

# *Risk Management* *for* *Environmental Consultants*



**GUNSTER**  
FLORIDA'S LAW FIRM FOR BUSINESS

# *Examples & Reasonable Foreseeability*

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- Lopez v. Frontera Produce: Canteloupe consultant reviewing food safety conditions at a canteloupe distribution plant knew or should have known that the food safety audit of the plant would be used to identify conditions that led to distribution of the contaminated canteloupe.
- Sykes v. Propane Power Corp.: An environmental consultant hired to identify the methods of chemical recovery used at a power plant is not responsible for an explosion of a chemical recovery boiler.
- Caldwell v. Bechtell, Inc.: A consultant could be responsible for the silicosis of a client's employee resulting from the consultant's clean up plan.

# *The Well-Drafted Contract – Examples*

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- **Scope of Work (Waste Remediation):** Unforeseen conditions are inherent in environmental services and subsurface work. If the conditions at the Worksite are (a) subsurface or other physical conditions which are materially different from those indicated in the Contract Documents, including the Worksite Information, or (b) unusual or unknown physical conditions which are materially different from conditions ordinarily encountered and generally recognized as inherent in Work provided for in the Contract Documents, Consultant shall stop Work and give prompt written notice of the condition to Owner. Consultant shall not be required to perform any work relating to the unknown condition without the written mutual agreement of the Parties.
- **Contract Documents:** The following documents shall comprise the Contract Documents, and in case of any inconsistency, conflict or ambiguity among the Contract Documents, the documents shall govern in the following order: (a) Change Orders and written amendments to this Agreement; (b) this Agreement, including all Exhibits specifically identified on the Agreement Summary Page, but to the extent conflicts exist between this Agreement and any of the Exhibits, this Agreement shall control; and (c) the drawings (large scale governing over small scale), and addenda issued prior to the execution of this Agreement.

# *The Well-Drafted Contract – Examples*

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- **Indemnification Clauses:**

1. To the fullest extent permitted by law, Contractor shall indemnify and hold harmless the Owner, Owner's officers, directors, members, consultants, agents and employees and the Architect/Engineer (the Indemnitees) from all claims for bodily injury and property damage, other than to the Work itself and other property insured under Paragraph 15.2, including reasonable attorneys' fees, costs and expenses, that may arise from the performance of the Work to the extent caused by the gross negligence of the Contractor, subcontractors or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable. The Contractor shall be entitled to reimbursement of any defense costs paid above Contractor's percentage of liability for the underlying claim to the extent provided under Paragraph 14.2.
2. To the fullest extent permitted by law, Owner shall indemnify and hold harmless Contractor ....

- **Integration Clause:** The Contract Documents constitute the entire Agreement of the parties. This Agreement supersedes and replaces, and the parties are not bound by any agreements, understandings or conditions otherwise than as expressly set forth herein.

# *Work Practices*

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- Emails
- Training
- Insurance
- Review Process
- Research

# Questions?

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