

**Email Alert – *UDC-Universal Development, L.P. v. CH2M Hill***

Morris Polich & Purdy always endeavors to keep its clients and friends updated as to legal developments and other topics of interest in the area of design and construction law. We trust that you will find the following interesting and of use, and if you have any questions or comments please contact any of the attorneys in our Construction and Design Practice Group.

-----

On January 15, 2010, the California Court of Appeal held that a design professional owed a duty to defend its developer/client pursuant to a contract of indemnity even though the jury found that the design professional had not been negligent in performing its services. In *UDC-Universal Development, L.P. v. CH2M Hill*, a residential condominium homeowners association sued UDC, the developer of the project, and UDC cross-complained against its design professional, CH2M Hill, seeking to enforce indemnity provisions in their contracts. Five days before the end of the trial on UDC's indemnity claim, the Supreme Court issued its decision in *Crawford v. Weather Shield*, which held that a contractual indemnitor incurs a duty to defend the indemnitee as soon as the indemnitee tenders its defense to a claim asserting that the indemnitee was at fault. At the conclusion of the trial, the jury returned a verdict finding CH2M Hill was not negligent and that it did not breach its contract with UDC. Regardless, the trial court found that, under *Crawford*, the indemnity provision in the contract obligated CH2M Hill to pay UDC's defense costs.

On appeal, CH2M Hill attempted to distinguish *Crawford* by arguing that the plaintiffs in *Crawford* had alleged that the indemnitor was negligent and a cause of their damages, whereas in the *UDC* case the HOA's complaint did not allege that CH2M Hill was negligent. The Court of Appeal rejected this argument, concluding that the HOA's general description of the defects in the project implicated CH2M Hill's work. CH2M Hill also argued that *Crawford* should not apply retroactively, on the grounds that *Crawford* changed previously existing law and CH2M Hill reasonably relied on pre-*Crawford* law. The Court rejected this argument as well, observing that the general rule is that case law applies retroactively and that none of the narrow exceptions to retroactivity applied.

For design professionals, the bad news is that once again, as in *Crawford*, a negligence-free engineer was nonetheless required to pay for an owner/client's defense. The good news is that this result can be avoided by a contractual provision that explicitly disclaims any responsibility of the indemnitor for the indemnitee's defense. It is therefore imperative that design professionals carefully review their own standard contracts as well as client-prepared contracts to ensure that such a disclaimer is present. We have assisted many of our clients in crafting appropriate disclaimer language, and would be happy to respond to specific inquiries.

Please click [HERE](#) to view a copy of the decision. If you have inquiries or would like further details in the meantime, please feel free to contact Derek Simpson or any of the other members of the Morris Polich & Purdy Construction and Design Practice Group.

Derek A. Simpson  
213.417.5136  
[dsimpson@mpplaw.com](mailto:dsimpson@mpplaw.com)

-----  
MPP Construction and Design Group  
Morris Polich & Purdy LLP  
Telephone: 213-891-9100  
[www.mpplaw.com](http://www.mpplaw.com)

-----  
*Disclaimer: This email is designed to provide accurate and authoritative information in regard to the subject matter and is made available with the understanding that the email does not constitute the rendering of legal advice or other professional services. If legal advice is required, such services should be sought. © 2010 MPP LLP. All rights reserved.*

-----