

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

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Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Alabama	Unclear as to design professionals.	<i>Cochrane Roofing & Metal Co., Inc. v. Callahan</i> , 472 So.2d 1005 (Ala. 1985). Indemnity provisions in construction contracts are valid in Alabama.		
Alaska	No.	<i>City of Dillingham v. CH2M Hill Northwest, Inc.</i> , 873 P.2d 1271 (Alaska 1994). Alaska's anti-indemnity statute bars enforcement of LOL limiting liability to the greater of \$50,000 or fee; legislative history indicates intent to prohibit not only indemnity clauses but also LOL clauses.	AS § 45.45.900 (prohibiting indemnity clauses)	LOL void under AS 45.45.900 regardless of whether indemnification has been sought; term "indemnify" must be broadly construed to mean "exempt."
Arizona	Yes.	<i>Sprint Commc'ns Co., L.P. v. W. Innovations, Inc.</i> , 618 F. Supp. 2d 1101, 1118 (D. Ariz. 2009) <i>supplemented sub nom. Sprint Commc'ns Co. v. W. Innovations, Inc.</i> , 618 F. Supp. 2d 1124 (D. Ariz. 2009) and on reconsideration in part, CV-06-2064-PHX-ROS, 2009 WL		LOL enforceability may turn on whether damages were caused by "sole negligence" of one of the parties.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		1458467 (D. Ariz. May 21, 2009). Citing to A.R.S. § 32-1159 and enforcing indemnity provision because party was not solely negligent for severing telecommunications company's fiber optic cable during excavation.		
Arizona	Yes.	<i>1800 Ocotillo v. WLB Group, Inc.</i> , 219 Ariz. 200, 196 P.3d 222 (2008). Breach of contract and negligence action for economic loss arising out of A/E failure to identify right-of-way in survey for developer. Held that LOL provisions by certain types of licensed professionals are not contrary to public policy. LOL does not operate as an "assumption of risk" as that term is used in the Arizona Constitution.	ARS § 32-1159 (prohibiting indemnity clauses) Arizona Constitution, Art. 18 § 5	LOL only caps amount of liability; it does not exempt promisee from liability. Legislative history does not reflect any consideration of LOL provisions. Absent public policy, parties are free to contract as they wish.
Arkansas	Yes.	<i>W. William Graham v. City of Cave City</i> , 709 S.W.2d 94 (1986). Breach of contract action against engineering firm that failed to meet deadline for preparing plans for wastewater treatment plant; late submittal resulted in reduced funding from government. LOL was narrowly drawn to apply to negligence, but not		LOL for negligent acts could not be enlarged to limit liability for breach of contract. Issue was <i>not</i> the enforceability of the LOL clause. "Clearly, if the clause limits liability, it is the duty of

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		breach of contract. Court declined to rewrite contract to engraft onto contract an LOL for breach of contract claims.		this Court to give effect to such clause.” 709 S.W.2d at 95.
California	Yes.	<i>Food Safety Net Servs. v. Eco Safe Sys. USA, Inc.</i> , 209 Cal. App. 4th 1118, 147 Cal. Rptr. 3d 634 (2012). With respect to claims for breach of contract, LOL clauses “are enforceable unless they are unconscionable, that is, the improper result of unequal bargaining power or contrary to public policy.”		
California	Yes.	<i>CAZA Drilling (California), Inc. v. TEG Oil & Gas U.S.A., Inc.</i> , 142 Cal. App. 4th 453, 48 Cal. Rptr. 3d 271 (2006). LOL in drilling agreement enforced in negligence claim against contractor. LOL was valid limitation on liability rather than improper attempt to exempt contracting party from liability for violation of law within meaning of § 1668.	Cal. Civ. Code § 1668 (codifying public policy against contracts that “exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law”).	Parties had equal bargaining power. Party seeking exculpation did not provide service of practical necessity to members of public such that public interest was implicated. Contract required party to accept responsibility for damage to equipment, injury to employees and pollution. Thus, LOL did not adversely affect public or workers.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
				<p>LOL did not exempt party from all liability, but merely limited its responsibility with respect to economic damages.</p> <p>Parties failed to identify specific law or regulation purportedly violated so as to trigger application of § 1688.</p>
California	Yes, but not as to third parties who are joint tortfeasors in context of motion for approval of good faith settlement.	<i>TSI Seismic Tenant Space, Inc. v. Superior Court</i> , 149 Cal. App. 4th 159, 56 Cal. Rptr. 3d 751 (2007). Court reversed order granting motion for good faith settlement where settlement would have given effect to LOL in contract between a geotechnical engineer and developer of a property. Held that settlement was not in good faith because the settlement amount – \$50K – was grossly disproportional to the amount of damage caused by the engineer’s negligence – approximately \$3.4 million – despite an LOL clause limiting potential damages to \$50K.	Cal. Civ. Proc. Code § 877.6 (discharging tortfeasor who settles in good faith from liability to other tortfeasors).	Goal of § 877.6 is to encourage pretrial settlements. However, the equitable policy behind this section is to encourage settlement among all interested parties.” That goal is not furthered when engineer’s proportionate share of liability with other defendants is not considered.



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
California	Yes, except in cases of fraud or willful injury.*	<i>450 North Brand v. McLarand</i> , No. B156222, 2002 WL 31590523 (Cal. Ct. App. Nov. 20, 2002). In action for fraud, contractual clause exculpating individual officers and shareholders of architectural design firm from liability violated state law prohibiting parties from contracting away liability for fraudulent acts.	Cal. Civ. Code § 1668	
California	Yes, unless unconscionable or contrary to public policy.*	<i>Viner, et al. v. Brockway, et al.</i> , No. B067736, 36 Cal. Rptr. 2d 718 (Cal. Ct. App. 1994) (ordered not published). Tort action by homeowners against engineering firm for negligence in performing slope stabilization project, where project was not adequate to prevent slope failure. Appellate court affirmed ruling that LOL clause in engineering services contract with unsophisticated homeowners is unconscionable, against public policy, and unenforceable, notwithstanding that the contract was negotiated by legal counsel.	Cal. Civ. Code § 2782.5	Whether the releasing party has really acquiesced voluntarily in the contractual shifting of the risk; and whether the releasing party has in fact received an adequate consideration for the transfer. Contract was for highly specialized services requiring technical expertise in area about which respondent had no knowledge.
California	Yes.	<i>Markborough California, Inc. v. Superior Court</i> , 227 Cal. App. 3d 705, 277 Cal. Rptr. 919 (Cal. Ct. App. 1991). LOL in a construction contract limiting engineer's liability to	Cal. Civ. Code § 2782.5	Cal. Civ. Code § 2782.5 does not trump prohibition of § 1668. Legislative history showed that legislature did not intend to change

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		developer for damages caused by the engineer’s professional errors and omissions is valid if the parties had an opportunity to accept, reject or modify the provision. Such LOLs do not violate California anti-indemnity statute so long as they are not against public policy and are not unconscionable.		common law that sanctioned use of LOLs so long as they were not against public policy and not unconscionable.
Colorado	Yes, if contract entered prior to enactment of Homeowner Protection Act (HPA) of 2007.*	<i>Taylor Morrison of Colorado, Inc. v. Bemis Constr., Inc.</i> , No. 12CA2428, 2014 WL 323490 (Colo. Ct. App. Jan. 30, 2014). LOL in contract between developer and construction company was enforceable because it predated enactment of HPA, and HPA did not apply retroactively.	Colo. Rev. Stat. § 13-20-806	The <i>Morrison</i> court did not address whether the HPA applies only to protect residential property owners, and not commercial entities.
Connecticut	Unclear as to design professionals.	<i>Mattegat v. Klopfenstein</i> , 50 Conn. App. 97, 717 A.2d 276 (1998). The parties signed a “Limited-Time Inspection” with no warranty, which included a clause limiting inspector’s liability to the inspection fee paid. The inspector reported that “he found no visible evidence of past or current wood destroying insect infestation.” The court viewed the LOL clause as a liquidated damages provision.	Conn. Gen. Stat. § 52-572k (anti-indemnity statute applicable to construction contracts entered into after Oct. 1, 1977, but not applicable to insurance contracts,	

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		<i>Leonard Concrete Pipe Co. v. C. W. Blakeslee & Sons, Inc.</i> , 178 Conn. 594, 424 A.2d 277 (1979). “Indemnification agreements have long been recognized as a valid method of allocating the risks inherent in construction projects.”	workers’ compensation).	
Delaware	Yes, unless possible damages are easy to ascertain or if terms of the contract are found to be unreasonable.	<i>RHA Constr., Inc. v. Scott Eng’g, Inc.</i> , No. CVN11C03013JRJCCLD, 2013 WL 3884937 (Del. Super. July 24, 2013) (involving contract for construction drawings and a record plan, court notes that LOL clauses that relieve a party of liability for its own negligence are generally disfavored under Delaware law but are enforceable where damages are uncertain and the amount agreed upon is reasonable).		
Delaware	Unclear as to design professionals.	<i>Menkes v. Saint Joseph Church</i> , No. CIV.A.09C-03-289 WCC, 2011 WL 1235225 (Del. Super. Mar. 18, 2011). Under Delaware law, a general contractor in a construction contract cannot assign its liability for its own wrongdoing to a third party. However, the presence of language assigning the general contractor’s own liability to another party does not always invalidate the entire indemnification	6 Del. C. § 2704 (construction anti-indemnity statute, but does not apply to insurance policies insuring against losses or damages from any causes	

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		clause of a contract. The court noted that whether an indemnification contract clause remains enforceable depends on whether the offensive language can be stricken from the contract so that the remaining obligation under the contract would be valid under Delaware law.	whatsoever).	
Florida	Not enforceable against claims seeking to hold a design professional personally liable for professional malpractice.	<i>Witt v. La Gorce Country Club, Inc.</i> , 35 So. 3d 1033 (Fl. Dist. Ct. App. 2010). LOL provision was invalid and unenforceable as to professional geologist in his individual capacity because “[a] cause of action in negligence against an individual professional exists irrespective, and essentially, independent of a professional services agreement.”		Florida law recognizes a cause of action against an individual professional geologist for professional negligence, irrespective of whether the geologist practices through a corporation. Contractual LOL provision does not trump statute and cannot as a matter of law limit individual liability for professional negligence.
Florida	Yes.	<i>Florida Power & Light Co. v. Mid-Valley, Inc.</i> , 763 F.2d 1316 (11th Cir. 1985). LOL and indemnity clause in engineering firm’s contract enforceable under Florida law where unequivocal terms of contract specifically identified “negligence” as one cause of damage covered by indemnity provision. LOL further		Florida law allows limitation of liability clauses that exculpate engineer from own negligence and provide indemnification for the indemnitee’s own negligence. Parent company was entitled to the benefit of the exculpatory (LOL) and

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		limited liability for indemnity to insurance coverage limits. Contract provided means for owner to increase that insurance coverage at additional cost. Court referred to LOL as exculpatory clause.		indemnity provisions as an implied third party beneficiary of contract between the wholly-owned subsidiary and plaintiff.
Georgia	No, if LOL not explicit and prominent.	<i>Monitronics Int'l, Inc. v. Veasley</i> , 323 Ga. App. 126, 746 S.E.2d 793 (2013). \$250 LOL in home security system contract not enforceable. Plurality opinion: three judges found that the LOL was not enforceable because it was not explicit and prominent in the contract; one judge found that it was not applicable because it applied only to property damage and not personal injury (plaintiff had been attacked in her home); one judge found that the LOL was not enforceable because the breach related to extra-contractual duties, which LOL did not reach; one judge concurred in the result but did not expressly address the LOL.		The lead opinion focuses on the fact that the LOL was not explicit and prominent in the contract, and cites numerous Georgia cases that focus their analysis on this issue, <i>see fn. 23</i> . The concurring opinions suggest that an LOL must clearly delineate which claims it reaches: “[A]n exculpatory clause must be clear and unambiguous and is construed against the drafter”; “a clause purporting to relieve a defendant of negligence liability with respect to every legal duty requires clear, explicit language expressing such an intent”).



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Georgia	Yes.	<i>RSN Properties, Inc. v. Eng'g Consulting Servs., Ltd.</i> , 301 Ga. App. 52, 686 S.E.2d 853 (2009). LOL did not violate public policy in contract between developer and professional engineering firm.		LOL did not violate public policy because: (1) parties had relatively equal bargaining positions; (2) parties' executed business judgment in agreeing to limitation of liability clause; (3) provision reflected an arms-length bargain to perform the service at the agreed-upon fee in return for the liability cap; (4) limitation of liability provision did not release firm from liability for its engineering errors; (5) firm remained liable for its errors up to \$50,000; and (6) nothing in the contract limited firm's liability for the safety, health and welfare of third parties.
Georgia	Yes.	<i>Precision Planning, Inc. v. Richmark Communities, Inc.</i> , 298 Ga. App. 78, 679 S.E.2d 43 (2009). Holding former statute (Ga. Code Ann. § 13-8-2(b)) barring total indemnity provisions in construction contracts did not bar the limitation of liability provision in claim arising out of the failure of a retaining wall designed by an architect.		"No statute prohibits a professional architect from contracting with a developer to limit the architect's liability to that developer. . . . [LOL] did not purport to indemnify or hold the architect harmless from damages but simply established a bargained-for cap on the liability of the

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
				architect to the developer for the architect's breach or negligence. Accordingly, we hold that the architect and the developer were free to limit the architect's liability to the developer" 298 Ga. App. at 80, 679 S.E.2d at 46.
Georgia	No.	<i>Lanier at McEver, L.P. v. Planners & Eng'rs Collaborative, Inc.</i> , 284 Ga. 204, 663 S.E.2d 240 (2008). Economic loss claim by project owner against civil engineering firm for negligent design of storm water drainage system. Broad LOL clause purporting to limit liability to owner and any third party violates public policy.	Ga. Code Ann. § 13-8-2(b) (anti-indemnity statute)	Whether LOL operated as indemnity as to damages that potentially could be sustained by third parties, even though case involved no third-party claims. As members of a regulated profession, engineers must practice in a manner that is protective of public safety, health and welfare.
Georgia (U.S. Court of Appeals, Fourth Circuit)	Yes.*	<i>Potter-Shackelford Constr. Co., Inc. v. Law Eng'g, Inc.</i> , Nos. 96-1073, 96-1112, 104 F.3d 359 (4th Cir. Dec. 23, 1996) (unpublished). Applying Georgia law in breach of contract action. Scope of services subject to LOL in engineering contract included pre-contract engineering recommendation as well as		Contracting party could not divide engineer's work into two parts (recommendation and performance) and then argue that LOL covered only one of the parts. Circumstances surrounding contract

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		subsequent implementation of recommendation action.		formation indicate parties intended for all work to be part of single contract. Hence, LOL in that contract should apply.
Georgia (U.S. Court of Appeals, Fourth Circuit)	Yes.*	<i>Gibbes, Inc., II, v. Law Eng'g, Inc.</i> , No. 91-1048, 960 F.2d 146 (4th Cir. Apr. 20, 1992). LOL capping liability at \$50,000 and disclaiming implied warranties was enforceable under Georgia law. Plaintiff automobile dealership was sophisticated entity. LOL applied to all claims advanced by plaintiff.		Plaintiff identified no Georgia statute that prohibits engineers from limiting their liability or disclaiming implied warranties. Existence of LOL clause was adequately called to attention of plaintiff in contract.
Hawaii	Unclear.*	<i>Arthur v. State, Dep't of Hawaiian Home Lands</i> , Nos. CAAP-13-0000531, CAAP-13-0000551, CAAP-13-0000615, 2015 WL 866435 (Haw. Ct. App. Feb. 27, 2015). Haw. Rev. Stat. § 431:10-222 does not invalidate application of duty to defend, and possibly to indemnify, in a construction contract in case where architect/civil engineering firm and other defendants were alleged to have been negligent.	Haw. Rev. Stat. § 431:10-222 (party to a construction contract cannot exempt itself from liability for personal injury or property damage caused by its sole negligence or misconduct).	

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Idaho	Unclear.*	<i>Mountain View Hosp., L.L.C. v. Sahara, Inc.</i> , No. 4:07-CV-464, 2011 WL 4962183 (D. Id. Oct. 17, 2011), <i>reconsideration denied</i> , No. 4:07-CV-464, 2012 WL 397704 (D. Id. Feb. 7, 2012). General contractor hired mechanical engineer for hospital construction project. Engineer proposed LOL equal to greater of \$50,000 or fee for engineering services. General contractor returned fully executed copy of the proposal raising the limitation of liability to \$1,000,000. Engineer challenged the validity of GC's unilateral change of the liability limitation provision. Summary judgment denied on the ground that issues of fact remained regarding the validity of either party's proposed limitation of liability clause.		Validity of LOL raised; check back for order following trial.
Illinois	Yes.*	<i>Halloran & Yauch, Inc. v. Roughneck Concrete Drilling & Sawing Co.</i> , No. 1-13-1059, 2013 WL 5226268 (Ill. Ct. App. Sept. 13, 2013). LOL limiting recovery to amount paid under contract enforceable. Plaintiff subcontractor hired defendant sub-subcontractor to drill holes in parking garage; defendant drilled through structural support cables, and plaintiff never		The court noted that "the limitation of damages provision was not unconscionable when both parties were sophisticated business entities and the provision itself was not inordinately one-sided." 2013 WL 5226268, at *14.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		paid defendant for work performed. Court found that LOL was neither ambiguous nor unconscionable, and thus plaintiff's recovery was limited to the amount paid under the contract (i.e., zero dollars).		
Illinois	Yes.*	<i>BB Syndication Servs., Inc. v. LM Consultants, Inc.</i> , No. 09-CV-1268, 2011 WL 856646 (N.D. Ill. Mar. 7, 2011). LOL – also described as either a partial exculpatory clause or a stipulated damages clause – that limited damages to the fees paid under the contract was enforceable under both Illinois and Wisconsin law.		Illinois law is similar to Wisconsin law: LOL clauses are not favored and are to be construed strictly against the party they benefit.
Illinois	Yes.*	<i>Illinois Power Co. v. Duke Eng'g and Servs. Inc.</i> , No. 99 C 5384, 2002 WL 35232810 (N.D. Ill. Mar. 29, 2002). Action by owner against engineer after engineer missed deadline for completing project. Owner sought to recover fee paid to engineer and consequential damages that reflected owner's disappointed business expectations. LOL limited engineer's liability to fee paid.	740 Ill. Comp. Stat. Ann. 35/1 ("Illinois Construction Contract Indemnification for Negligence Act")	Because plaintiff sought damages only for economic loss, it could not proceed on negligence theory. Inability to state claim for negligence removed case from Act's sphere of influence because Act applies only to agreements that indemnify or hold harmless a person from person's own negligence. Breach of contract and breach of warranty claims do not sound in

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
				<p>negligence. Anti-indemnity act is therefore not applicable to those claims.</p> <p>LOL is not contrary to public policy. Purpose of statute is to protect public from regulated entity's exculpatory clause, not to protect the regulated entity. If exculpatory agreements were unenforceable, contractors would demand higher compensation before subjecting themselves to unlimited liability.</p> <p>No public policy prevents engineers from contractually limiting liability to another party to the contract, and weight of authority from other jurisdictions suggests engineers can do so.</p>
Illinois (U.S. Court of Appeals, Seventh Circuit)	Yes.	<p><i>Pratt Central Park Ltd. P'ship v. Dames & Moore, Inc.</i>, 60 F.3d 350 (7th Cir. 1995). Upholding the dismissal of a diversity case for lack of jurisdiction because LOL in geotechnical engineering contract made it unlikely that</p>		

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		<p>plaintiff would recover more than \$5,000. Based on analysis of facts surrounding contract formation, it appeared that LOL clause would cap damages at less than the jurisdictional amount.</p>		
<p>Indiana (U.S. Court of Appeals, Seventh Circuit)</p>	<p>Yes.</p>	<p><i>SAMS Hotel Group, LLC v. Environs, Inc.</i>, 716 F.3d 432 (7th Cir. 2013). On summary judgment, trial court held that unambiguous LOL in contract between architect and hotel developer limiting liability to the total lump sum fee of contract was enforceable. Court of Appeals affirmed. Architect failed to design hotel structure to adequately resist lateral loads, hotel was off center and had to be demolished. Architect’s liability was limited to the amount of its fee, \$70,000.</p>		<p>Degree of sophistication of contracting parties was a key factor, as was the fact that the parties had contracted with each other once before and both contracts contained an LOL provision limiting the architect’s total liability for negligence, errors, omissions, strict liability, breach of contract or breach of warranty to the lump sum of the contract. The Court noted that “two commercial entities, well aware of the risks involved, freely and knowingly negotiated a limitation of liability clause so as to allocate those risks in advance.” 716 F.3d at 436.</p>



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Iowa	Yes.*	<i>Optimal Interiors, LLC v. HON Co.</i> , 774 F. Supp. 2d 993 (S.D. Iowa 2011). LOL clause enforceable; prohibition on the recovery of consequential damages necessarily precludes ability to recover any lost profits.	Iowa Code § 554.2719	Under Iowa law, parties may contract to limit consequential damages. However, a contract provision that limits the recovery of consequential damages will not be enforced in two circumstances: (1) “[w]here circumstances cause an exclusive or limited remedy to fail of its essential purpose, remedy may be had as provided in this chapter;” or (2) where the limitation of liability clause is unconscionable. 774 F. Supp. 2d at 1013.
Iowa	Yes.	<i>Aetna Cas. & Sur. Co. v. Leo A. Daly Co.</i> , 870 F. Supp. 925 (S.D. Iowa 1994). Trial on cross-claim by contractor against architect to determine comparative fault in action for breach of contract, breach of warranty, and negligence where fire sprinkler pipe at racehouse froze and burst. Engineer was responsible for reviewing and approving design substitutions during the construction phase. LOL in architect’s and		LOL did not violate public policy, as it ran only to the party in privity and did not in this case exempt the parties from liability for personal injury or death of a third party.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		contractor’s contracts with owner enforceable.		
Kansas	Yes.	<i>Wood River Pipeline Co. v. Willbros Energy Servs. Co.</i> , 241 Kan. 580, 738 P.2d 866 (1987). Owner of pipeline brought suit against contractor which had built pipeline for damages resulting from rupture of pipeline and holding that handwritten addition to contract limiting contractor’s liability to owner for consequential damages controlled and modified printed provision of contract under which contractor agreed to pay owner for damages to owner’s property.	Kan. Stat. Ann. § 16-121 (construction anti-indemnity statute). Note that the definition of “construction contract” includes “design.” The statutory provision voids contractual requirements in public and private projects to indemnify or provide liability coverage to another person as an additional insured for that person’s own negligence, acts or omissions – to	

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
			which there are six exceptions.	
Kentucky	Unclear as to design professionals.	<i>Enerfab, Inc. v. Kentucky Power Co.</i> , 433 S.W.3d 363 (Ky. Ct. App. 2014). Injured employee of maintenance contractor brought negligence action against electrical utility company, seeking to recover for injuries sustained in fall that occurred while employee was performing maintenance work at power plant. The court stated that “[t]he right of an indemnitee to recover of the indemnitor under a contract of indemnity according to the terms of such a contract is well recognized. Such a contract is not against public policy and will be enforced if the indemnitee has suffered loss thereunder and has complied with its terms.”	Ky. Rev. Stat. Ann. § 371.180 (construction anti-indemnity statute applicable to contracts entered into after June 20, 2005). Note that the definition of “construction services context” does include a contract or agreement relating to planning and design.	



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Louisiana	Yes.	<i>City of Shreveport v. SGB Architects, L.L.P.</i> , 47 So. 3d 1105 (La. Ct. App. 2010). LOL in subcontract for soil testing was enforceable.		Party opposing enforcement of the LOL did not argue the provision was invalid, but rather alleged that it had never agreed to the liability limitation provision in the contract.
Maine	Yes, if clear and unequivocal.	<i>Burns & Roe, Inc. v. Central Maine Power Co.</i> , 659 F. Supp. 141 (D. Me. 1987). Declaratory judgment action seeking determination of rights in connection with attempt to use LOL as shield against third party claim for contribution. Held that previous payment by engineer exhausted its liability to owner but did not limit right of third party to seek contribution in the event that both engineer and third party are found to be joint tortfeasors.		Agreement to limit engineer's liability was not an agreement to indemnify engineer against liability imposed upon it in third-party actions. Court declined to read into LOL provision "an indemnification obligation that is nowhere hinted at by the terms of the contract."
Maine	Yes, against breach of contract claims.	<i>Lincoln Pulp & Paper Co., Inc. v. Dravo Corp.</i> , 436 F. Supp. 262 (D. Me. 1977). Pennsylvania law applied pursuant to choice of law provision in contract. No authority indicates that substantive law of Pennsylvania differs from that of Maine, or that Pennsylvania law offends any Maine public policy. LOL clause protects		Separate analyses were required to determine whether enforceability of LOL as to breach of contract and negligence claims. Stricter standard applies where party seeks to apply LOL as shield against negligence claim. Pennsylvania law requires

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		<p>engineer from liability for consequential damages, including loss of profits and products, arising from breach of contract or breach of warranty. However, LOL does not limit liability of engineering firm for consequential damages caused by its own negligence. At evidentiary hearing, expert testified that LOL clauses are customary in the trade. LOL clauses became standard in the industry by the late 1960s, resulting from both the rise in litigation and the inclusion of limiting clauses in the equipment contracts of suppliers.</p>		<p>“clear and unequivocal” expression of intent to limit liability for negligence.</p> <p>LOL relieved engineer of liability on breach of contract and breach of warranty claims where LOL was drafted by experienced counsel.</p>
Massachusetts	Yes.	<p><i>Mistry Prabhudas Manji Eng. Pvt. Ltd. v. Raytheon Eng'rs & Constructors, Inc.</i>, 213 F. Supp. 2d 20 (D. Mass. 2002). Liquidated damages provision in engineering services contract enforceable under Pennsylvania law. LOL provision was not an exculpatory clause; it capped damages at 10 percent of fee paid.</p>		<p>Although contracting party was small Indian company that precipitously entered into contracts without adequate legal representation, these facts did not show that contracting party lacked meaningful choice or suffered unfair surprise where LOL was not hidden boilerplate. But “the one point which gives this Court pause is whether a ten percent cap creates an adequate incentive to perform.” 213 F. Supp. 2d at 27. However, plaintiff</p>

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
				did not demonstrate unconscionability as there was no indication that its profit margin was higher than 10 percent.
Massachusetts	Yes.	<i>G. Conway, Inc. v. Tocci Bldg. Corp.</i> , No. 012261, 2004 WL 3120559 (Mass. Super. Dec. 22, 2004). In action involving collapse of retaining wall, LOL in contract between geotechnical engineering subcontractor and construction manager was enforceable. Court rejected construction manager’s argument that certificate of insurance provided by engineer governed the amount of engineer’s liability.		Contracting party “agreed to accept the allocation of risk set forth in Contract and cannot now argue the unenforceability of the limitation of liability provision simply because it is unfavorable to [party’s] position.” 2004 WL 3120559, at *3. Certificate of insurance does not modify or replace LOL in contract. It is customary for design firm to provide client with certificate of insurance; such certificate is merely an informational document evidencing existence of insurance policy.



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Massachusetts	Yes.	<i>R-1 Associates, Inc. v. Goldberg-Zoino & Assocs., Inc.</i> , No. 91-7417, 4 Mass. L. Rptr. 219 (Mass. Super. 1995). Action by developer against environmental consultant for breach of contract and negligence where consultant's site assessment failed to identify presence of contamination at property. LOL in engineering contract enforceable in contract that arose out of a private, voluntary transaction in which one party, for consideration, agreed to shoulder a risk which the law would otherwise have placed upon the other party.		<p>Developer that authorized design/build contractor to hire engineering firm could not argue that it did not authorize agent to bind principal to LOL clause in contract.</p> <p>The existence of an offer to negotiate the limits of liability in the preprinted contract was fatal to plaintiff's claim.</p>
Michigan	Yes.*	<i>Rogers v. Parish Corp. and Prof. Serv. Indus., Inc.</i> , No. 5:92:CV:101, 1993 WL 13654533 (W.D. Mich. Aug. 30, 1993). Developer of Wal-Mart store contracted with geotechnical engineering firm to do soil boring and geotechnical report. Parties entered second contract for construction oversight services. Both contracts contained LOL and indemnification clauses. LOL clause contained option to increase liability cap for additional fee. LOL enforceable because it does not remove liability completely. LOLs could be aggregated	Mich. Comp. Laws § 691.991 (anti-indemnity statute for construction contracts)	<p>Reasonableness is a primary consideration in determining whether to enforce a damage limitation clause.</p> <p>Potential problems with enforceability of indemnity clause in light of anti-indemnity statute do not alter the enforceability of LOL clause.</p> <p>LOLs do not limit liability for intentional representation or wanton</p>

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		since engineer performed work under separate contracts, each with its own limitations clause.		misconduct.
Minnesota	Yes.	<p><i>Katzner v. Kelleher Const.</i>, 545 N.W.2d 378 (Minn. 1996). In discussing Minnesota’s anti-indemnity statute, the court held that: (1) the agreement to indemnify did not extend to claims arising from the designer-builder’s own negligence; and (2) the contractors were not required by their construction contracts to purchase liability insurance covering the designer-builder for its own negligence. The court also noted that, pursuant to Minn. Stat. § 337.02, an attempt to indemnify a party to a construction contract from liability for its own actions can no longer be enforced under Minnesota law, and that the statutory provision ensures that each party will remain responsible for its own negligent acts or omissions.</p> <p><i>Nat’l Hydro Sys., a Div. of McNish Corp. v. M.A. Mortenson Co.</i>, 529 N.W.2d 690 (Minn. 1995). Subcontractor on wastewater treatment plant expansion project sued engineer for</p>	<p>Minn. Stat. §§ 337.01, 337.02. Anti-indemnification statute provides exception in cases where owner agrees to indemnify for strict liability under environmental laws.</p>	

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		compensation for costs allegedly arising from negligently prepared equipment specifications. The court held that: (1) the agreement indemnifying the engineer for its own negligence would not automatically be void as against public policy; (2) the subcontractor's claim against the engineer was not covered by the indemnity provision; and (3) the indemnity provision did not express an intent to indemnify the engineer for claims based on the engineer's own negligence.		
Mississippi	Yes.	<i>Thrash Commercial Contractors, Inc. v. Terracon Consultants, Inc.</i> , 889 F. Supp. 2d 868 (S.D. Miss. June 25, 2012). Court enforced LOL in contract between contractor and geotechnical engineer where LOL was negotiated, and provided damages in excess of fees earned by engineer.		General contractor failed to show that limitation of liability provision that subcontractor included, in bold-faced lettering, in proposed subcontract was unenforceable under Mississippi law as one that it did not understand, or that was not fairly and honestly negotiated between parties.
Mississippi	Only if fairly and honestly negotiated and understood by both parties.	<i>Lyndon Prop. Ins. Co. v. Duke Levy and Assoc.</i> , 475 F.3d 268 (5th Cir. 2007). Exculpatory clause in contract between owner and engineer was not enforceable because not sufficiently		LOL not inconsistent with waiver of consequential damages. LOL provision simply limits recovery for the damages which are not subject to

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		clear to act as limitation of liability under Mississippi law. Owner agreeing to exculpatory clause could not bargain away engineer's potential duty to surety that would step into owner's shoes under doctrine of equitable subrogation.		the consequential damages waiver.
Missouri	Maybe.	<i>Village of Big Lake v. BNSF R.R. Co., Inc.</i> , 433 S.W.3d 460 (Mo. App. 2014). "[A] different standard applies to determine whether general exculpatory clauses or indemnity clauses can cover claims of future negligence depending upon whether the parties to the contract are 'sophisticated businesses, experienced in this type of transaction.'"		
Missouri	Yes.	<i>Sports Capital Holdings, LLC v. Schindler Elevator Corp.</i> , No. 4:12CV1108 SNLJ, 2014 WL 1400159 (E.D. Mo. Apr. 10, 2014). LOL in contract between owner of facility and designer/manufacture of elevator upheld because provision was clear, unambiguous, unmistakable, and conspicuous, and thus did not violate public policy.		



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Missouri	Yes, except in the case of gross negligence or intentional torts.	<i>Util. Serv. & Maint., Inc. v. Noranda Aluminum, Inc.</i> , 163 S.W.3d 910 (Mo. 2005). Indemnity clause between sophisticated commercial entities in contract for technical and dangerous work will be enforced. Clause must be conspicuous but need not be set apart from other provisions or separately labeled as indemnity provision.		Fact that parties did not bargain for indemnity clause is irrelevant. A contract between sophisticated businesses that does not include indemnification would presumably carry a different price than a contract that does include such a provision.
Nebraska	No with respect to beneficiary's own negligence; yes as to all other causes of action.*	<i>Omaha Cold Storage Terminals, Inc. v. Hartford Ins. Co.</i> , No. 8:03 CV 445, 2006 WL 695456 (D. Neb. Mar. 17, 2006). Engineering subcontractor assisted with foundation repair at cold storage warehouse. After repairs had commenced, the main support structure of warehouse collapsed. Contract contained a broad LOL that limited liability from any cause or causes, "including but not limited to [engineer's] negligence, errors, omissions, strict liability, breach of contract, or breach of warranty." Held: clause "clearly contains language which operates to insulate or limit [engineer's] liability for its negligent acts, thus, under Neb. Rev. Stat. § 25-21, 187(1), that language violates public policy and is invalid. . .	Neb. Rev. Stat. § 25-21, 187(1)	LOL is construed as an indemnification provision because it "operates to insulate or limit" liability for negligence. Severance. Under Nebraska law, only the portion prohibited by public policy is stricken from the contract. Thus, a party may limit its liability under causes of action other than negligence.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		. However, this does not mean that the entire indemnification clause is rendered invalid and unenforceable. . . . [T]he contract’s risk allocation clause is invalid with respect to any claims arising out of [engineer’s] negligence, but remains enforceable in all other respects.”		
Nevada	Yes.	<i>Reyburn Lawn & Landscape Designers, Inc. v. Plaster Dev. Co.</i> , 127 Nev. Adv. Op. 26, 255 P.3d 268, 274 (2011). The court noted that since Nevada has not adopted an anti-indemnity statute, “parties have great freedom in allocating indemnification responsibilities between one another.”		
New Hampshire	Yes.*	<i>Senter Cove Development v. Costello, Lomasney & deNapoli</i> , New Hampshire District Court, Case No. C-89-1990/C-89-459 (Dec. 1992). LOL does not violate New Hampshire’s anti-indemnity statute. Citation is wrong.		
New Hampshire	Yes, except in cases of wanton and willful conduct.	<i>PK’s Landscaping v. New Eng. Tel. & Tel. Co.</i> , 128 N.H. 753 (1986). Limitation of liability clause in contract between telephone company and landscaping company held valid.		



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
New Jersey	Yes.*	<i>Atlantic City Associates, LLC, v. Carter & Burgess Consultants, Inc.</i> , 453 Fed. Appx. 174 (3d Cir. May 04, 2011) (unpub.). Limitation of liability enforced to the extent damages, including attorney fees, exceeded total fees paid.	N.J. Stat. Ann. § 2A:40A-2 (anti-indemnity statute for architects and engineers)	
New Jersey	Yes, if clear and unambiguous.	<i>Marbro, Inc. v. Borough of Tinton Falls</i> , 297 N.J. Super. 411, 688 A.2d 159 (N.J. Super. Law Div. 1996). LOL in engineering contract enforceable under New Jersey law. Anti-indemnity statute not relevant because statute applies only to indemnity and hold-harmless provisions, not to LOLs.	N.J. Stat. Ann. § 2A:40A-2 (anti-indemnity statute for architects and engineers)	<p>LOL clause limiting liability to amount of fee was reasonable cap because it provided adequate incentive to perform. Reasonableness of LOL is not a jury question.</p> <p>Anti-indemnity statute does not express a blanket public policy against engineers contractually limiting their liability.</p> <p>Adopted rationale of <i>Valhal Corp. v. Sullivan Assoc., Inc.</i>, 44 F.3d 195</p>

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

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

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
				<p>Absence of additional terms inviting contracting party to negotiate LOL was immaterial.</p> <p>Nothing in statute or <i>Valhal</i> precludes enforcement of LOL clauses in cases involving property damage.</p>
New York	Yes, unless conduct is grossly negligent.	<p><i>S. Wine & Spirits of Am., Inc. v. Impact Envtl. Eng'g, PLLC</i>, 104 A.D.3d 613, 614, 962 N.Y.S.2d 118, 119 (N.Y. App. Div. 2013). The Court stated that “[p]ublic policy ‘forbids a party’s attempt to escape liability, through a contractual clause, for damages occasioned by grossly negligent conduct,’” and thus the trial court “properly declined to enforce Impact’s contractual limitation on liability, since an issue of fact exists as to whether Impact’s conduct was “grossly negligent,” given plaintiffs’ expert affidavit stating that Impact failed to disclose to Southern Wine the presence of 38 drywells, containing potential contaminants, on plaintiffs’ property, despite the availability of this information in the public records.”</p>		



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
New York	Yes.	<i>Soja v. Keystone Trozze, LLC</i> , 106 A.D.3d 1168 (N.Y. App. Div. 2013). Plaintiff homeowners hired defendants to design their residence. Plaintiffs alleged gross negligence in defendants' failure to use a flood elevation report in designing the home. The court disagreed, and upheld the trial court's granting of partial summary judgment on this issue.		The court stated that "the conduct alleged does not evince the necessary reckless indifference to the rights of others that would render the limitation of liability clause unenforceable."
New York	Yes, absent a showing of gross negligence.	<i>Princetel, LLC v. Buckley</i> , 95 A.D.3d 855, 944 N.Y.S.2d 191 (2012) leave to appeal dismissed, 20 N.Y.3d 994, 982 N.E.2d 1256 (2013). In a lawsuit involving a claim for breach of contract and negligence in connection with a land survey, holding LOL provisions enforceable.		Summary judgment was proper because complaint did not allege that work was performed in gross negligence or any conduct that would support such a claim.
New York	No as to beneficiary's own negligence, Yes as to damages for economic loss only.	<i>Cibellis Contracting, Inc. v. Hamilton Gardens Owners, Inc.</i> , 34 Misc. 3d 1224(A), 946 N.Y.S.2d 65 (Sup. Ct. 2012). Subcontractor's motion for summary judgment limiting liability denied because subcontractor was not free from negligence.	N.Y. Gen. Oblig. Law §§ 5-322.1 and 5-324	
New York	No as to beneficiary's own negligence, Yes as to damages for	<i>Fiorenza v. A & A Consulting Engineers, P.C.</i> , 77 A.D.3d 569, 909 N.Y.S.2d 356 (N.Y. App. Div. 2010). A limitation-of-liability clause is ordinarily enforced unless it expresses an intention to relieve a party of its own grossly	N.Y. Gen. Oblig. Law §§ 5-322.1 and 5-324	A party seeking to enforce a hold harmless clause must prove itself free of negligence.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
	economic loss only.	negligent conduct.		Citing <i>Sommer v. Federal Signal Corp.</i> , 79 N.Y.2d 540, 554, 583 N.Y.S.2d 957, 593 N.E.2d 1365 (1992).
New York	No as to claims for gross negligence and intentional torts, Yes as to claims for negligence.	<i>Sear-Brown Group v. Jay Builders, Inc.</i> , 244 A.D.2d 966, 665 N.Y.S.2d 162 (N.Y. App. Div. 1997). Engineer sought to enforce LOL against counterclaim alleging negligence and gross negligence in performance of engineering services on residential development projects. LOL is not applicable to gross negligence and intentional tort claims under New York law.		LOL not void and unenforceable pursuant to N.Y. Gen. Oblig. Law §§ 5-322.1 and 5-324. These sections prohibit LOLs that seek to limit liability for personal injury or physical damage to property. Counterclaim sought damages only for economic loss. However, LOL clause could not insulate party from damages caused by negligent misrepresentation or gross negligence.
New York	Yes.	<i>Bennett v. Bank of Montreal</i> , 161 A.D. 2d 158; 554 N.Y.S. 2d 869 (N.Y. App. Div. 1990). Cross-claim by engineer for contractual indemnification by client, following settlement of main action in personal injury case. LOL	N.Y. Gen. Oblig. Law §§ 5-322.1 (anti-indemnity statute for bodily injury or property	Extent to which LOL is enforceable turns on allocation of liability between joint tortfeasors. Under anti-indemnity statute, LOL could not create right to indemnity from

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		provided for indemnification from liability only “to the extent permitted by law.”	damage from negligence) and § 5-324 (anti-indemnity statute for bodily injury or property damage from defects in plans, specs, maps)	liability for party’s own negligence. However, statute did not prohibit indemnification from liability by reason of acts of others. To the extent that the LOL violates the anti-indemnity statute, it is unenforceable. However, the LOL is not rendered unenforceable in toto.
New York	Yes.	<i>Long Island Lighting Co. v. IMO Delaval, Inc.</i> , 668 F. Supp. 237 (S.D.N.Y. 1987). LOL in engineering contract enforceable under New York law. LOL limited liability to proceeds from insurance. Court rejected argument that recovery was limited only as to claims that fell within the specific insurance coverage identified in the contract. Although contract did not specify coverage for malpractice or breach of warranty, LOL clause would nonetheless apply to these claims. The plain language of the limitations clause suggests that the parties intended to include malpractice among the risks for which recovery was limited.	N.Y. Gen. Oblig. Law § 5-323 (anti-indemnity statute for contractor negligence)	Exemptions from liability for economic losses are not rendered void or unenforceable under anti-indemnity statute. Statute prohibits exemptions from liability for injury to persons or property. LOL merely limits liability in this regard and thus is not an exemption.



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
New York	Yes.*	<i>Central Hudson Gas and Elec. Corp. v. Combustion Eng'g, Inc.</i> , No. 86 Civ. 3061, 1987 WL 10030 (S.D.N.Y. July 26, 1989). Defendant entered into a series of service contracts to inspect and repair boiler components. Each contract contained an LOL clause. LOL clauses were clear and unequivocal and therefore enforceable.		Where plaintiff claimed breach of two contracts with separate LOL clauses, plaintiff could recover up to limit under each contract.
North Carolina	Yes.	<i>Blaylock Grading Co. v. Smith</i> , 658 S.E.2d 680 (N.C. Ct. App. 2008). Action by grading company against engineering firm alleging breach of contract and negligence where engineer's surveying error caused grading company to incur excess costs. Appellate court reversed trial court's finding that LOL was unenforceable. Contract limiting damages to \$50K did not elicit a profound sense of injustice. LOL was not unconscionable or contrary to public policy.	N.C.G.S. § 22B-1 (prohibiting construction indemnity agreements)	<p>Distinguished engineers and surveyors from providers of public utilities. Although surveyors and engineers must be licensed, that fact alone does not automatically convert profession into public service.</p> <p>Where breach of contract involves only economic loss, public health and safety are not implicated.</p> <p>Anti-indemnity statute does not apply because LOL is materially different from indemnity provision. Unlike indemnity, LOL does not require another party to agree to be</p>

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
				liable for negligence of another.
North Carolina	Yes.*	<i>Mosteller Mansion LLC et al. v. Mactec Eng'g</i> , 190 N.C.App. 674 (N.C. Ct. App. May 20, 2008) (unpub.). LOL in engineering contract was enforceable under both states' laws. LOL does not violate Georgia public policy because it only relieves engineer from liability for economic damages not personal injury or property damage.		Choice of law – North Carolina law governs tort claim; Georgia law governs breach of contract claim. Construction anti-indemnity statutes of North Carolina and Georgia are “essentially identical.”
North Dakota	Unclear as to design professionals.		No anti-indemnity statute.	
Ohio	Probably.	<i>Fertec, L.L.C. v. BBC & M Eng'g, Inc.</i> , 2009-Ohio-5246 (Ohio Ct. App. Oct. 1, 2009). Trial court entered summary judgment order enforcing LOL provision in contract between residential construction contractor and geotechnical and engineering subcontractor; appellate court held the order was not a final		Appears to be the first case involving enforcement of LOL clause in design professional setting in Ohio; no appellate ruling.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		appealable judgment so it would not consider the issue.		
Oklahoma	Yes.	<i>Arnold Oil Properties LLC v. Schlumberger Tech. Corp.</i> , 672 F.3d 1202 (10th Cir. 2012). Owner of deep-zone gas well brought action alleging breach of contract and negligence against contractor hired to perform specialized cement job on well. The court denied the summary judgment motion asserting that the parties' contract indemnified and held contractor harmless from all claims. The court stated that "[u]nder Oklahoma law, courts may enforce contractual provisions limiting a party's liability for ordinary negligence if the parties have equal bargaining power."	Okla. Stat. tit. 15, § 221 (construction anti-indemnity statute with exception that it is not applicable to the requirement that entities purchase project-specific insurance policy).	
Oregon	Yes, where LOL clearly and unequivocally expresses intent to limit liability.	<i>Estey v. MacKenzie Eng'g Inc.</i> , 324 Or. 372, 927 P.2d 86 (1996) refusing to enforce LOL clause in contract between prospective home purchaser and inspection firm.		Court disregarded LOL clause because actual language of the clause was not clear and the parties were not in equal bargaining positions ("...plaintiff, a lay consumer, should [not] bear the risk of the alleged negligence of a licensed professional

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
				engineer.”).
Pennsylvania	Yes, where limitation of liability is reasonable and gross negligence or intentional torts not involved.*	<i>Flatrock Ptrns., L.P. v. Kasco-Chip Constr., J.V.</i> , 2007 Phila. Ct. Com. Pl. LEXIS 123 (Pa. C.P. 2007). Third-party action by general contractor against geotechnical engineering firm for breach of contract and negligent misrepresentation in performance of foundation construction monitoring services. LOL was valid enforceable as to breach of contract claim. LOL did not apply to negligent misrepresentation claim, however, because that claim was based on plaintiff’s purported reliance on investigation engineer performed for another party under a different contract. Although that contract also contained an identical LOL clause that limited liability to the “client,” plaintiff was not the client in that contract.		<p>Court would not disregard LOL clause that was clear and unambiguous. LOL clause was subject of private contract between sophisticated business entities dealing at arm’s length who were at liberty to fashion the terms of their bargain as they wish.</p> <p>LOL provision that limited liability to “client” did not operate to limit liability to any other party.</p>



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Pennsylvania	Yes.	<i>Mistry Prabhudas Manji Eng. Pvt. Ltd. V. Raytheon Engineers & Constructors, Inc.</i> , 213 F.Supp.2d 20 (D. Mass. 2002). Liquidated damages provision in engineering services contract enforceable under Pennsylvania law. LOL provision was not an exculpatory clause; it capped damages at 10 percent of fee paid.		Although contracting party was small Indian company that precipitously entered contracts without adequate legal representation, these facts did not show that contracting party lacked meaningful choice or suffered unfair surprise where LOL was not hidden boilerplate. But “the one point which gives this Court pause is whether a ten percent cap creates an adequate incentive to perform.” However, plaintiff did not demonstrate unconscionability as there was no indication that its profit margin was higher than 10 percent.
Pennsylvania	Yes.	<i>Lincoln Pulp & Paper Co., Inc. v. Dravo Corp.</i> , 436 F. Supp. 262 (D. Mass. 1977). Pennsylvania law applied pursuant to choice of law provision in contract. No authority indicates that substantive law of Pennsylvania differs from that of Maine, or that Pennsylvania law offends any Maine public policy. LOL clause protects engineer from liability for		Separate analyses were required to determine whether enforceability of LOL as to breach of contract and negligence claims. Stricter standard applies where party seeks to apply LOL as shield against negligence claim. Pennsylvania law requires “clear and unequivocal” expression

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		consequential damages, including loss of profits and products, arising from breach of contract or breach of warranty. However, LOL does not limit liability of engineering firm for consequential damages caused by its own negligence. At evidentiary hearing, expert testified that LOL clauses are customary in the trade. LOL clauses became standard in the industry by the late 1960s, resulting from both the rise in litigation and the inclusion of limiting clauses in the equipment contracts of suppliers.		of intent to limit liability for negligence. LOL relieved engineer of liability on breach of contract and breach of warranty claims where LOL was drafted by experienced counsel.
Pennsylvania (3 rd Circuit)	Yes.	<i>Valhal Corp. v. Sullivan Associates, Inc.</i> , 44 F.3d 195 (3d Cir. 1995). LOL enforceable under Pennsylvania law in suit arising from architect's failure to apprise high-rise developer of height restriction on property in pre-purchase study for developer. Developer later purchased property in reliance upon architect's report. LOL does not shield architect from all potential liability. Although indemnity provisions are exculpatory and disfavored under Pennsylvania law, LOL clauses are subject to the same strict construction. LOL clauses are routinely upheld so long as reasonable, parties had equal bargaining power, and no willful or malicious	68 Pa. Stat. § 481 (anti-indemnity provision)	Anti-indemnity statute is strictly limited to indemnity and hold harmless agreements, which are distinct from LOL clauses. Anti-indemnity statute applies only to contracts between owners and architects. Developer did not own the property at the time it entered into the contract with architect. In determining reasonableness of LOL, appropriate inquiry is whether cap is so minimal compared with

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		omission occurred.		<p>expected compensation that the concern for consequences of a breach is drastically minimized.</p> <p>Maximum recovery under any action was \$50,000 by operation of LOL. Owner could not meet jurisdictional minimum of \$75,000. Third Circuit remanded to district court with instructions to dismiss for lack of subject matter jurisdiction.</p>
Rhode Island	Yes.	<p><i>Sangermano v. Roger Williams Realty Corp.</i>, 22 A.3d 376, 377 (R.I. 2011). Court provides that Rhode Island law is well settled regarding indemnity provisions – “indemnity provisions are valid if sufficiently specific, but are to be strictly construed against the party alleging a contractual right of indemnification.”</p> <p><i>See also A.F. Lusi Const., Inc. v. Peerless Ins. Co.</i>, 847 A.2d 254, 265 (R.I. 2004). The court discusses R.I. Gen. Laws § 6-34-1, which it has interpreted to invalidate agreements between contractors in which a subcontractor has agreed to indemnify a general contractor for the latter’s own negligence, but permits agreements in</p>	R.I. Gen. Laws § 6-34-1 (construction anti-indemnity statute). Includes contracts that relate to “design [and] planning” but does not prohibit purchase of insurance or construction bond.	

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		which the subcontractor indemnifies the general contractor for claims arising from the subcontractor's own negligence.		
South Carolina	Yes.	<i>Georgetown Steel Corp. v. Union Carbide Corp.</i> , 806 F. Supp. 74 (D.S.C. 1992), <i>overruled on other grounds</i> 7 F.3d 223 (4th Cir. Sept. 14, 1993). LOL enforceable under South Carolina law. LOL was product of arm's length negotiations between two commercially sophisticated entities. LOL allowed parties to negotiate waiver of limitation for additional consideration. Engineer had no liability to another contractor on project where no contractual relationship existed; court denied cross-claim by other contractor claiming to be third-party beneficiary of contract between engineer and owner.		LOL enforceable based on evidence that owner was made aware of it during contract formation, even though LOL may not have been specifically or expressly negotiated. Clause provided a simplistic way for owner to shift full liability to engineer. If owner had wanted to negotiate that term differently, option to do so was provided right in the language of the limiting provision.
South Dakota	Unclear as to design professionals.		S.D. Codified Laws § 56-3-18 (construction anti-indemnity statute).	



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Tennessee	Yes.	<i>Moore & Assocs. v. Jones & Carter, Inc.</i> , No. 3:05-0167 (M.D. Tenn. Dec. 13, 2005), <i>aff'd</i> , 217 Fed. Appx. 430 (6th Cir. 2007). General contractor sought indemnification from civil engineering firm for damages in connection with construction of hotel in Texas. Hotel filed arbitration proceeding against general contractor in Texas. Contract provided that Texas law would govern. LOL valid and enforceable.		<p>Indemnity clause in contract did not require engineering firm to defend claim; clause was narrowly drawn to require indemnification against from damage, liability or cost to the extent caused by negligence of engineering firm, which negligence had yet to be determined.</p> <p>Contract was to be read as a whole. Focusing only on indemnity clause would make LOL superfluous. General contractor was charged a lower fee in exchange for agreeing to limit engineer's total aggregate liability to fee paid for services.</p>
Texas	Yes.	<i>CBINA-CON, Inc. v. UOP, Inc.</i> , 961 S.W.2d 336 (Tex. Ct. App. 1997). LOL limits remedies of plaintiff in third-party contribution action against engineering firm. Owner entered into separate contracts with engineering firm and product manufacturer. Contract with engineer contained LOL clause limiting liability to reperformance of the work. Owner sued	Tex. Civ. Code § 33.015(a) (contribution)	A contribution claim is derivative of plaintiff's right to recover from joint defendant against whom contribution is sought. Any claim owner could have against engineer would be for economic loss arising out of negligent performance of contract. Accordingly, such claim would be

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		manufacturer after product failed. Manufacturer brought third-party claim against engineer for contribution. Held: LOL in engineer's contract applied to derivative claim.		for breach of contract, not negligence. A breach of contract claim is not a basis for contribution under Texas law. If plaintiff could bring a negligence action against engineer, its recovery would be limited to reperformance of the negligent work pursuant to LOL; plaintiff could not sue for damages. In light of the derivative nature of third-party plaintiff's claim, third-party plaintiff's remedy is limited to that of plaintiff.
Texas	Yes.	<i>AGIP Petroleum Co., Inc. v. Gulf Island Fabrication, Inc.</i> , 920 F. Supp. 1330 (S.D. Tex. 1996) <i>aff'd</i> , 56 F. Supp. 2d 776 (S.D. Tex. 1999). LOL that specifically excluded liability for consequential damages was enforceable under Louisiana and maritime law. Plaintiff was barred from recovering under either a contract or breach of warranty theory. However, direct damages were recoverable because not within scope of LOL.		Subcontractor was indemnitee under contractor's LOL agreement with owner. Thus, as third-party beneficiary, subcontractor was entitled to assert LOL against plaintiff's claims.

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Utah	Unclear as to design professionals.	<i>Jacobsen Const. Co. v. Blaine Const. Co.</i> , 863 P.2d 1329 (Utah Ct. App. 1993). The court finds that because the indemnity agreement between the parties mandated that Blaine indemnify Jacobsen in the event that they are solely and passively negligent, the agreement violates public policy as expressed in Utah Code Ann. § 13-8-1.	Utah Code Ann. § 13-8-1 (construction anti-indemnity statute). The definition of “construction contract” includes an agreement relative to the design of a building or structure. Provision also provides that indemnification provisions between an owner and construction parties will result in a <i>pro-rata</i> apportionment of fault.	
Vermont	Yes, as long as unambiguous and part of an arm’s-length deal.	<i>Stratton Corp. v. Engelberth Constr., Inc.</i> , 2015 VT 69 (2015). In a case involving a condominium construction project, the developer sued the general contractor who in turn filed third-party claim against subcontractor. The agreement between the developer and the contractor included an		

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		<p>indemnification provision, as did the subcontract entered into between the general contractor and the subcontractor. While the jury found that subcontractor was obligated to indemnify general contractor, the Supreme Court held that subcontractor failed to preserve its argument.</p> <p><i>See also Hemond v. Frontier Comm. of America, Inc.</i>, 2015 VT 66 (2015). The Supreme Court upheld the rule that contractual indemnity clauses will be upheld where the language is unambiguous and part of an arm's-length deal.</p> <p><i>See also Southwick v. City of Rutland</i>, 2011 VT 53, 190 Vt. 106, 35 A.3d 113 (2011). The court interpreted an indemnification provision so as to give effect to the intent of the parties as expressed in their writing, while noting Vermont law's general rule that "[w]e assume that parties included contract provisions for a reason, and we will not embrace a construction of a contract that would render a provision meaningless."</p>		

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Virginia	Yes.	<i>Dewberry & Davis, Inc. v. C3NS, Inc.</i> , 81 Va. Cir. 122 (2010). In a case of first impression, the court analyzed Va. Code Ann. § 54.1-411, noting that the drafters specifically added “Engineers shall not . . . be prohibited from . . . limiting liability through contract.” The court also noted that the statute’s amendment would have been unnecessary if design professionals were already permitted to limit liability through contract.	Va. Code Ann. § 11-4.1 (construction anti-indemnity statute). <i>But see</i> Va. Code Ann. § 54.1-411.	
Washington	Yes.*	<i>REI v. GeoEngineers, Inc.</i> , Washington State Superior Court, King County, No. 95-2-30163-1 SEA (1996). LOL in geotechnical engineering contract enforceable under Washington law.		
Washington	Yes.*	<i>O’Keefe Development Co. v. Hart Crowser, Inc.</i> , Washington State Superior Court, King County, No. 91-2-13519-3 (1995). LOL in geotechnical engineering contract enforceable under Washington law.		



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Washington	Yes.*	<i>Coventry Assoc. v. Golder Assoc., Inc.</i> , Washington State Superior Court, King County, No. 93-2-27092-5. LOL in geotech contract enforceable under Washington law.		
Washington	Yes.*	<i>Lear Capital, LLC, et al. v. Albany Insurance Company, et al.</i> , Washington State Superior Court, King County, No. 99-2-03743-0SEA. Trial court finds LOL enforceable as to engineering firm but not firm's individual employees.		
Washington	Yes.*	<i>Les Schwab Tire Centers of Oregon v. GeoTech Consultants, Inc.</i> , Washington State Superior Court, King County, No. 95-2-16358-1 (Mar. 1996). LOL in geotechnical contract enforceable under Washington law.		
Washington	Yes.	<i>McCain Foods USA v. CH2M Hill, Inc., et al.</i> , USDC Eastern District at Spokane, No. CS-99-084-RHW. Factual issue regarding whether LOL was incorporated into subsequent amendments to contract precludes summary judgment.		



DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
Washington	Yes.	<i>Stokes v. Bally's Pacwest, Inc.</i> , 113 Wn. App. 442, 54 P.3d 161 (2002). LOL clause enforced in contract between health care club and patron.		The general rule in Washington is that such exculpatory clauses are enforceable unless (1) they violate public policy, (2) the negligent act falls greatly below the standard established by law for protection of others, or (3) they are inconspicuous.
Washington (9 th Circuit)	Yes.*	<i>Charles L. Kelly, Jr. et al. v. AGRA Earth & Environmental, Inc., et al.</i> , 16 Fed. Appx. 695, 2001 WL 873828 (9th Cir. 2001). LOL in geotech contract enforceable under Washington law.	RCW 4.24.115 (anti-indemnity statute)	Anti-indemnity statute could not be extended to void limitations of liability. Economic loss doctrine bars gross negligence claim. Disclaimer of warranties in LOL bars breach of implied warranty claim.
West Virginia	Unclear as to design professionals.	<i>VanKirk v. Green Const. Co.</i> , 195 W. Va. 714, 466 S.E.2d 782 (1995). The State's highway department brought an action against a construction contractor for indemnification. The court stated that ordinary rules of contract construction apply and held that the indemnity provision was sufficiently plain, unambiguous	W. Va. Code 55-8-14 (construction anti-indemnity provision that prohibits broad indemnity)	

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

Jurisdiction	Are LOL Clauses Enforceable?	Case Citation	Statute	Notable Enforcement Issues
		and broad to cover losses incurred as a result of the delay, neglect, and omissions by construction contractor.	provisions).	
Wisconsin	Yes.	<i>Wausau Paper Mills Co. v. Charles T. Main, Inc.</i> , 789 F. Supp. 968 (W.D. Wis. 1992). Action for economic loss under negligence and breach of warranty causes of action. LOL clause in contract for design engineering services prohibiting recovery of consequential damages was enforceable under breach of warranty claim. LOL was immaterial under negligence claim.		“No economic loss” doctrine barred owner’s claim against engineer for professional negligence. LOL clause therefore had no effect on that claim. However, action was allowed to proceed under breach of warranty claim based on same factual allegations. Recovery was allowed to extent of LOL provision.
Wyoming	Unclear as to design professionals.	<i>Wyoming Johnson, Inc. v. Stag Indus., Inc.</i> , 662 P.2d 96 (Wyo. 1983). The court noted that contracts for indemnity are to be construed strictly against the indemnitee, and that the test is whether the contract language specifically focuses attention on the fact that by the agreement the indemnitor was assuming liability for indemnitee’s own negligence. The court held that the subcontract was insufficient to impose the same liability for indemnification on Stag as the prime contract imposed on Wyoming Johnson to the owner.		

DESIGN PROFESSIONAL
LIMITATION OF LIABILITY CASE INDEX
Updated May 2015

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

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Page 51 of 51

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