

VIRGINIA:

IN THE ROCKINGHAM COUNTY CIRCUIT COURT

INTERSTATE, LLC, )  
 )  
Plaintiff, )  
 )  
v. ) Case No. CL04-00169  
 )  
TRIAD ENGINEERING, INC., )  
 )  
Defendant. )

**ORDER**

On August 26, 2008, the parties appeared by their respective counsel to argue the Motion for Partial Summary Judgment filed herein by Defendant, Triad Engineering, Inc. The question presented was whether a contractual provision limits Triad's liability for the claims asserted in the Complaint filed herein.

Upon consideration whereof, including the legal memoranda filed herein and the argument of counsel, the Court **FINDS** that the claims at issue sound in contract, that privity of contract is alleged by the Plaintiff to exist between the parties, that there is an ambiguity in the term "professional negligence" as it is used in Paragraph 4 of each of the subject contracts, that any ambiguity could have been resolved at the time of contracting, and that Va. Code § 54.1-411 appears to prohibit the limitation of liability provision as it is

sought to be applied by Defendant. Accordingly, the Court does hereby

**ORDER** that Defendant's Motion for Partial Summary Judgment is **DENIED**.

The Clerk is directed to send an attested copy of this Order to counsel of record.

This cause is continued.

ENTERED: 9/12/08

/s/ Thomas J. Wilson, IV  
Thomas J. Wilson, IV  
Circuit Court Judge

I ASK FOR THIS:

to M. Rose

KEVIN M. ROSE (VSB No. 35930)  
BotkinRose PLC  
3210 Peoples Drive  
Harrisonburg, Virginia 22801  
(540) 437-0019 (office)  
(540) 437-0022 (fax)  
Co-Counsel for Plaintiff

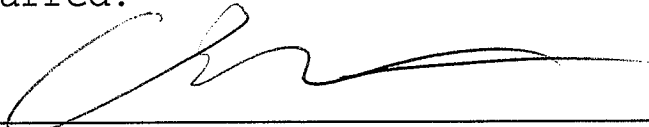
Lisa A. Hawkins (VSB No. 44738)  
William E. Shmidheiser, III (VSB No. 19047)  
of Lenhart Obenshain, PC  
90 North Main Street, Suite 201  
Harrisonburg, VA 22801  
540-437-3100 (office)  
540-437-3119 (fax)  
Co-Counsel for Plaintiff

A TRUE COPY

ATTESTE

Wendell Roudon  
DEPUTY CLERK

SEEN AND OBJECTED TO on the grounds set forth in the memorandum and in oral argument, and on the following grounds: The case of Blue Cross of Southwestern Virginia v. McDevitt & Street Company, 234 Va. 191 (1987), decided after the enactment of the statute (according to Lexis) in 1982, clearly upholds a contractual waiver of certain liability in favor of an architect; the case of Moore v. Drewry, 215 Va. 277 (1996), holds that an architect licensee may avoid personal liability for economic loss by using a corporation to execute the contract for professional services; Section 54.1-411 cannot and should not be interpreted to mean that contractual waivers of or limitations on liability such as the one at issue are barred.



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ARTHUR T. K. NORRIS (VSB No. 32536)  
Lee & McShane, PC  
1211 Connecticut Avenue, N.W.  
Suite 425  
Washington, DC 20036  
(202) 530-8100  
(202) 530-0402 (fax)  
Counsel for Triad Engineering, Inc.