBURSEMENT**
Indemnity and Indemnification (this index)
Performance bond surety's equitable rights, § 12:99
- REINSURANCE**
Bond risk, § 12:12
- REJECTION**
Warranties distinct from right of, § 9:8
- RELEASES**
CGL coverage, sick buildings, release or discharge requirement, § 11:126
Defined, § 7:239
Parol evidence rule, § 3:20
Partial release, § 4:48
Performance bond surety's defense, § 12:67
Risk management. **Waiver, Estoppel and Release Risks** (this index)
- REMEDIATION COSTS**
Indemnity for, § 5:207
- REMEDIES**
Generally, § 19:1-§ 19:99
Agreed Remedies and Damage Measures (this index)
AIA General Conditions of the Contract for Construction form A201 provisions, § 5:248
Bid, improper award of. **Bids** (this index)
Changes and Extras Clauses (this index)
Classical remedies, § 19:2
Common law, § 19:1
Completion of project risks and inadequate, § 7:307

REMEDIES—Cont'd

- Damages** (this index)
- Equitable adjustment damage measure, § **19:49-§ 19:52**
- Gordian complexity, § **19:1, 19:53**
- Restitution** (this index)
- Statutory, § **19:44-§ 19:51**
- Subrogation, relationship to other remedy clauses, § **11:193**
- Theories of, § **19:1**
- Uniform Commercial Code (UCC)** (this index)

RENTED EQUIPMENT

- Insurance for, § **11:319**

RENTED PROPERTY EXCLUSION

- CGL coverage, § **11:96**

REPAIR

- Maintenance and Repair** (this index)

REPEATED EXPOSURE AS “OCCURRENCE”

- CGL coverage, § **11:73**

REPLACEMENT COST VALUE

- Insurance, § **11:270, 11:271.50, 11:274**

REPOSE, STATUTE OF

- Constitutional challenges, § **7:32**
- Continuous treatment tolling, § **7:35**
- Exterior Insulation Finish Systems (EIFS), § **7:215**
- Fraud tolling, § **7:35**
- Minnesota's bridge-collapse litigation, § **10:11**
- Misrepresentation tolling, § **7:35**
- Repairs tolling, § **7:35**
- Risk Management** (this index)
- Substantial completion, § **8:28**

REQUEST FOR INFORMATION (RFIS)

- Delays in issuing and responding to, § **7:283**

REQUEST FOR PROPOSALS (RFPS)

- Cancellation of, § **2:159**
- Contract formation by competitive negotiation, § **2:158 to 2:161**
- Design-build project delivery method, § **6:60**
- Evaluation of, § **2:161**
- Material nonconformity to, § **2:160**

RESCISSION

- AIA General Conditions of the Contract for Construction form A201 provisions, § **5:144**
- Arbitrability of rescission claims, § **21:65**

RESERVATION OF RIGHTS LETTERS

- CGL coverage, duty to defend, § **11:57**

RESIDENCE

- Bids, statutory preferences, § **2:53**

RESIDENTIAL CONSTRUCTION, STATUTORY WARRANTIES APPLYING TO

- Warranties** (this index)

RES JUDICATA

- Arbitration** (this index)

RESOURCE CONSERVATION AND RECOVERY ACT OF 1976 (RCRA)

- Purpose of, § **5:207**
- Solid waste, governing management of, § **7:188**

RESOURCE RISKS

- Risk Management** (this index)

RESTATEMENT OF LAWS

- Insurance, choice of law issues in coverage disputes, § **11:39**

RESTITUTION

- Generally, § **19:35-§ 19:43**
- Constructive trust, § **19:43**

INDEX

RESTITUTION—Cont'd

Disgorgement, restitutionary, § 19:42

Equitable lien, § 19:43

Indemnity and Indemnification

(this index)

Performance bond surety's equitable rights, § 12:99

Quantum Meruit (this index)

Unjust enrichment. **Quantum Meruit** (this index)

RETAINAGE

Generally, § 8:19

California, § 8:19.50

Defined, § 8:19

Performance bond surety's rights to, § 12:102-§ 12:107

Statutes, § 8:57

Third parties, rights of, § 8:41

Turnover of earned but unpaid progress payments and retainages, § 5:180

Warranty retainage, § 8:21

RETENTIONS

Self-insurance

Generally, § 11:11

Duty to defend, effect of limit on, § 11:42.20

RETROACTIVITY

Insurance, date and "gaps," claims-made policy forms, § 11:283

REVOCAION

Warranties distinct from right of, § 9:8

REWORK ENDORSEMENT

Insurance, contractor's, § 11:322

RFIS (REQUESTS FOR INFORMATION)

Delays in issuing and responding to, § 7:283

RIGHT OF REIMBURSEMENTS

CGL coverage, duty to settle, § 11:66

RIGHT-OF-WAY

Failure to obtain; site risks, § 7:154

RISK MANAGEMENT

Generally, § 7:1-§ 7:340

Abnormally dangerous activities, § 7:21

Achievable risk allocation distinguished from rational risk allocation, § 7:7

Administration of project risks

Generally, § 7:316-§ 7:319

Communication, inadequate policies and procedures to ensure effective, § 7:318

Discovery risks, § 7:38-§ 7:58

Dispute resolution procedures, inefficient, § 7:319

Electronic discovery risks, burdensomeness, § 7:38

Record-keeping procedures, inadequate, § 7:317

Allocation principles

Generally, § 7:7-§ 7:9

Achievable risk allocation distinguished from rational risk allocation, § 7:7

Control/benefit risk allocation model, § 7:7

Creative incentives through, § 7:13

Delegation of duties and allocation of risks distinguished, § 7:9

Foreseeability of risk allocation model, § 7:8

"Golden rule" approach, § 7:7

Rational risk allocation distinguished from achievable risk allocation, § 7:7

American Institute of Architects Standard Forms (this index)

Analysis

Allocation principles, above

Characterization of risk, § 7:6

Contingency accounts, § 7:14

Mathematical modeling, § 7:10

Measuring risk, § 7:10

Risk defined, § 7:2

RISK MANAGEMENT—Cont'd

- Asbestos claims, application of repose statute to, § 7:33
- Award of contract process, choosing inadequate, § 7:113
- Back-up tapes, duty to preserve, § 7:46
- Bankruptcy
 - Lender, surety or insurer insolvency, § 7:279
 - Major participant, § 7:271-§ 7:273
- Bids. Contract formation risks, below
- Building Information Modeling (BIM)** (this index)
- Characterization of risk, § 7:6
- Chart, § 7:340
- Claw backs, preserving privilege, § 7:51
- Client selection, poor, § 7:115
- Collection activities, scope of, § 7:45
- Commercial general liability (CGL) coverage, § 7:15
- Communication Risks** (this index)
- Competent contractor, owner's duty to select
 - Generally, § 7:19-§ 7:22
 - Abnormally dangerous activities, § 7:21
 - Inspection of work, § 7:19
 - Nondelegable duties, allocating risk of, § 7:22
 - Peculiar risk doctrine, § 7:20
 - Reasonable care, § 7:19
- Completion of Project Risks** (this index)
- Conditional payment arrangements, § 8:53
- Condominiums, § 7:116
- Consequential damages, § 7:277
- Contingency accounts, § 7:14
- Contract formation risks
 - Generally, § 7:119-§ 7:139
 - Acceptance by contractor constituting counteroffer, § 7:131
 - Ambiguities in contract, § 7:121

RISK MANAGEMENT—Cont'd

- Contract formation risks—Cont'd
 - Auction bidding, reverse, § 7:124
 - Bid bond, § 7:128
 - Bid chiseling, § 7:125
 - Bid shopping, § 7:123, 7:132
 - Buy American Act, § 7:139
 - Competitive bidding, use of alternates in, § 7:122
 - Confusing public and private work; suretyship and other consequences, § 7:127
 - Disappointed expectations regarding contract award, § 7:122
 - Disappointment over award process, subcontractor, § 7:123
 - Foreign suppliers, doing business with; application of international law to domestic contracts, § 7:126
 - General contractor-subcontractor relationship, generally, § 7:118
 - Illegal contract, § 7:120
 - Miscommunications and ambiguities in contract, § 7:121
 - Mistake in bid, § 7:128, 7:130
 - Prime contractor's refusal to honor its bid, § 7:128
 - Project labor agreements, § 7:138
 - Repudiation of bid defense
 - Generally, § 7:130-§ 7:135
 - Reverse auction bidding, § 7:124
 - Socioeconomic contractor selection programs, § 7:136
 - Statutory or regulatory law, contracts in violation of, § 7:120
 - Subcontractor's refusal to honor their bids
 - Generally, § 7:129-§ 7:135
 - Acceptance by contractor constituting counteroffer, § 7:131
 - Damages and mitigation, § 7:135
 - Delayed acceptance, § 7:133

INDEX

RISK MANAGEMENT—Cont'd

- Contract formation risks—Cont'd
 - Subcontractor's refusal to honor their bids—Cont'd
 - Obvious mistake, § 7:130
 - Promissory estoppel, § 7:129
 - Repudiation of bid defense, § 7:130-§ 7:135
 - Shopping bid, § 7:132
 - Statute of frauds, § 7:134
- Contribution claims, time limitations governing, § 7:31
- Control/benefit risk allocation model, § 7:7
- Costs
 - Communication risks
 - Confusion over responsibility for fees, § 7:227
 - Ill-defined costs, § 7:229
 - Completion of Project Risks** (this index)
 - Estimation process, materiality of risk assessment for, § 7:11
 - Expectation risks
 - Contractor's failure to accurately cost work, § 7:258
 - Owner's reliance upon inaccurate cost estimates, § 7:256
 - Financial risks, below
 - Owner's reliance upon inaccurate cost estimates, § 7:256
 - Waivers
 - Cost guarantees, § 7:253
 - Impact costs, § 7:245
- Cost shifting and sanctions, § 7:40
- Creative incentives through allocation, § 7:13
- Currency risks
 - Generally, § 7:336-§ 7:340
 - Devaluation risk, § 7:340
 - Hedging strategies, § 7:340
 - Inconvertibility, § 7:338
 - Insurance; chart, § 7:40
 - Transfer risk, § 7:339

RISK MANAGEMENT—Cont'd

- Defined, § 7:1, 7:2
- Delegation of duties and allocation of risks distinguished, § 7:9
- Delivery system, choosing inappropriate or inadequate project, § 7:112
- Discovery risks, § 7:38-§ 7:58
- Electronic discovery risks
 - Accessibility of electronically stored information, § 7:47
 - Allocating the cost, § 7:39
 - Burdensomeness, § 7:38
 - Duty to preserve, § 7:46
 - Federal Rules of Civil Procedure, 2006 amendments, § 7:53
 - Maintaining privilege, § 7:52
 - Manual collection of electronic documents, § 7:58
 - Metadata, § 7:49
 - Planning, § 7:43
 - Predictive coding, § 7:42
 - Preserving privilege after inadvertent production, § 7:51
 - Science, § 7:50
 - Search, § 7:50
 - Software, § 7:50
- Entity formation risks
 - Generally, § 7:140-§ 7:146
 - Corporate form, inadequate, § 7:141
 - Joint ventures, contracting with government as small business, 7:146.50
 - Joint ventures, ill-conceived, § 7:146
 - License, doing business without proper, § 7:145
 - Personal liability risk, § 7:142
 - Piercing corporate veil, § 7:142
 - Sole proprietors, doing business with
 - Litigation risk; nonclaim statutes, § 7:143
 - Workers' compensation risks, § 7:144

RISK MANAGEMENT—Cont'd

- Entity formation risks—Cont'd
 - Workers' compensation risks, § 7:144
- Entity management risks
 - Generally, § 7:147-§ 7:152
 - Debarment from public contracting business, § 7:150
 - Family-run construction business, § 7:152
 - Financial controls, inadequate internal, § 7:151
 - Generational change in ownership, § 7:152
 - Quality management procedures, inadequate, § 7:149
 - Safety programs, inadequate; civil and criminal liability, § 7:148
 - Suspension and debarment from public contracting business, § 7:150
 - Total Quality Management, § 7:149
- Environmental Risks** (this index)
- Estoppel. **Waiver, Estoppel and Release Risks** (this index)
- Executory contracts, § 7:273
- Expectation Risks** (this index)
- Exterior Insulation Finish Systems (EIFS)** (this index)
- Family-run construction business, § 7:152
- Federal Rules of Civil Procedure, electronic discovery, § 7:53
- Fees. Costs, above
- Financial controls, inadequate internal, § 7:151
- Financial risks
 - Generally, § 7:270-§ 7:279
 - Budget or funding, inadequate project, § 7:275
 - Consequential damages, § 7:277
 - Executory contracts, § 7:273
 - Inflation, increased interest or financing costs, § 7:278

RISK MANAGEMENT—Cont'd

- Financial risks—Cont'd
 - Insolvency
 - Lender, surety or insurer insolvency, § 7:279
 - Major participant, § 7:271-§ 7:273
 - Insurer insolvency, § 7:279
 - Lender, surety or insurer insolvency, § 7:279
 - Mechanics' lien recovery, insufficient unencumbered value in project for, § 7:274
 - Surety insolvency, § 7:279
 - Third parties, loss or damage incurred by, § 7:276
- Force Majeure** (this index)
- Foreign suppliers, doing business with; application of international law to domestic contracts, § 7:126
- Foreseeability of risk allocation model, § 7:8
- Generational change in ownership, § 7:152
- “Golden rule” approach to allocation, § 7:7
- Green contracting. **Environmental Risks** (this index)
- Handling or managing risk, generally, § 7:5
- Identification of risk, § 7:3
- Inadvertent production, preserving privilege, § 7:51
- Indemnity, time limitations governing, § 7:31
- Inflation, increased interest or financing costs, § 7:278
- Injuries
 - Employees, § 7:174
 - Nonemployee workers, § 7:175
- Innovation. **Building Information Modeling (BIM)** (this index)
- Insolvency. Bankruptcy, above
- Inspection of work, § 7:19

INDEX

RISK MANAGEMENT—Cont'd

Insurance
Generally, § 7:15-§ 7:17
Chart, § 7:340
Commercial general liability (CGL) coverage, § 7:15
Extended insurance program, § 7:17
Insolvency of insurer, § 7:279
Professional liability insurance, § 7:15
Standard insurance program, § 7:16
Waiver of insurance rights, § 7:246
Integrated project delivery (IPD), § 6:37
Joint ventures, ill-conceived, § 7:146
Labor unrest and strikes, § 7:172
Litigation or legal holds, § 7:44
Loss/gain neutral, § 7:2
Maintaining privilege in electronic discovery, § 7:52
Managerial/supervisory inadequacy or inefficiency, § 7:173
Materiality of risk assessment for cost estimation process, § 7:11
Material shortages, § 7:176
Mathematical modeling, § 7:10
Measuring risk, § 7:4
Mechanics' lien recovery, insufficient unencumbered value in project for, § 7:274
Multi-family housing developments, § 7:116
Nondelegable duties, allocating risk of, § 7:22
Nonpayment, § 7:312
Payment risks
Generally, § 7:311-§ 7:315
Bankruptcy and preferences, § 7:315
Conditional payment arrangements, § 8:53
Interest, late payment and liability for, § 7:313

RISK MANAGEMENT—Cont'd

Payment risks—Cont'd
Late payment and liability for interest, § 7:313
Nonpayment, § 7:312
Overpayment, § 7:314
Peculiar risk doctrine, § 7:20
Performance
Completion of project risks and failure to achieve performance requirements, § 7:308
Technology risks, § 7:216
Planning and selection risks
Generally, § 7:110-§ 7:118
Award of contract process, choosing inadequate, § 7:113
Client selection, poor, § 7:115
Condominiums, § 7:116
Delivery system, choosing inappropriate or inadequate project, § 7:112
Inadequate project planning, § 7:111
Multi-family housing developments, § 7:116
Pricing arrangements, choosing inappropriate or inadequate, § 7:114
Primary design and construction team, assembling, § 7:117
Subcontractor selection, § 7:118
Political Risks (this index)
Pricing arrangements, choosing inappropriate or inadequate, § 7:114
Primary design and construction team, assembling, § 7:117
Production of documents, specifying the forms of, § 7:48
Productivity and innovation. **Building Information Modeling (BIM)** (this index)
Professional liability insurance, § 7:15
Project risks
Generally, § 7:109-§ 7:340

RISK MANAGEMENT—Cont'd

Project risks—Cont'd
Building Information Modeling (BIM) (this index)
 Categories, § 7:109
 Chart, § 7:340
Communication Risks (this index)
Completion of Project Risks (this index)
 Contract formation risks, above
 Delay risks. Completion of project risks, above
 Entity formation risks, above
 Entity management risks, above
 Estoppel. **Waiver, Estoppel and Release Risks** (this index)
Expectation Risks (this index)
Exterior Insulation Finish Systems (EIFS) (this index)
 Financial risks, above
 Payment risks, above
 Planning and selection risks, above
Political Risks (this index)
 Release. **Waiver, Estoppel and Release Risks** (this index)
 Resource risks, below
 Selection risks. Planning and selection risks, above
 Time. **Completion of Project Risks** (this index)
Waiver, Estoppel and Release Risks (this index)
 Quality management procedures, inadequate, § 7:149
 Quick peeks, preserving privilege, § 7:51
 Rational assignment of risk, § 7:13
 Rational risk allocation distinguished from achievable risk allocation, § 7:7
 Release. **Waiver, Estoppel and Release Risks** (this index)
 Repose statute
 Asbestos claims, § 7:33
 Commencement, § 7:29

RISK MANAGEMENT—Cont'd

Repose statute—Cont'd
 Constitutional challenges, § 7:32
 Repairs and tolling of, § 7:35
 Running of, § 7:29
 Short statutes, § 7:23
 Statute of limitations versus, § 7:24
 Tolling
 Generally, § 7:35
 Bankruptcy filing, § 7:36
 Resource risks
 Generally, § 7:170-§ 95:177
 Equipment availability, § 7:177
 Injuries
 Employees, § 7:174
 Nonemployee workers, § 7:175
 Labor unrest and strikes, § 7:172
 Managerial/supervisory inadequacy or inefficiency, § 7:173
 Material shortages, § 7:176
 Skilled labor, unavailability of sufficient amounts of, § 7:171
 Strikes and labor unrest, § 7:172
 Supervisory inadequacy or inefficiency, § 7:173
 Reverse auction bidding, § 7:124
 Risk defined, § 7:2
 Safe harbor from sanctions, § 7:57
 Safety programs, inadequate; civil and criminal liability, § 7:148
 Sanctions, discovery risks, § 7:56, 7:57
 Selection risks. Planning and selection risks, above
 Shop drawings
 Communication risks, § 7:228
 Waiver of approval process, § 7:243
Site Risks (this index)
 Sole proprietors, doing business with
 Litigation risk; nonclaim statutes, § 7:143
 Workers' compensation risks, § 7:144

INDEX

RISK MANAGEMENT—Cont'd

- Spoliation, who bears burden of proof of prejudice, § 7:55
- Statute of limitations
 - Generally, § 7:26-§ 7:37
 - Accrual date, altering, § 7:34
 - Claims covered, § 7:28
 - Commencement, § 7:30
 - Contribution claims, § 7:31
 - Determining applicable, § 7:25
 - Governmental bodies, application to claims by, § 7:37
 - Improvement defined for purposes of, § 7:26
 - Indemnity, § 7:31
 - Persons covered, § 7:27
 - Repairs and tolling of, § 7:35
 - Repose statute versus, § 7:24
 - Running of, § 7:30
 - Shorten, agreement to, § 7:34
 - Short statutes, § 7:23
 - Tolling
 - Generally, § 7:35
 - Bankruptcy filing, § 7:36
- Strikes
 - Political risks, § 7:325
 - Resource risks, § 7:172
- Strikes and labor unrest, § 7:172
- Subcontractors
 - Contract formation risks, above
 - Selection, § 7:118
- Supervisory inadequacy or inefficiency, § 7:173
- Surety bonds, § 7:18
- Technology Risks** (this index)
- Third parties, loss or damage incurred by, § 7:276
- Unit price contracts
 - Communication risks, § 7:237
 - Completion of project risks, § 7:293
- Waiver, Estoppel and Release Risks** (this index)
- Weather, unusually severe, § 7:321

RISKS

- Allocations
 - American Institute of Architects Standard Forms** (this index)
 - Contract Interpretation** (this index)
 - American Institute of Architects Standard Forms** (this index)
 - Commercial General Liability (CGL) Coverage** (this index)
 - Construction industry's great risk, § 14:1
 - Delay** (this index)
 - Differing site conditions, generally, § 14:1-§ 14:59
 - Force Majeure** (this index)
 - Indemnity and Indemnification** (this index)
 - Insurance, risk of builder soft cost coverage, § 11:253
 - Mitigation. **American Institute of Architects Standard Forms** (this index)
 - Risk Management** (this index)
 - Schedule** (this index)
 - Site conditions. **Differing Site Conditions** (this index)
 - Site Risks** (this index)
 - Time** (this index)
 - Transfer. **American Institute of Architects Standard Forms** (this index)
- ### **ROOF DAMAGE**
- Insurance, water without roof damage exclusion, § 11:241
- ### **ROOFING EXCLUSION**
- CGL coverage, § 11:140
- ### **ROTTING EXCLUSION**
- Insurance, § 11:243
- ### **ROYALTIES**
- AIA General Conditions of the Contract for Construction form A201 risk allocation provisions, § 5:86

RUST AND CORROSION

EXCLUSION

Insurance, § 11:246

SAFE DRINKING WATER ACT

Purpose of, § 5:207

SAFETY PRECAUTIONS

American Institute of Architects Standard Forms (this index)

Design professional's responsibility for safe work site. **Design Professionals** (this index)

Insurance, safeguarding covered property, duties of insured, § 11:21

Licensing and permitting, § 16:3
Occupational Safety and Health Act (OSHA) (this index)

Risk management, § 7:148

SALARIES

Wages and Salaries (this index)

SALE OF GOODS

Uniform Commercial Code (UCC) (this index)

SALVAGE

Surety salvage. **Suretyship** (this index)

SANCTIONS

Arbitration awards, vacating; sanctions for frivolous appeals, § 21:295

Fines and Penalties (this index)

Licenses and Permits (this index)

Permits. **Licenses and Permits** (this index)

SANCTITY OF CONTRACT

DOCTRINE

Allocation of contract risks, § 5:1, 9:70, 14:24

Breach of contract, § 18:2

Changes and extras clauses and, § 4:3, 14:25

Common law, § 2:2, 4:3

SANCTITY OF CONTRACT

DOCTRINE—Cont'd

Consequential damages, foreseeability of, § 19:16

Contextual contract and, § 2:8

Damages

Consequential damages, foreseeability of, § 19:16

Economic waste, § 19:30

Defective design, owner risk of, § 14:28

Delays, § 15:71, 15:72

Differing site conditions

Affirmative misrepresentation, § 14:29, 14:33, 14:34, 14:40

Allocation of contractor risk, § 14:24

Changes and extras clauses and, § 14:25

Contractor risk, § 14:24

Defective design, owner risk of, § 14:28

Differing site conditions, § 14:45, 14:54

Impossibility exception to, § 14:28, 14:44

Economic waste and, § 19:30

Extras clause and, § 4:3, 14:25

Harsh consequences of, § 5:1

Implied warranties and, § 9:70

Impossibility exception to, § 14:28

Impracticability, implications of, § 15:28

Schedule, § 15:3

Standard form, need for, § 5:1

Strict compliance with terms, § 13:3, 15:22

SCAFFOLDING

Indemnity for strict liability, § 10:51

Safety precautions and program, § 5:202

SCHEDULE

Generally, § 15:2-§ 15:10

American Institute of Architects Standard Forms (this index)

INDEX

SCHEDULE—Cont'd

“As planned” schedule, understanding contractor’s, § **15:129**, **15:131**, **15:134**

Bar chart, § **15:4**

Baseline schedule, § **15:8**

Completion of Project Risks (this index)

Critical path method, § **15:5**-§ **15:10**

Design professionals liability for negligent certification, § **17:63**

Float concept, § **15:9**

Scientific construction project management scheduling, § **15:2**

Unreasonable completion schedule, § **7:262**

Updating schedule during construction, § **15:10**

SCHEDULED ENDORSEMENTS

Insurance (this index)

SCIENCE

Electronic discovery risk management, § **7:50**

SCOPE OF WORK PROVISIONS

American Institute of Architects Standard Forms (this index)

Completion of project risks and involuntary changes to, § **7:295**

Design-build contract formation risks, § **6:79**

Differing site conditions; extra work outside of scope of work, § **14:25**-§ **14:27**

Soil and site conditions; extra work outside of scope of work, § **14:26**

SEALED BIDS

Bids (this index)

SEARCH

Electronic discovery risk management, § **7:50**

SECOND RESTATEMENT

Insurance, choice of law issues in coverage disputes, § **11:39**

SECURED TRANSACTIONS

UCC Article 9, § **9:15**

SECURITY

Bids (this index)

SELECTIVE TENDERS

CGL coverage, § **11:59**

SELF-HELP REMEDY

Termination of contract, § **18:3**

SELF-INSURED RETENTIONS

Generally, § **11:11**

Duty to defend, effect of limit on, § **11:42.20**

Duty to procure insurance, effect on, § **11:206.10**

Exhaustion of limits, § **11:304.20**

SEPARABILITY DOCTRINE

Federal Arbitration Act and, § **21:32**

SEPARATE CONTRACTORS

American Institute of Architects Standard Forms (this index)

SEQUENTIAL LOSS PROVISIONS

Insurance, § **11:226**

SET-OFFS

Bankruptcy

Generally, § **8:120**

Mechanics’ liens, § **8:122**

Surety’s rights, § **8:121**

Contribution, § **10:163**

Professional liability insurance; lost fees from setoff as “damages” analysis, § **11:291.30**

SETTLEMENTS

CGL coverage, § **11:65**, **11:66**

Change orders, claim settlement and release arising out of, § **4:48**

Contribution (this index)

Design professionals, contribution, § **17:22**

Indemnatee, preclusive effect of judgments and settlements incurred by, § **10:121**-§ **10:128**

SETTLEMENTS—Cont'd

- Insurance** (this index)
- Liquidation agreements, § **8:58**
- Loan receipt agreements, § **10:163**
- Mary Carter agreements, § **10:163**
- Partial release, § **4:48**
- Performance bond surety's defense, § **12:67**
- Termination of contract for convenience, § **5:272**
- Unfair Claims Settlement Practices "Model Act," NAIC's, § **12:6**
- Vouching-in process and indemnification, § **10:121-128**
- Waiver of risks through execution of settlement agreements, § **7:248**

SEVERIN DOCTRINE

- Claims, § **4:55**

SHOP DRAWINGS

- American Institute of Architects Standard Forms** (this index)
- American Institute of Steel Construction (AISC), influence of, § **17:61**
- Communication risks, § **7:228**
- Compensable delay where delay within contractor's control, § **15:58**
- Design professional's liability for negligent or untimely review of, § **17:61**
- Design responsibility, delegation of, § **6:47, 6:48**
- Risk management
 - Communication risks, § **7:228**
 - Waiver of approval process, § **7:243**
 - Waiver of risk, § **7:243**

SHOPPING A BID

- Bid Shopping** (this index)

SHRINKING AND CRACKING

- Insurance exclusions, § **11:246.10**

SICK BUILDINGS

- Commercial General Liability (CGL) Coverage** (this index)
- Curtain walls; technology risks, § **7:207**
- Environmental risks, § **7:193**

SIGNATURES

- Arbitration** (this index)

SILICA CLAIMS COVERAGE

- CGL coverage, § **11:135**

SINKHOLES

- Insurance exclusion, § **11:250**

SISTERSHIP EXCLUSION

- CGL coverage, § **11:107**

SITE CONDITIONS

- Differing Site Conditions** (this index)

SITE INSPECTIONS

- Inspections** (this index)

SITE RISKS

- Generally, § **7:153-7:169**
- Access limitation, § **7:156**
- Adjacent property, damage to, § **7:158**
- Admiralty law, application of, § **7:169**
- Availability of site, § **7:154**
- Congestion, § **7:161**
- Drainage, poor, § **7:160**
- Easements, failure to obtain, § **7:154**
- Government approvals, remote sites and problems with, § **7:156**
- Investigation
 - Impracticable or impossible, § **7:166**
 - Inadequate, § **7:164, 7:165**
 - Insufficient time or access to perform adequate, § **7:165**
- Latent conditions in existing construction, § **7:167**
- Navigable waterways and application of admiralty law, § **7:169**

INDEX

SITE RISKS—Cont'd

- Ownership, failure to obtain, § 7:154
- Poor soils, § 7:159
- Power and/or other utilities, lack of readily available, § 7:168
- Remote sites and problems with government approvals, § 7:156
- Right-of-way, failure to obtain, § 7:154
- Security problems, § 7:163
- Underground structures, damage to, § 7:158
- Underground water, § 7:162
- Utilities
 - Lack of readily available power and/or other utilities, § 7:168
 - Underground utilities, § 7:157, 7:158
- Water
 - Navigable waterways and application of admiralty law, § 7:169
 - Underground water, § 7:162
- Zoning and land use regulation, § 7:155

SLANDER

- Defamation** (this index)

SMALL BUSINESSES

- Bids, statutory preferences, § 2:54

SOCIAL PROGRAMS

- Competitive sealed bidding, exemption from, § 2:35

SOFT COST COVERAGE

- Insurance, builder's risk soft cost coverage, § 11:253

SOFTWARE

- Technology Risks** (this index)

SOIL AND SITE CONDITIONS

- Generally, § 14:1-§ 14:41
- Boulders, § 14:7
- Bracing systems, § 14:4
- Cemented soils, § 14:5
- Classifications, soil, § 14:2
- Environmental issues, § 14:16

SOIL AND SITE CONDITIONS

—Cont'd

- Environmental risks, § 7:178, 7:182
- Fill, soil unsuitable as, § 14:10
- Foreseeing problems and preventing disputes. **Soil Exploration for Design and Construction** (this index)
- Geotechnical engineering, § 14:2
- Groundwater, § 14:9
- Inadequate bearing capacity, § 14:4
- Lateral support to adjacent properties, strengthening, § 14:4
- Low density soil, § 14:4
- Man-made obstructions, § 14:14-§ 14:16
- Means and methods, unanticipated soil and site conditions causing changes in construction.
 - Unanticipated conditions causing changes in construction means and methods, below
- Non-soil/water conditions, § 14:14-§ 14:16
- Permafrost, § 14:13
- Risks. **Site Risks** (this index)
- River elevations, unanticipated, § 14:12
- Rock, § 14:8
- Science of soil mechanics and art of soil exploration; geotechnical engineering, § 14:2
- Soft clay soils, § 14:6
- Soil Exploration for Design and Construction** (this index)
- Superfund Act, § 7:178
- Surface water from extraordinary weather, § 14:11
- Tough clay and cemented soils, § 14:5
- Unanticipated conditions causing changes in construction means and methods
 - Generally, § 14:3-§ 14:16
 - Boulders, § 14:7
 - Bracing systems, § 14:4
 - Cemented soils, § 14:5

SOIL AND SITE CONDITIONS

—Cont'd

- Unanticipated conditions causing changes in construction means and methods—Cont'd
- Fill, soil unsuitable as, § 14:10
- Groundwater, § 14:9
- High tides, unanticipated river elevations and heavy currents, § 14:12
- Inadequate bearing capacity, § 14:4
- Lateral support to adjacent properties, strengthening, § 14:4
- Low density soil, § 14:4
- Permafrost, § 14:13
- River elevations, unanticipated, § 14:12
- Rock, § 14:8
- Soft clay soils, § 14:6
- Surface water from extraordinary weather, § 14:11
- Tough clay and cemented soils, § 14:5
- Water
 - Groundwater, § 14:9
 - High tides, unanticipated river elevations and heavy currents, § 14:12
 - Surface water from extraordinary weather, § 14:11
- Unified Soil Classification System, § 14:2
- Water
 - Groundwater, § 14:9
 - High tides, unanticipated river elevations and heavy currents, § 14:12
 - River elevations, unanticipated, § 14:12
 - Surface water from extraordinary weather, § 14:11
 - Unanticipated conditions causing changes in construction means and methods, above

SOIL EXPLORATION FOR DESIGN AND CONSTRUCTION

- Generally, § 14:17-§ 14:22
- Common law allocation of differing site condition risks, § 14:22
- Field exploration of site, § 14:20
- Guidelines, § 14:18-§ 14:21
- Misrepresentation by owner, affirmative. Affirmative misrepresentation
- Negligent geotechnical exploration and reporting, owner and design professional liability for, § 14:22
- Recognizance of area, § 14:19
- Reports
 - Geotechnical Design Summary Report, § 14:21
 - Negligent geotechnical exploration and reporting, owner and design professional liability for, § 14:22
 - Results, interpretation and reporting of, § 14:21
- Results, interpretation and reporting of, § 14:21
- Science of soil mechanics and art of soil exploration; geotechnical engineering, § 14:2

SOVEREIGN IMMUNITY

- Arbitration, role of sovereign immunity, § 21:287
- Changes to contract, cardinal, § 4:20
- Eleventh Amendment's bar against federal court actions, § 8:107
- False Claims Act (FCA), § 8:73
- Implied warranties, § 9:5
- Indemnity and indemnification, § 10:14
- Indian tribes, § 7:222
- Inspection liability and Uniform Building Code (UBC) requirements, § 13:23
- Payment bonds, § 8:181
- Payment** (this index)

INDEX

SOVEREIGN IMMUNITY—Cont'd

Surety salvage, § 12:105

SPEARIN DOCTRINE

Warranties (this index)

SPECIAL CONDITIONS

Bids, § 2:61

SPECIAL DUTY THEORY

Warranty protection and economic loss recovery, § 9:56

SPECIFICATIONS

Advertised procurement, § 2:21

American Institute of Architects Standard Forms (this index)

Completion of project risks

Inadequate or insufficient specifications, § 7:303

Unsuitable products, use of, § 7:304

Defined, § 2:21, 5:26

Design responsibility delegation through performance specifications, § 6:49

Drafting, § 2:21

Inadequate or insufficient; completion of project risks, § 7:303

Materiality of breach of contract, waiver of, § 18:19

Time to prepare, § 2:21

Warranties (this index)

SPOILIATION

Discovery, risk management, § 7:55

STACKING

CGL coverage, § 11:186, 11:186.10

STANDARD FORM AGREEMENTS

Generally, § 5:1, 5:8

Allowances in fixed-price agreements, § 5:8

American Association of State Highway Officials (AASHTO), § 5:4

American Institute of Architects Standard Forms (this index)

STANDARD FORM AGREEMENTS

—Cont'd

Associated General Contractors of America (AGC), § 6:80

Changes and Extras Clauses (this index)

Construction Management Association of America, Inc. (CMAA), § 5:7

Construction Owners of America (COAA), § 5:7

Contract Interpretation (this index)

Contracts and Agreements (this index)

Design-Build Institute of America (DBIA), § 5:7

Design-build project delivery method, § 6:69

Development of, § 5:1, 5:8

Engineering Advancement Association of Japan (ENAA), § 5:7

Engineers Joint Contract Documents Committee (EJCDC), § 5:5

Federal Acquisition Regulations (this index)

Fixed-price agreements, § 5:8

Insurance (this index)

International construction law, harmonization of, § 20:10

International Federation of Consulting Engineers (FIDIC), § 5:7

Mortgage clause, insurance, § 11:216

National Association of Attorneys General (NAAG), § 5:7

Risks and responsibilities, accepted approaches to, § 5:1, 5:8

STANDING

Bid award, standing to protest improper, § 2:144

STATUTE OF FRAUDS

Bid repudiation defense, § 7:134

Oral agreements barred under, § 3:13

Parol evidence rule and, § 3:13

Suretyship, § 12:5

STATUTE OF FRAUDS—Cont'd

Uniform Commercial Code, arbitration agreements subject to, § 21:110
Writing requirement, § 3:13

STATUTE OF LIMITATIONS

Arbitrating, § 21:58, 21:174-§ 21:177
Exterior Insulation Finish Systems (EIFS), § 7:215
Federal Copyright Act, 17:87.70
Implied warranties, § 9:5
Indemnity and indemnification, § 10:10, 10:81, 11:265
Insurance, property policy terms, valuation, § 11:272
Mechanics' liens, foreclosing on, § 8:171
Performance bond surety's bond defenses, § 12:75
Repairs tolling, § 7:35
Risk Management (this index)
Substantial completion, § 8:28

STIPULATED SUM CONTRACTS

Lump Sum Contracts (this index)

STOP-LOSS COVERAGE

Insurance, § 11:321

STOP NOTICE

AIA General Conditions of the Contract for Construction form A201 provisions, § 5:44
Cardinal changes or abandonment of contract, § 4:18
Changes and extras clauses, § 4:18
Mechanics' liens, § 8:172, 8:173

STORAGE

Materials and equipment storage; AIA standard form A201 provisions
Payment for stored materials, § 5:168
Scope of work provisions, § 5:133

STORM WATER

Sedimentation and storm water runoff, § 7:187

STRICT COMPLIANCE DOCTRINE

Acceptance of work, § 13:64
Expectation risks, § 7:259
Inspections, § 13:3
Performance bond surety's defense, § 12:63

STRICT LIABILITY

Blasting activities, § 5:87
Design professionals, § 17:25
Indemnity clause, § 10:51
Warranties (this index)

STRIKES

Delays
Excusable delay where delay outside control of both contracting parties, § 15:44
Inexcusable delay where delay within contractor's control, § 15:37
Political risks, § 7:325
Resource risks, § 7:172
Risk management
Political risks, § 7:325
Resource risks, § 7:172

STRUCTURAL WORK

Special inspections of, § 13:20

SUBCONTRACTORS

American Institute of Architects Standard Forms (this index)
Bids (this index)
CGL coverage, completed operations work exclusion, subcontractor exception, § 11:105
Default insurance, § 11:317
Inexcusable delay where delay within contractor's control, § 15:33
Insurance, subcontractor default insurance, § 11:317
Liquidation agreements, § 8:58

INDEX

SUBCONTRACTORS—Cont'd

- Listing statutes, § 5:125
- Pass-through claims arrangements, § 8:58
- Pay If Paid Clause** (this index)
- Payment** (this index)
- Pay When Paid Clause** (this index)
- Performance bonds
 - Beneficiaries, unpaid subcontractors as, § 12:30
 - Equitable rights, surety's, § 12:100
 - Owner and lender third-party rights against subcontractor's performance bond, § 12:34
- Risk Management** (this index)

SUBPOENAS

- Arbitrator's authority to issue, § 21:193

SUBROGATION

- Generally, § 11:189-§ 11:205
- Allocation of subrogation proceeds, § 11:201, 11:202, 11:202.10
- Anti-subrogation rule
 - Generally, § 11:198-§ 11:200
 - Property coverage loss context, § 11:200
- Application of collateral-source rule, § 11:205
- Arbitrating third party claims, § 21:99, 21:167
- Assignment of subrogation rights, § 11:204
- CGL coverage, effect of additional insured status on subrogation rights of insurer, § 11:170
- Collateral-source rule, application of, § 11:202.10, 11:205
- Contribution and indemnity distinguished, § 11:190
- Curtain wall failures, allocating risk of loss from, § 7:213
- Damage award reduction due to insurance recoveries, § 11:205
- Distinctions
 - Contribution and indemnity distinguished, § 11:190

SUBROGATION—Cont'd

- Distinctions—Cont'd
 - Waivers, from post-loss waivers, § 11:194
- Extent of recovery, § 11:191
- Gross negligence and waiver, § 11:197
- Indemnity and contribution distinguished, § 11:190
- Indemnity clause, § 10:53
- Insurance, drafting considerations, § 11:17.20
- Insured's right to be "made whole," § 11:202
- Insurer's subrogation rights, protection of, § 11:23
- Lender assignment of and subrogation to owner's position under owner-contractor contract, § 8:130
- Limitation on recovery, superior equities doctrine as, § 11:203
- New York anti-subrogation rule, § 11:199
- Notice, waivers of subrogation and, § 11:192.20
- Performance bonds
 - Beneficiaries, subrogees of obligees as, § 12:28
 - Equitable rights, surety's, § 12:100
- Post-loss waivers distinguished, § 11:194
- Property coverage loss context, application of anti-subrogation rule, § 11:200
- Protection of subrogation rights of insurer, § 11:23
- Recovery, extent of, § 11:191
- Reduction of damage award due to insurance recoveries, § 11:205
- Relationship to other contract remedy clauses, § 11:193
- Remedy clauses, relationship to other, § 11:193
- Scope of waiver, § 11:196, 11:196.10
- State insurance guarantee funds, rights under, § 11:203.30

SUBROGATION—Cont'd

- Superior equities doctrine as limitation on recovery, § **11:203**
- Suppliers, coverage of, § **11:195**
- Third-party liability insurance, application of waivers of subrogation to, § **11:192.30**
- Volunteer defense, § **11:189.10**
- Waiver of
 - Generally, § **11:192-§ 11:197**
 - Agreed remedies and damage measures, § **19:52.58**
 - Creation of waiver, § **11:192.10**
 - Notice, waivers of subrogation and, § **11:192.20**
 - Owner's other than contractors and own forces, application to, § **11:192.25**
 - Third-party liability insurance, application to, § **11:192.30**

SUBSIDIARIES

- Indemnity provision, application of, § **10:43**

SUBSTANTIAL COMPLETION

- American Institute of Architects Standard Forms** (this index)
- Attorneys' fees, § **8:38**
- Balance, entitlement to contract, § **8:29**
- Bid relief, § **8:33**
- Claim notification, § **8:34**
- Contractually defining, § **8:27**
- Design professional's liability for negligent certification of, § **17:66**
- Expectation risks, § **7:259**
- Fire codes, failure to comply with, § **8:27**
- Interest, § **8:39**
- Lien rights, § **8:31**
- Liquidated damages, § **8:30**
- Material breach of contract determination, § **18:12**
- Overhead costs, § **8:35**
- Owner's damages, § **8:36**

SUBSTANTIAL COMPLETION

—Cont'd

- Payment
 - Generally, § **8:27-§ 8:40**
 - Statute of limitations and repose, § **8:28**
- Performance bonds
 - Defective construction damages, calculation of, § **8:37**
 - Defense, substantial performance as surety's, § **12:45**
 - Duration of obligations, § **12:23**
- Punch list, § **8:27**
- Repose, statute of, § **8:28**
- Risk allocation and commencement of warranties, § **8:40**
- Statute of limitations, § **8:28**
- Termination, § **8:32**
- Time of completion, § **15:15**
- Warranties, risk allocation and commencement of, § **8:40**

SUBSTANTIAL PERFORMANCE

- Substantial Completion** (this index)

SUBSTITUTION OF MATERIALS

- AIA General Conditions of the Contract for Construction for Construction form A201 provisions, § **5:56**

SUBSTITUTIONS

- Pre-bid approval for, § **2:65.50**

SUB-SUBCONTRACTOR

- Defined, § **5:123**

SUCCESSOR LIABILITIES

- Insurance coverage for, § **11:325**

SUCCESSORS

- AIA standard for A201 provisions, § **5:245**
- Arbitration agreement's effect on assignees, § **21:99**
- Insurance coverage for successor liabilities, § **11:325**

INDEX

**“SUDDEN AND ACCIDENTAL”
EXCEPTION**

CGL coverage, pollution-related
injury, § 11:113

SUE AND LABOR CLAUSE

Insurance, § 11:217, 11:257

SUPERFUND ACT

**Comprehensive Environmental
Response, Compensation and
Liability Act (CERCLA)** (this
index)

SUPERINTENDENT

AIA General Conditions of the
Contract for Construction form
A201, § 5:65

SUPERIOR EQUITIES DOCTRINE

Subrogation, as limitation on
recovery, § 11:203

**SUPERIOR KNOWLEDGE
DOCTRINE**

Contract interpretation, § 3:25
Patent ambiguity doctrine as vehicle
for flowing design responsibility
to contractor and, § 6:53
Wrongful withholding of; Type IV
constructive change, § 4:33

SUPPLIERS

AIA standard form A201 provisions
Debtor's right to recover payments
made to subcontractors and
suppliers, § 5:180
Payment rights, § 5:178
Inexcusable delay where delay within
contractor's control, § 15:33
Owner rejection of, § 2:115
Performance bond beneficiaries,
unpaid suppliers as, § 12:30
Risk management
Foreign suppliers, doing business
with; application of
international law to domestic
contracts, § 7:126
Selection of supplier, § 7:118

SUPPLIERS—Cont'd

Subrogation, coverage of suppliers,
§ 11:195

SURETYSHIP

Generally, § 12:1-§ 12:119
Antitrust laws, § 12:6
Arbitration agreement's effect on,
§ 21:108
Bad faith and, § 12:7
Bankruptcy
Automatic stay
Interest in bonded contract
funds, notifying obligee
prior to lifting stay about,
§ 12:115
Principal's waiver of, § 12:112
Bonded contract funds, securing,
§ 12:116
Chapter 11 case, assumption or
rejection of unexpired leases
or executory contracts in,
§ 12:117
Completing surety, § 12:108-
§ 12:119
Equipment, securing debtor's,
§ 12:118
Executory contracts, assumption or
rejection of, § 12:117
Financing
Postpetition, § 12:119
Prepetition financing of
principal by surety,
§ 12:110
Financing statement, general
indemnity agreement filed as,
§ 12:113
General indemnity agreement filed
as financing statement,
§ 12:113
Postpetition challenges, § 12:114-
§ 12:119
Prepetition activities influencing
surety's rights and obligations
postpetition, § 12:109-
§ 12:113
Salvage, surety, § 12:107

SURETYSHIP—Cont'd

- Bankruptcy—Cont'd
 - Setoff rights of surety, § 8:121
 - Subcontractors, securing debtor's, § 12:118
 - Termination of bonded contracts, prepetition, § 12:111
 - UCC-1 financing statement, general indemnity agreement filed as, § 12:113
 - Unexpired leases or executory contracts, assumption or rejection of, § 12:117

Bids (this index)

- CGL coverage, surety as beneficiary of insurer's duty to defend, § 11:55

- Claims practice laws, § 12:6
- Compensated suretyship, § 12:5
- Conditional payment provision as defense for payment bond surety, § 8:57

- Construction law and, § 1:3
- Dual-obligee bond, lender recourse against, § 8:148

- English law, § 12:3
- Guaranty distinguished, § 12:8
- Heard Act, bond issued pursuant to, § 12:10

- Historical background, § 12:3
- Indemnity Clause** (this index)
- Insurance distinguished, § 11:4, 12:9
- Interpretation of obligations under, § 12:10

- Obligations under, interpretation of, § 12:10

- Overpayment defense, surety's, § 8:67

Performance Bonds (this index)

- Purpose of, § 12:1
- Regulation of industry, § 12:6
- Reinsurance of bond risk, § 12:12
- Risk management, § 7:18, 7:279
- Salvage
 - Generally, § 12:103-§ 12:107
 - Bankruptcy, § 12:107

SURETYSHIP—Cont'd

- Salvage—Cont'd
 - Claim recoveries versus contract funds, § 12:103
 - Federal projects, § 12:104
 - Immunity, governmental, § 12:105
 - Payment bond versus performance bond, § 12:106
- Statute of Frauds, § 12:4
- Statutory bonds, § 12:10
- Surety Association of America, § 12:6
- Towing Rating Bureau, § 12:6
- Tripartite relationship, § 12:2
- Underwriting bonds, § 12:11

SURFACE WATER EXCLUSION

- Insurance, § 11:242

SURVIVAL CLAUSE

- Contribution, § 10:9
- Indemnity, § 10:9

SUSPENDED CORPORATIONS

- CGL coverage, duty to defend, § 11:54

SUSPENSION

- Generally, § 15:83-§ 15:88
- AIA General Conditions of the Contract for Construction form A201 provision
 - Convenience, suspension by owner for, § 5:269
 - Suspension costs, § 5:128
- Bidder suspension and debarment of bidder from future contract award, § 2:105
- Compensable delay, contractually authorized
 - Generally, § 15:83-§ 15:88
 - Constructive suspension, § 15:87
 - Directed suspension, § 15:86
 - Historical background, § 15:84
 - Standard clauses, § 15:85
 - Voluntary suspension, § 15:88
- Constructive suspension, § 15:87
- Directed suspension, § 15:86

INDEX

SUSPENSION—Cont'd

- Disruption distinguished, § 15:103
- Federal Acquisition Regulations notice requirements, § 7:231
- Standard suspension of work clauses, § 15:85
- Voluntary suspension, § 15:88

SYSTEMS PERFORMANCE COVERAGE

- Insurance, § 11:315

“TAILS”

- Insurance, claims-made policy forms, § 11:284

TANGIBLE PROPERTY

- CGL coverage, physical injury to, § 11:85.105
- CGL coverage, physical injury to property, § 11:85
- Odorless gas; CGL coverage for injury to tangible property, § 11:85.10

TARGET VALUE DESIGN

- Integrated project delivery (IPD), § 6:34

TAXES

- AIA General Conditions of the Contract for Construction form A201 provisions, § 5:59
- Communication risks and confusion over responsibility for, § 7:227
- Dischargeability of trust fund debts, § 8:51
- International, § 7:336
- Joint ventures taxed as partnerships, § 7:146
- Licenses and permits, government revenue collection for, § 16:1
- Mechanics' liens, § 8:160
- Value added tax (VAT), § 7:336

TECHNOLOGY RISKS

- Generally, § 7:65-§ 7:99
- Building Information Modeling (BIM)** (this index)

TECHNOLOGY RISKS—Cont'd

- Chemical incompatibility, § 7:200
- Complex building materials
 - Generally, § 7:200-§ 7:213
 - Case studies, § 7:200-§ 7:213
 - Chemical incompatibility, § 7:200
 - Compatibility problems, § 7:200
 - Curtain walls, below
 - Physical incompatibility, § 7:200
 - Thermal incompatibility, § 7:200
- Copyright liability, § 7:218
- Curtain walls
 - Generally, § 7:201-§ 7:213
 - Aesthetic defects, § 7:205
 - Collapse, § 7:206
 - Contribution and allocating risk of loss, § 7:213
 - Cracking and spalling, § 7:204
 - Defenses
 - Economic waste, § 7:210
 - Implied warranty of design, § 7:209
 - Design professional's reliance on marketing information, § 7:208
 - Disclaimers, § 7:211
 - Implied warranty of design, § 7:209
 - Limitations of liability provisions, § 7:211
 - Manufacturers, techniques practiced by, § 7:211
 - Misrepresentation, risk product information will give rise to tort of, § 7:212
 - Risk of loss, contribution and allocating, § 7:213
 - Sick building syndrome, § 7:207
- Water infiltration
 - Brick veneer curtain wall, § 7:203
 - Glass curtain wall, § 7:202
- Cyber risk
 - Design and construction, § 7:90
 - Frequency and severity of cyber loss, § 7:91

TECHNOLOGY RISKS—Cont'd

- Cyber risk—Cont'd
 - Managing, § 7:93
 - Types of threats, § 7:92
- Electronic discovery risk management, § 7:42
- Electronic Signatures in Global and National Commerce (E-SIGN) Act, § 7:196
- Exterior Insulation Finish Systems (EIFS)** (this index)
- Innovation. **Building Information Modeling (BIM)** (this index)
- New products or new uses of existing products, incorporation of, § 7:199
- Novel or unproven designs, § 7:198
- Patent liability, § 7:217
- Prevention measures, matching to particular risks, § 7:94
- Productivity and innovation. **Building Information Modeling (BIM)** (this index)
- Sick building syndrome and curtain walls, § 7:207
- Software bugs, § 7:197
- System performance requirements or guarantees, § 7:216
- Thermal incompatibility, § 7:200
- Uniform Electronic Transaction Act (UETA), § 7:196
- Unproven designs, § 7:198
- Water infiltration
 - Brick veneer curtain wall, § 7:203
 - Glass curtain wall, § 7:202

TENNESSEE

- CGL coverage, “occurrence,” § 11:75

TERMINATION FOR CAUSE

- Generally, § 18:31-§ 18:38
- Adequacy of evaluation of materiality of breach, § 18:40-§ 18:44
- AIA standard form provisions, § 5:272, 18:34-§ 18:36
- Anticipatory repudiation, § 18:23

TERMINATION FOR CAUSE

—Cont'd

- Bankruptcy, § 18:29
- Bonds, failure to maintain, § 18:31
- Cardinal changes, § 4:18, 18:27
- Clauses, § 18:32-§ 18:38
- Criminal activity, § 18:28
- Cure of breach, § 18:15, 18:16, 18:41
- Damages for wrongful termination, § 18:44
- Defective work, § 18:25
- Determining breach and assessing its materiality as basis for, § 18:1
- Federal termination for default clause, § 18:37
- Independence and good faith termination decision, § 12:40, 18:42
- Insolvency, § 18:29
- Insurance, failure to maintain, § 18:31
- Laws, violation of, § 18:28
- Licenses and permits, failure to maintain, § 18:30
- Material breach determination, § 18:1-§ 18:31, 18:40-§ 18:44
- Nonpayment, § 18:26
- Ordinances, violation of, § 18:28
- Performance Bonds** (this index)
- Permits, failure to maintain, § 18:30
- Procedure, § 18:39
- Progress, contractor's failure to make adequate, § 18:24
- Public policy issues, § 18:38
- Regulations, violation of, § 18:28
- Reprocurement following, § 18:43
- Termination for convenience compared, § 5:272
- Wrongful termination, § 18:3

TERMINATION FOR CONVENIENCE

- Generally, § 18:45-§ 18:49
- Agreed remedies and damage measures, § 19:52.60

INDEX

TERMINATION FOR

CONVENIENCE—Cont'd

- AIA General Conditions of the Contract for Construction form A201 provisions, § 5:270-§ 5:272
- Clauses, § 18:46
- Constructive termination, § 18:45.50
- Contractor's obligations upon owner's termination, § 5:271
- Deductive change, partial termination or, § 18:48
- Disadvantaged business enterprises (DBEs), § 2:55.56
- Judicial limitation of right to, § 18:47
- Owner's right to terminate, § 5:270
- Partial termination or deductive change, § 18:48
- Payment in event of, § 5:272
- Procedure, § 18:49
- Termination for cause compared, § 5:272

TERMINATION OF CONTRACT

- Generally, § 18:1-§ 18:50
- American Institute of Architects Standard Forms** (this index)
- Bankruptcy, § 18:29
- Breach conversion clauses, § 18:2
- Cause, termination for. **Termination for Cause** (this index)
- Code enforcement official's role in material breach determination, § 18:10
- Convenience, for. **Termination for Convenience** (this index)
- Cure of breach, § 18:15, 18:16
- Design professional's role in evaluation of material breach
 - Generally, § 18:6-§ 18:9
 - Certificates, design professional's, § 18:7
 - Progress, evaluation of, § 18:9
 - Quality of work, evaluation of, § 18:8
- Economic consequences, § 18:3

TERMINATION OF CONTRACT

—Cont'd

- Economic waste doctrine and its impact on materiality, § 18:13
- First uncured material breach as justification for future contract nonperformance, § 18:16
- Force majeure, § 15:28.5, 18:21
- Frustration, doctrine of, § 18:21
- Future performance, construction breaches judged sufficiently material to, § 18:22-§ 18:31
- Impossibility doctrine, § 18:21
- Impracticability doctrine, § 18:21
- Independent expert's role in material breach determination, § 18:11
- Insolvency, § 18:29
- Material breach determination
 - Generally, § 18:1-§ 18:31
 - Code enforcement official's role in, § 18:10
 - Construction industry's approach, § 18:5-§ 18:11
- Cure of breach, § 18:15, 18:16
- Design professional's role in evaluation of material breach, above
- Economic waste doctrine and its impact on materiality, § 18:13
- First uncured material breach as justification for future contract nonperformance, § 18:16
- Force majeure, § 18:21
- Frustration, doctrine of, § 18:21
- Future performance, construction breaches judged sufficiently material to, § 18:22-§ 18:31
- Impossibility doctrine, § 18:21
- Impracticability doctrine, § 18:21
- Independent expert's role in, § 18:11
- Legal standard, § 18:4
- Mitigation and its impact on materiality, § 18:14
- Self-help remedy, § 18:3

TERMINATION OF CONTRACT

—Cont'd

- Material breach determination
 - Cont'd
 - Specifications, waiver of materiality of, § 18:19
 - Substantial performance doctrine and, § 18:12
 - Timely performance, waiver of materiality of, § 18:18
 - Waiver doctrine and elimination of materiality of breach, § 18:17-§ 18:20
 - Wrongful termination, § 18:3
- Mitigation and its impact on materiality of breach, § 18:14
- No-cost contract termination, § 18:50
- Performance Bonds** (this index)
- Progress, contractor's failure to make adequate, § 18:24
- Risk management and waiver of right to terminate, § 7:242
- Self-help remedy, § 18:3
- Specifications, waiver of materiality of, § 18:19
- Substantial completion, § 8:32
- Substantial performance doctrine and material breach determination, § 18:12
- Timely performance, waiver of materiality of, § 18:18
- Unit price contracts, § 8:11
- Waiver doctrine and elimination of materiality of breach, § 7:242, 18:17-§ 18:20
- Wrongful termination, § 18:3, 18:44

TERRORISM

- Force Majeure** (this index)
- Insurance, § 11:312

TERRORISM INSURANCE

- Generally, § 11:312

TESTS

- Inspections** (this index)

TEXAS

- Commercial General Liability (CGL) Coverage** (this index)

THEFT EXCLUSION

- Insurance, § 11:248, 11:248.10

THIRD PARTIES

- Acceptance of work and defense to third-party liability, § 13:56
- Arbitration
 - Beneficiaries, effect on, § 21:98
 - Third-party claims, § 21:166
- Arbitration** (this index)
- CGL coverage, "property damage" and "third-party property," § 11:82
- Contract interpretation where third-party standards incorporated, § 3:30
- Design professionals
 - Beneficiaries, liability for, § 17:30
 - Certification for benefit of third parties, liability for, § 17:67
- Financial risks where loss or damage incurred by, § 7:276
- Indemnity provision, application of, § 10:43
- Inspection liability of owner agents to third parties for failing to discover another's breaches, § 13:30-§ 13:32
- Insurance** (this index)
- Limitation of liability provision application to claims by, § 19:52.72
- Loan agreement, contractor as third party beneficiary to, § 8:133
- Nonresponsive bid, recourse against third parties for, § 2:93
- Performance bond, third party beneficiary claimants. **Performance Bonds** (this index)
- Retainage, right to, § 8:41
- Subrogation, application of waivers of, § 11:192.30

INDEX

TIME

- Generally, § 15:1-§ 15:136
- Acceleration Claim** (this index)
- American Institute of Architects Standard Forms** (this index)
- Arbitration award, time within which motion to vacate or confirm, § 21:225
- Bids, time to prepare, § 2:21, 2:50, 2:61, 2:71
- Changes
 - Notice of, timeliness of, § 4:35
 - Submission of claim, timeliness requirements for, § 4:36
- Commercial General Liability (CGL) coverage** (this Index)
- Completion, time of
 - Generally, § 15:14-§ 15:16
 - Final completion, § 15:16
 - Risk management. **Completion of Project Risks** (this index)
 - Substantial completion, § 15:15
- Completion of Project Risks** (this index)
- Constructive Acceleration** (this index)
- Control concept and allocation of risks
 - Actual physical control, implications of exercise of, § 15:25
 - Avoid or mitigate, failure to avoid or, § 15:27
 - Bad faith, implications of, § 15:26
 - Delay performance, using control principle to assess liability for time impacts for. **Delays** (this index)
 - Fault, implications of, § 15:26
 - Foreseeability of performance, implications to control, § 15:23
 - Impracticability, implications of, § 15:28
 - Legal control, implications of, § 15:24

TIME—Cont'd

- Control concept and allocation of risks—Cont'd
 - Negligence, implications of, § 15:26
- Delays** (this index)
- Disruption Claim** (this index)
- Early completion, implication of scheduled, § 15:21
- Extension. **Time Extension** (this index)
- Final completion, § 15:16
- Force Majeure** (this index)
- Impact evaluation. **Time Impact Evaluation** (this index)
- Implied warranty of adequacy of contract time, § 9:114
- Impracticability, implications of, § 15:28
- Insurance** (this index)
- Limitations of time. **Statute of Limitations** (this index)
- Materiality of contract time
 - Generally, § 15:17-§ 15:20
 - Performance, time created during, § 15:18
 - Unilateral right to fix time of performance, exercise of, § 15:19
 - Waiver of, § 15:20
- Materials, time and. **Time and Materials** (this index)
- Risk management. **Completion of Project Risks** (this index)
- Risks impacting timely performance. **Force Majeure** (this index)
- Schedule** (this index)
- Start date, defining, § 15:12, 15:13
- Statute of Limitations** (this index)
- Substantial completion, § 15:15
- Time Extension** (this index)
- Undertaking, contract time within limits of
 - Generally, § 15:11-§ 15:21
 - Commencement date, § 15:12
 - Completion, time of, above

TIME—Cont'd

- Undertaking, contract time within limits of—Cont'd
- Early completion, implication of scheduled, § 15:21
- Materiality of contract time, above
- Start date, defining, § 15:11, 15:12

TIME AND MATERIALS

- Generally, § 6:110
- Contract formation, § 2:20
- Force account contract, § 2:20
- Price arrangements, § 6:110

TIME EXTENSION

- AIA General Conditions of the Contract for Construction form A201, § 5:160
- Constructive acceleration, § 15:95, 15:96
- Conversion of inexcusable delay to excusable delay, § 15:73
- Performance bond surety's defense, § 12:76

TIME IMPACT EVALUATION

- Generally, § 15:120-§ 15:136
- As-built analysis, § 15:132
 - “As planned” schedule compared, § 15:132
 - “Collapsed as-build” method, § 15:135
 - “As planned” schedule, understanding contractor's, § 15:129, 15:131, 15:134
- Bar chart schedule, problems proving impacts with, § 15:122
- Baseline analysis, § 15:129
- Burden of proof, § 15:121
- “Collapsed as-build” method, § 15:135
- Contemporaneous analysis method, § 15:130
- Critical path method, use of
 - Generally, § 15:123-§ 15:127
 - Abuse, vulnerabilities of analysis to, § 15:127

TIME IMPACT EVALUATION

—Cont'd

- Critical path method, use of—Cont'd
- Concurrencies, sorting out, § 15:126
- Float, consideration of, § 15:125
- Historical analysis methods, § 15:131-§ 15:136
- Selecting appropriate method for proving impact, generally, § 15:128-§ 15:136
- Total time method, § 15:133
- Window analysis method, § 15:136

TIME IS OF THE ESSENCE

- AIA General Conditions of the Contract for Construction form A201 provisions, § 5:157

TITLE

- Express oral warranties and warranties of, contractor, § 9:63

TORTS

- Arbitrating tort claims, § 21:165
- Commercial General Liability (CGL) Coverage** (this index)
- Construction law, § 1:3
- Contractual relations, tortious interference with, § 17:29
- Contribution** (this index)
- Damages** (this index)
- Defamation** (this index)
- Design professionals, standard of care, § 17:11, 17:12
- Federal Tort Claims Act
 - Inspection liability of federal government agencies under, § 13:24
 - Sovereign immunity waiver under, § 8:103
- Indemnity and Indemnification** (this index)
- Lender's liability for tortious interference, § 8:136
- Misrepresentation** (this index)
- Palsgraf v. Long Island R. Co. case, § 7:264

INDEX

TORTS—Cont'd

Performance bond beneficiaries,
personal injury claimants as,
§ 12:32

Proximate cause principle, § 19:5

Risk Management (this index)

Strict liability theory

Blasting activities, § 5:87

Warranties (this index)

Warranty as tort, § 9:3-§ 9:9

Workers' Compensation (this
index)

TOTAL COST CLAIM

Changes resulting in extra work, time
impacts and disruptions;
contractor's compensatory dam-
age measures, § 19:93, 19:94

TOTAL TIME CLAIM

Time impact evaluation, § 15:133

TOWN HOMES

Mechanics' liens, § 8:167

TOXIC SUBSTANCES CONTROL ACT

Purpose of, § 5:207

TRADE, CUSTOM AND USAGE

Application of meaning when
contract is silent, § 3:45

Conflicts in contract language,
employing trade usage to
resolve, § 3:46

Establishing, § 3:47

Filling in terms not expressly
included in agreement, § 3:45

Generally, § 3:5, 3:41-§ 3:47

Implied product warranties of
merchantability and fitness for
particular purpose arising from,
§ 9:39

Particular terms, defining, § 3:44

Plain meaning rule, § 3:44

Preference standards, interpretation
of, § 3:37

Presumption of knowledge of well-
established, § 3:42

TRADE, CUSTOM AND USAGE

—Cont'd

Restatement Second, Contracts on,
§ 3:43

Role in contract interpretation, § 3:43

Theories on, § 3:43

Uniform Commercial Code

Arbitration agreements subject to,
§ 21:114

Trade usage defined under, § 3:41,
3:43

Well-established, presumption of
knowledge of, § 3:42

TRADEMARKS

Design-build project and control and
ownership of design documents,
§ 6:72

TRANSMITTALS

Completion of project risks and
delays in transmittal process,
§ 7:282

TRESPASS

Design professionals, liability of,
§ 17:36

TRIBAL ENTITY

Native Americans (this index)

TRIGGERING

**Commercial General Liability
(CGL) Coverage** (this index)

TRUSTS

AIA standard form A201 risk alloca-
tion provisions, § 5:180

Automatic stay under bankruptcy,
§ 8:109

Payment (this index)

TRUTHFULNESS

Insurance, duties of insured, § 11:20,
11:20.10

TUCKER ACT

Sovereign immunity, § 8:102

TURNKEY

Project delivery method, § 6:8

UCC

Uniform Commercial Code (UCC)
(this index)

UMBRELLA COVERAGE

Excess insurance, § 11:309

**UNAUTHORIZED PRACTICE OF
LAW**

Arbitration, effects on, § 21:297-
§ 21:299

**UNCITRAL MODEL LAWS AND
GUIDES**

Harmonization of international
construction law, § 20:8

UNCONSCIONABILITY

Arbitration, unconscionability
defense and preemption of state
law, § 21:137 et seq.

Decision makers, § 21:145,
21:145.50

Effective-vindication exception to
enforcement, § 21:146

Limitation of liability, § 5:238

Procedural unconscionability, apply-
ing concept, § 21:139

Recurring challenges, § 21:141

State law, variations in, § 21:142

Trends in unconscionability chal-
lenges, § 21:138

UNCOVERING OF WORK

Inspection, for, § 5:237

UNDAMAGED WORK

Insurance, valuation, increased cost
to complete, § 11:276

**UNDERGROUND STORAGE
TANKS**

Environmental risks, § 7:180

Regulation of, § 5:207

UNDERWRITING

Design-build contracts, surety
industry's attitude toward bond-
ing, § 12:85-§ 12:94

Loans, § 8:126

UNDERWRITING—Cont'd

Performance bonds, § 12:13

Surety bond, § 12:11

UNFORESEEN CONDITIONS

Delays, § 5:160

Force Majeure (this index)

UNIDROIT

International Construction (this
index)

**UNIFORM COMMERCIAL CODE
(UCC)**

Acceptance of goods

Generally, § 13:55

Nonconforming goods, buyer's
rights upon tender of, below

Accounts, sale of, § 8:68

Arbitration (this index)

Article 2A, § 9:15

Battle of forms, § 2:142, 9:46

Curtain wall manufactures, risk
management techniques
practiced by, § 7:211

Custom and usage

Arbitration agreements subject to,
§ 21:114

Trade usage defined under, § 3:41,
3:43

Damage measures

Generally, § 19:45-§ 19:48

Buyer, § 19:47

Freedom of contract, endorsement
of, § 19:46

Preemption of common law reme-
dies, § 19:46

Seller, § 19:48

Equipment leases, application to,
§ 9:15

Freedom of contract, endorsement of,
§ 19:46

Inspection of goods, § 13:52

Nonconforming goods, buyer's rights
upon tender of

Generally, § 13:70-§ 13:75

INDEX

**UNIFORM COMMERCIAL CODE
(UCC)—Cont'd**

- Nonconforming goods, buyer's rights upon tender of—Cont'd
 - Damages available upon acceptance, rejection or revocation, § 13:75
 - Revoking acceptance and substantial impairment of value to buyer, § 13:71
 - Substantial alteration of accepted goods, § 13:72
 - Timely acceptance or rejection, § 13:73, 13:74
- Parol evidence rule, § 3:13
- Revoking acceptance and substantial impairment of value to buyer, § 13:71
- Risk of loss provisions, § 5:168
- Secured transactions, Article 9, § 9:15
- Substantial alteration of accepted goods, § 13:72
- Trade usage defined under, § 3:41, 3:43
- Warranties** (this index)

**UNIFORM ELECTRONIC
TRANSACTION ACT (UETA)**

- Generally, § 7:196

UNILATERAL MISTAKES

- Bids. **Mistake in Bid** (this index)

**UNITED NATIONS CONVENTION
ON CONTRACTS FOR THE
INTERNATIONAL SALE OF
GOODS (CISG)**

- Contract formation risks, § 7:126
- Enforcement of contract under, § 7:126
- Harmonization of international construction law, § 20:9
- Place of business, determination of, § 7:126

UNIT PRICE CONTRACTS

- Generally, § 6:99-§ 6:107, 8:4-§ 8:16

**UNIT PRICE CONTRACTS
—Cont'd**

- Ambiguous measurement specifications, § 8:13
- Catchall categories, § 8:14
- Change order requirements, written, § 8:16
- Communication risks, § 7:237
- Completion of project risks, § 7:293
- Complex unit price arrangements, § 6:101
- Conversion issues, § 8:9
- Defined space, payment of units within, § 8:6
- Design professionals, cost estimation liability of, § 17:47
- Differing site conditions
 - Clauses, § 14:59
 - Extra work clause, § 14:27
- Estimation discrepancies, § 6:103
- Fixed price contracts and, § 6:99, 6:106
- General unit price payment terms, § 8:7
- Inaccurate estimated quantities, § 6:102
- Lump sum contracts, § 6:99, 6:106, 8:8
- Measurement problems, § 6:105
- Mixing unit price and lump sum contracts, § 6:106
- Overlapping or vague categories, § 8:14
- Overrun units, § 8:15
- Parol evidence altering meaning terms, § 8:10
- Per foot measurement, § 8:7
- Per yard measurement, § 8:7
- Poorly defined units, § 6:104
- Risk management
 - Communication risks, § 7:237
 - Completion of project risks, § 7:293
- Special excavation, § 8:14
- Termination of contract and applicability of, § 8:11

UNIT PRICE CONTRACTS

—Cont'd

- Transverse measurements for area computations, § 8:13
- Truckload yard, § 8:7
- Unbalanced pricing, § 6:100
- Unspecified measurement terms, § 8:12
- Vague categories, § 8:14
- Variation in Estimated Quantity (VEQ) clause
 - Generally, § 8:4, 8:15
 - Adjusting price pursuant to, § 8:15
 - Differing site conditions
 - Clauses, § 14:59
 - Extra work clause, § 14:27
 - Estimation discrepancies, § 6:103
 - Extra work clause, § 14:27
 - Increase in work units and completion of project risks, § 7:296
 - Indefinite quantity contracts where no purchases are made, application to, § 6:107
 - Limitations of, avoiding, § 8:15
 - Mixing unit price and lump sum contracts, § 6:106
 - Overrun units, § 8:15

UNJUST ENRICHMENT

- Quantum Meruit** (this index)

USAGE, CUSTOM AND

- Trade, Custom and Usage** (this index)

UTILITIES

- Site risks
 - Damage to underground utilities, § 7:157, 7:158
 - Lack of readily available power and/or other utilities, § 7:168

VACANCY EXCLUSION

- Insurance, § 11:249

VALUATION

- Insurance** (this index)

VALUE ENGINEERING CHANGES

- Contract provisions, § 4:6, 4:24
- Expectation risks, § 7:269

VARIATION IN ESTIMATED QUANTITY (VEQ)

- Unit Price Contracts** (this index)

VENUE

- Arbitration
 - Hearing locale, § 21:282-§ 21:284
 - Miller Act bond claims, § 21:168
- Political risks where local courts or administrative bodies failing to recognize, § 7:332

VEQ (VARIATION IN ESTIMATED QUANTITY)

- Unit Price Contracts** (this index)

VERTICAL VS. HORIZONTAL EXHAUSTION DOCTRINE

- Excess insurance, § 11:306

VESSEL OWNER'S LIMITATION OF LIABILITY ACT

- Limitation of liability under, § 7:169

VICARIOUS LIABILITY

- Indemnity, § 10:150
- OSHA violations, § 13:16

VIOLATION OF LAW

- Indemnification clauses, § 11:28

VIRUS

- Force majeure and relief from disruption caused by COVID-19 pandemic, § 7:322

VOUCHING-IN PROCESS

- Indemnity and, § 10:121-§ 10:128

WAGES AND SALARIES

- Bids and labor preferences
 - Job targeting wage subsidy programs, § 2:60
- Prevailing wage requirements, § 2:59

- Workers' Compensation** (this index)

INDEX

**WAIVER, ESTOPPEL AND
RELEASE RISKS**

- Generally, § 7:238-§ 7:254
- Acceptance of defective work, waiver through acceptance of, § 7:244
- Bid process, § 7:252
- Broad release language, determining scope of, § 7:241
- Change order release language, waiver of claims through execution of, § 7:247
- Completion date waiver, § 7:249
- Costs
 - Guarantees, § 7:253
 - Impact costs, § 7:245
- Estoppel defined, § 7:239
- Exculpatory provisions, § 7:254
- Impact costs, § 7:245
- Insurance rights, § 7:246
- Jury waiver provisions and arbitration agreements, § 21:13
- Notice requirements, § 7:251
- Partiality of arbitrator, waiver of right to object, § 21:236
- Release and, § 7:239
- Settlement agreement execution, § 7:248
- Shop drawing approval process, § 7:243
- Significance of, generally, § 7:240
- Subrogation, insurance provision drafting considerations, § 11:17.20
- Terminate, right to, § 7:242
- Vacatur, waiver of right to seek, § 21:235, 21:236
- Waiver defined, § 7:239
- Written change order requirements, § 7:250

WAIVERS

- Acceptance of Work** (this index)
- Action or failure to act, no waiver presumed by, § 5:249
- Agreed remedies and damage measures
 - Consequential damages, § 19:52.54

WAIVERS—Cont'd

- Agreed remedies and damage measures—Cont'd
 - Subrogation, § 19:52.58
- American Institute of Architects Standard Forms** (this index)
- Arbitration** (this index)
- Bids
 - Constructive changes, Type I construction changes, § 4:29
 - Evaluation of responsiveness and waiver of minor deviations, § 2:74, 2:91
 - Unilateral mistakes, waiver of rights to relief for, § 2:131
- Change orders
 - Settlement and release arising out of, § 4:48
 - Writing requirement for, waiver of, § 4:39
- Claim submission timeliness requirements; notice and waiver Minnesota-style, § 4:36.50
- Consequential damages, § 19:52.54
- Constructive changes, Type I construction changes, § 4:29
- Contract time, materiality of, § 15:20
- DBE contract waivers and modifications, requesting, § 2:55.55
- Defined, § 7:239
- Final payment, waiver of claims through
 - Acceptance of payment, through, § 8:25
 - Estoppel, § 8:26
 - Making final payment, through, § 8:26
- Final payment, waiver of claims upon making or accepting, § 5:193, 5:194
- Inspections; constructive waiver, § 13:4
- Lien Waiver** (this index)
- Materiality of breach of contract, § 7:242, 18:17-§ 18:20
- Mechanics' liens, § 8:180

WAIVERS—Cont'd

- No damages for delay clause,
§ 7:254, 15:80
- Payment bond rights, § 8:208
- Performance bond surety's defense,
§ 12:63
- Risk management. **Waiver, Estoppel
and Release Risks** (this index)
- Sovereign immunity waiver in
contractual claims for payment.
Payment (this index)
- Subrogation** (this index)

WARNINGS

- Erection of safeguards and posting,
safety precautions; standard
form A201 provisions, § 5:198

WARRANTIES

- Generally, § 9:1-§ 9:105
- AIA review obligation and
contractor's implied duty to seek
clarification distinguished,
§ 9:71, 9:72
- American Institute of Architects
Standard Forms** (this index)
- Arbitration** (this Index)
- Brand name specifications, implied
warranty of commercial avail-
ability under, § 9:108
- Brochures and sales literature; UCC
express warranties, § 9:22
- Buyer's notification obligations;
UCC express warranties, § 9:35
- Causation loss, proof of; UCC
express warranties, § 9:34
- Certifications compared, § 9:9
- Characterization, significance of,
§ 9:3-§ 9:9
- Clarification, contractor's implied
duty to seek
 - AIA review obligation
distinguished, § 9:72, 9:73
 - Design discrepancies, clarification
of obvious, § 9:71
 - Errors or discrepancies, duty to
alert owner of, § 9:73

WARRANTIES—Cont'd

- Clarification, contractor's implied
duty to seek—Cont'd
 - Last clear chance to avoid dispute,
control over, § 9:71
- Code violations, implied duty to warn
of defects, errors and, § 9:116
- Common law, § 9:1, 9:69.50, 9:70
- Competing products comparison;
UCC express warranties, § 9:26
- Completion of project risks and inad-
equately, § 7:307
- Concrete mix design, approval of,
§ 9:110
- Construction methods, implied war-
ranty implications of specifica-
tions of, § 9:111
- Consumer law protections, state,
§ 9:10, 9:55
- Contract, warranty as, § 9:3-§ 9:9
- Contract time, implied warranty of
adequacy of, § 9:114
- Control over information material to
construction, implied duty of
full disclosure, § 9:107
- Cooperation, implied duty of, § 9:113
- Coverages, § 9:2
- Damages
 - Consequential damages, implied
product warranties of
merchantability and fitness for
particular purpose, § 9:41,
9:49
 - Economic loss, below
 - Privity and damages for breach of
warranty, § 5:52
 - Uniform Commercial Code,
§ 9:59.30, 9:59.70
- Defect-free work, contractor express
warranty, § 9:65-§ 9:61
- Defective Trade Practices Act, § 9:10
- Defects, errors and code violations,
implied duty to warn of, § 9:116
- Delivery of materials or equipment at
specified time, promise of; UCC
express warranties, § 9:27

INDEX

WARRANTIES—Cont'd

- Design adequacy, implied warranty of
 - Breach of, establishing, § 9:104
 - Curtain wall claims, defenses to, § 7:209
 - Delegation of, § 9:92
 - Differing site conditions, § 14:28
 - Disclaiming implied warranty of, § 9:87
 - Malpractice by design professional distinguished, § 9:89
 - Materials, owner's warranty of design adequacy versus contractor's warranty of, § 9:112
 - Performance bonds surety's contract defenses, § 12:47
 - Performance specifications, application to
 - Generally, § 9:101-§ 9:103
 - Acceptance requirements, § 9:103
 - Mixed design, § 9:102
 - Design discrepancies, contractor's implied duty to seek clarification of obvious, § 9:71
- Design professionals
 - Certifications compared, § 9:9
 - Liability, § 17:24
 - Malpractice and implied warranty of design adequacy distinguished, § 9:89
- Disclaimers
 - Agreed remedies and damage measures, § 19:52.61
 - Design adequacy, disclaiming implied warranty of, § 9:87
 - Fitness of purpose, implied product warranty of. **Implied Product Warranties of Merchantability and Fitness of Purpose** (this index)
 - Habitability, implied warranty of, § 9:81
 - Merchantability and fitness for particular purpose, implied

WARRANTIES—Cont'd

- Disclaimers—Cont'd
 - product warranties of. **Implied Product Warranties of Merchantability and Fitness for Particular Purpose** (this index)
- Disclosure, implied duty of full, § 9:107
- Discrepancies or errors, contractor's duty to alert owner of, § 9:73
- Doctrine of, § 9:1
- Duplications and gaps among tiers, § 9:2
- Economic loss
 - Generally, § 9:53-§ 9:51
 - Express warranties, § 9:54
 - Fraud, recovery under, § 9:56
 - Implied warranties, generally, § 9:5, 9:57
 - Integrated system analysis, § 9:54.50
 - Misrepresentation, recovery under, § 9:56
 - Special duty theory, recovery under, § 9:56
 - State consumer protection laws, recovery under, § 9:55
- Engineer-procure-construct contracting, § 6:80
- Equipment, plant or work plan, implied warranty implications of approval of, § 9:109
- Errors or discrepancies, contractor's duty to alert owner of, § 9:73
- Express warranties, generally, § 9:1
- Federal projects, negotiating warranties on, § 9:118, 9:119
- Fitness of purpose, implied product warranty of. **Implied Product Warranties of Merchantability and Fitness of Purpose** (this index)
- Fraud, economic loss recovery under, § 9:56
- Future performance, express warranty of
 - Accrual and limitations, § 9:29

WARRANTIES—Cont'd

- Future performance, express warranty of—Cont'd
 - Clarity of expression requirement, § 9:28
- Gaps among tiers, § 9:2
- Good faith and fair dealing, implied duty of, § 9:117
- Habitability, implied warranty of
 - Generally, § 5:238, 9:1, 9:79-§ 9:75
 - Disclaiming, § 9:81
 - Home builders and strict liability, § 9:80
 - Strict liability and home builders, § 9:80
 - Subsequent purchasers, application to, § 9:82
- Historical background, § 9:1
- Implied-in-fact distinct from implied-in law, § 9:5
- Implied warranties, generally, § 5:238, 9:1
- Impossibility of performance, § 9:112
- Insurance** (this index)
- Jointly developed design specifications, application of implied warrant of design adequacy to, § 9:100
- Last clear chance to avoid dispute, control over, § 9:71
- Lender's implied warranty liability, § 8:138
- Malpractice by design professional distinguished from implied warranty of design adequacy, § 9:89
- Materials and equipment of good quality and new, contractor express warranty, § 9:64
- Materials and workmanship, contractor express warranties of, § 9:61, 9:62
- Merchantability and fitness for particular purpose, implied product warranties of. **Implied Product Warranties of Merchantability and Fitness for Particular**

WARRANTIES—Cont'd

- Purpose** (this index)
- Misrepresentation, economic loss recovery under, § 9:56
- Models; creation of UCC express warranties, § 9:24
- Negligence, recovery in. Economic loss, above
- New and good quality materials and equipment, contractor express warranty, § 9:64
- One-year correction remedy, § 5:238, 5:239, 9:69
- Oral representations; creation of UCC express warranties, § 9:22-§ 9:17
- Overlays, duplications and gaps among tiers, § 9:2
- Past history or present condition, express warranties of, § 9:30
- Performance bonds surety's contract defenses
 - Design adequacy, implied warranty of, § 12:47, 12:53
 - Special construction material, owner's implied warranty of commercial availability of, § 12:48
- Plans and specifications, statement goods will comply with, § 9:25
- Plant, equipment or work plan, implied warranty implications of approval of, § 9:109
- Post-completion warranty clauses, § 12:23
- Privity
 - Generally, § 9:50-§ 9:51
 - Economic loss, above
 - Horizontal nonprivity, § 9:50
 - Strict liability where personal injury or property damage caused by defective products without regard to, § 9:52
 - Third-party beneficiary status, § 9:51
 - Vertical and horizontal nonprivity, § 9:50

INDEX

WARRANTIES—Cont'd

- Product defect liability and breach of express warranty compared, § 9:7
- Promise to supply goods pursuant to detailed specifications; UCC express warranties, § 9:19
- Puffing and vague expressions of quality and affirmations of value; creation of UCC express warranties, § 9:20
- Rejection right compared, § 9:8
- Residential construction, statutory warranties applying to
 - Generally, § 9:84-§ 9:91
 - Defect statutes, § 9:84.50
 - Design adequacy, implied warranty of, above
 - Product specifications and manufacturing defects, § 9:86
- Spearin doctrine
 - Generally, § 9:86
 - Adoption by state courts, § 9:88
 - Asbestos, § 9:5
 - Design/build contracting, § 9:105, 9:106
 - Liability, used as shield against, § 9:90
- Retainage, § 8:21
- Revocation right compared, § 9:8
- Sales literature, UCC express warranties, § 9:22
- Samples and models; creation of UCC express warranties, § 9:24
- Spearin doctrine. Residential construction, statutory warranties applying to, above
- Special duty theory, economic loss recovery under, § 9:56
- Strict liability
 - Economic loss, above
 - Habitability, implied warranty of, § 9:80
 - Home builders and, § 9:80
 - Privity, where personal injury or property damage caused by defective products without

WARRANTIES—Cont'd

- Strict liability—Cont'd
 - regard to, § 9:52
- Subsequent purchasers, application of implied warranty of habitability and workmanlike performance to, § 9:82
- Suitability of construction work, contractor's implied warranty of, § 9:83
- Title, contractor express oral warranties and warranties of, § 9:63
- Tort, warranty as, § 9:3-§ 9:9
- UCC express warranties
 - Generally, § 9:3, 9:16-§ 9:29
 - Basis of bargain requirements, § 9:18-§ 9:21
 - Brochures and sales literature, § 9:22
 - Buyer's notification obligations, § 9:35
 - Causation loss, proof of, § 9:34
 - Competing products comparison, § 9:26
 - Creation of warranties, § 9:18-§ 9:21
 - Delivery of materials or equipment at specified time, promise of, § 9:27
 - Future performance, warranty of
 - Accrual and limitations, § 9:29
 - Clarity of expression requirement, § 9:28
 - General types of express warranties, § 9:17
 - Inspection, effect of; past history or present condition, § 9:30
 - Models, § 9:24
 - Oral representations, § 9:22-§ 9:17
 - Past history or present condition, § 9:30
 - Plans and specifications, statement goods will comply with, § 9:25
 - Promise to supply goods pursuant to detailed specifications, § 9:19

WARRANTIES—Cont'd

- UCC express warranties—Cont'd
 - Puffing and vague expressions of quality and affirmations of value, § 9:20
 - Sales literature, § 9:22
 - Samples and models, § 9:24
 - Scope and meaning of representations, § 9:33
- Specifications
 - Promise to supply goods pursuant to detailed specifications, § 9:19
 - Vague expressions of quality and affirmations of value, § 9:20
- Uniform Commercial Code
 - Application of, § 9:13, 9:15
 - Damages, § 9:59.30, 9:59.70
 - Equipment leases, application to, § 9:15
 - Fitness for particular purpose, implied product warranty of. **Implied Product Warranties of Merchantability and Fitness for Particular Purpose** (this index)
 - Merchantability and fitness for particular purpose, implied product warranties of. **Implied Product Warranties of Merchantability and Fitness for Particular Purpose** (this index)
 - Privity, above
 - Vague expressions of quality and affirmations of value; creation of UCC express warranties, § 9:20
- Whole product, § 9:115
- Workmanlike performance, contractor's implied warranty of, § 9:74-§ 9:71
- Workmanship, contractor express warranties of materials and, § 9:61, 9:62
- Work plan, implied warranty implications of approval of, § 9:109

WASTE

- Disposal of construction waste and environmental risks, § 7:188

WATER

- Infiltration
 - Brick veneer curtain wall, § 7:203
 - Glass curtain wall, § 7:202
- Sedimentation and storm water runoff, § 7:187
- Site risks
 - Navigable waterways and application of admiralty law, § 7:169
 - Underground water, § 7:162

WATERCRAFT EXCLUSION

- CGL coverage, § 11:143

WATER EXCLUSIONS

- Insurance** (this index)

WEATHER

- Delays caused by
 - Excusable delay where delay outside control of both contracting parties; abnormal weather, § 15:43
 - Inexcusable delay where delay within contractor's control, § 15:36
 - Payment risks, § 7:321
 - Unusually severe weather, § 7:321
- Disruption claim, § 15:107-§ 15:109
- Force Majeure** (this index)
- Surface water from extraordinary weather; unanticipated conditions causing changes in construction means and methods, § 14:11

WELDING FUME EXPOSURE CLAIMS

- CGL coverage, § 11:137

WETLANDS

- Environmental risks, § 7:183

WICKS LAW

- Multi-prime contracting, § 6:14

INDEX

WILLFUL CONDUCT

- Design professionals, economic loss rule, § **17:98.30**
- Indemnification clauses, § **11:28**

WIND

- Insurance exclusions, § **11:251.10**

WINDOW ANALYSIS METHOD

- Time impact evaluation, § **15:136**

WOMEN BUSINESS

ENTERPRISES (WBE)

- Bids, § **2:55, 2:89, 2:102**
- FCA liability for non-compliance with programs, § **8:79**

WORKERS' COMPENSATION INSURANCE

- Generally, § **11:298, 11:299**
- AIA General Conditions of the Contract for Construction form A201 provisions, § **5:88**
- Borrowed employee, § **10:71**
- Boundary disputes with CGL coverage, § **11:298**
- CGL coverage and, § **11:298**
- Common enterprise doctrine, § **10:71**
- Contribution claims, workers' compensation acts bar to, § **10:162**
- Determination of employment status, § **11:298**
- Drafting considerations for provisions, § **11:17.24**
- Effect of employment status on employer liability, § **11:299**
- Employment status, workers' compensation coverage, § **11:298, 11:299**

WORKERS' COMPENSATION INSURANCE—Cont'd

- Immunity to implied-in-fact and implied-in-law indemnity, § **10:72**
- Indemnity and, § **10:70-§ 10:57, 10:124.20**
- Loaned employee test, § **10:71**
- Sole proprietors, doing business with; entity formation risks, § **7:144**
- Status of employment, workers' compensation coverage, § **11:298, 11:299**
- Statutory employee, § **10:71**

WORKMANSHIP EXCLUSION

- Insurance, § **11:232 et seq.**

WORK PLAN

- Inspections, § **13:5**
- Performance bonds surety's contract defenses based on owner's approval of, § **12:52**

WORK PRODUCT EXCLUSION

- CGL coverage, § **11:102**

WRAP-UP INSURANCE

- Generally, § **11:310, 11:310.10, 11:311**

WRITING REQUIREMENT

- CGL coverage, additional insureds, § **11:152, 11:152.10**

WRONGFUL DEATH

- Performance bond beneficiaries, wrongful death claimants as, § **12:32**

ZONING

- Site risks, § **7:155**