

Email Alert – UPDATE: New California Statute Restricts Indemnity Liability for Design Professionals

On September 29, 2010, California Governor Arnold Schwarzenegger signed into law Senate Bill 972. This new law will curtail the rulings in *Crawford v. Weather Shield* and *UDC-Universal Development, L.P. v. CH2M Hill*, in which the California Supreme Court and California Court of Appeal held that a duty to defend and indemnify arises as soon as the indemnitee tenders its defense to the indemnitor. The Court in *UDC* went so far as to hold that the obligation to defend arises regardless of whether the indemnitor was negligent or caused the alleged damages.

The new law applies to contracts for design professional services with a public agency that purport to require the design professional to defend and indemnify the public agency. Indemnity agreements between public agencies and design professionals will now be **unenforceable**, except for claims that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. The law applies to contracts entered into on or after January 1, 2011.

Therefore, design professionals will only have a duty to defend and indemnify an owner of a public works project if the claim arises out of the negligence, recklessness or willful misconduct of the design professional. It should be noted that this new law does not apply to private works of improvement.

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