

CONTRACTING WITH THE DESIGN FIRM



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AGENDA

A background image showing several pairs of hands pointing at and reviewing architectural blueprints on a table. The blueprints are detailed technical drawings with various lines and text. The hands are of different ages and are wearing various types of clothing, suggesting a collaborative work environment.

Basic Provisions in Design Services Agreement

Indemnification

Worker Compensation Waivers

Limitations of Liability Clauses

STANDARD CLAUSES

Scope of Services

Fees

Standard of Care

Indemnification

Waiver of
Consequential
Damages

Site Safety Duties



Waiver of Worker
Comp Immunity

Disclaimer of Third
Party Reliance

Ownership of Design
or Contract
Documents

Dispute Resolution

INDEMNIFICATION



**Owner
Indemnification of
Design Firm**

**Design Firm
Indemnification of
Owner**

ANTI-INDEMNITY STATUTE

- **RCW 4.24.115**
- Any construction contract that seeks indemnification for bodily injury or property damage resulting from the **sole** negligence of the owner or its agents is against public policy, is void and unenforceable.

Any construction contract that seeks indemnification for bodily injury or property damage caused by the **concurrent negligence** of the owner and the design firm is valid but only to the extent of the design firm's negligence and only if the agreement specifically and expressly provides for such indemnification.



Defend, Indemnify, and Hold Harmless

“Sally shall defend, indemnify and hold Joe harmless”

- ▶ **Defend:** Sally will step into Joe’s shoes, hire an attorney, and pay legal fees regardless of the merits of the claim.
- ▶ **Indemnify:** Sally will pay any judgment entered against Joe.
- ▶ **Hold Harmless:** Sally releases Joe from any liability for enumerated claims.



OWNER INDEMNIFICATION



When should an Owner agree to defend or indemnify a design firm from:

Contractor claims

Personal injury claims

Property damage claims

DESIGN FIRM INDEMNIFICATION

- **When should a design firm agree to defend or indemnify an Owner from:**
- **Contractor claims**
- **Personal injury claims**
- **Property damage claims**



BROAD FORM

Consultant shall defend, indemnify and hold Owner harmless from any and all claims arising out of the Consultant's Work.



DOT Indemnification

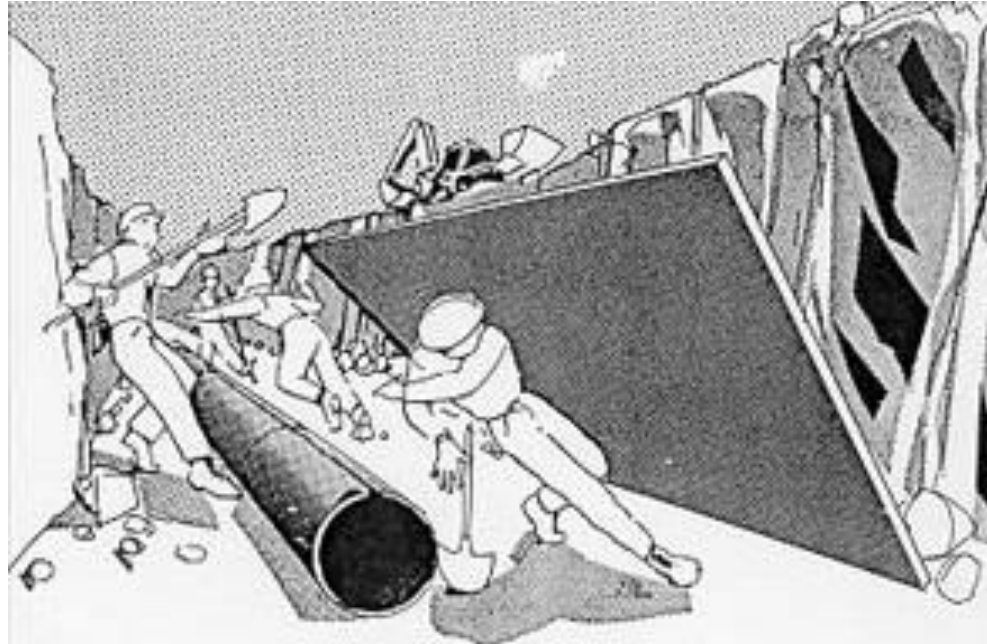
Consultant shall indemnify and hold the Agency harmless from, and shall defend at its own expense, all claims demands and lawsuits, arising in whole or in part from the Consultant's negligence or breach of any of its obligations under this Agreement.

Nothing shall require the Consultant to indemnify or defend the Agency from any claims based solely on conduct of the Agency.

If the claims arise from the concurrent negligence of Consultant and Agency, the Consultant's duty to defend and indemnify shall be valid only to the extent of the Consultant's negligence.



Worker Compensation Immunity Waivers



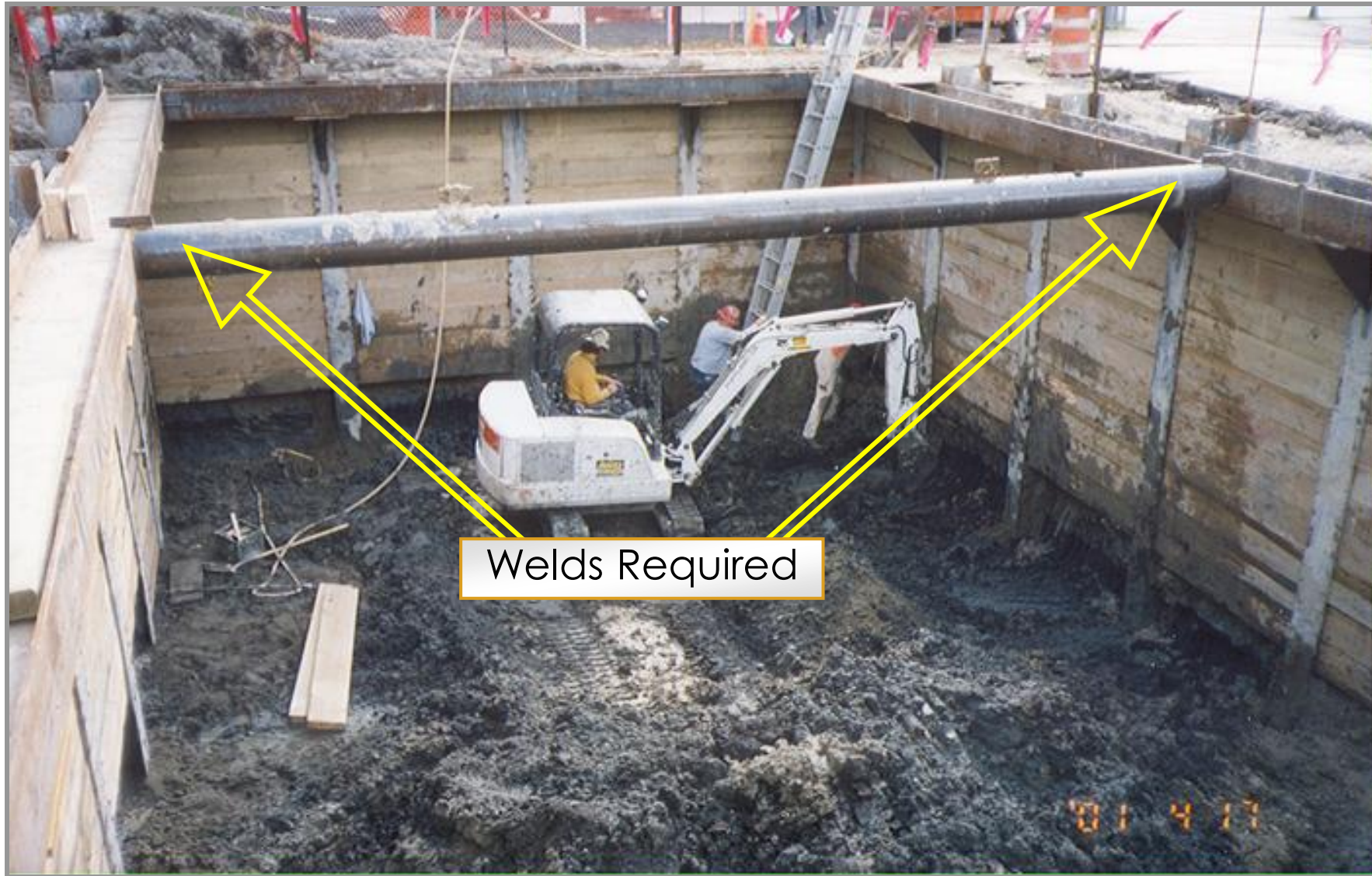
Designers can be held liable for injuries to third parties resulting from a negligent design ...

But they are immune from suits by their own employees.





Designers and owners are generally **not** liable for unsafe construction means or methods ... but contractor is immune from suit by an injured employee.



Welds Required



RCW 4.24.115

An employer may waive immunity under industrial insurance, Title 51 RCW, only if the agreement specifically and expressly provides therefor and the waiver was mutually negotiated by the parties.

LIMITATIONS OF LIABILITY

Consultant's maximum aggregate liability to Owner for any claims, including claims asserted against Owner by contractor, is limited to its fee or \$50,000, whichever is greater, for any and all work performed under the Agreement.



ENFORCEABLE IN WASHINGTON

METHOD FOR BRINGING DOWN COST OF DESIGN SERVICES

APPROPRIATE ON HIGH RISK DESIGN PROJECTS



One Convention Place, 701 Pike Street, Suite 1400, Seattle, WA 98101