

Preventing Limitation of Liability End-Runs

Owners who are dissatisfied with their contractors' performance increasingly assert fraud-based claims in addition to breach of contract claims because fraud-based claims are not typically barred by contractual waivers and limits of liability, according to a **client alert** published by **Pepper Hamilton**.

"Fraud-based claims may also create the potential for punitive damages in addition to compensatory damages," wrote the authors, **Ralph A. Finizio**, **Robert A. Gallagher** and **Jane Fox Lehman**. "Contractors and their counsel, however, can limit their potential exposure for fraud-based claims through careful contract drafting and thoughtful selection of the law to be applied to disputes."

They wrote that contractors should first consider: the codified law of the jurisdiction where the project is to be built, statutes that regulate the availability of punitive damages, and differences in common law.

"Contractors should also keep in mind that their choice of law will likely impact the conduct and cost of any litigation, as well as the best choice of outside counsel to handle the matter," they wrote.

Read the article.