



August 8, 2024

Re: Formal Response to Request for Policy Advisory Opinion Regarding The Ability of Engineers to Contractually Limit Their Liability (Policy Advisory Request No. 70)

The Texas Board of Professional Engineers and Land Surveyors (Board) met in public session on August 8, 2024 and approved this response to an anonymous policy advisory opinion request dated July 24, 2024.

**Request:**

The requestors seeks guidance on the following issues:

- To what extent may licensed professional engineers limit their liabilities in a service contract? Examples of contract excerpts were provided and the requestor questioned whether such provisions were contrary to the Texas Engineering Practice Act.

Sample language provided included:

- In order for the client to obtain the **benefit** of a fee which includes a lesser allowance for risk, the client agrees to limit SE's liability arising from SE's acts, errors or omissions, such that the total aggregate liability of SE shall not exceed the total amount paid to SE for the services contemplated by this agreement. [Emphasis added].

and

- Client acknowledges the fee charged is relatively small compared to and given the risk of liability that is associated with the project if liability could not be limited. Client acknowledges that without the ability to limit liability, Company would be forced to charge Client substantially more than the fee charged. Additionally, it is difficult to foresee or determine at the time of this Agreement potential damages. Company and company representatives assumes no liability for any defects or issues either current or arising in the future, the cost of repair or replacement of unreported defects, deficiencies, or conditions either current or arising in the future. In recognition of the relative risks, rewards, and benefits of the services/project to both the client and company, the risks have been allocated so that client expressly agrees to the fullest extent provided by law and acknowledges that the total liability of company and company representatives for any claims, including but not limited to claims for, losses, injuries, or damages (whether contract or in tort) against company and/or company representatives, including claims for, but not limited to, breach of contract, negligence, fraud or misrepresentations, omissions, acts, mistakes, errors, misconduct, and/or violation of any law, statute, regulation, ordinance, or any other theory of liability arising out of, from or in any way related to this agreement or arising out of, from or in any way related to the services under this agreement, the services, or the drawing and specifications, shall be limited to liquidated damages in the amount equal to the fee paid to company for the services. This sum shall be client's sole and exclusive remedy in law or equity, including attorneys' fees, costs and expenses, and the total aggregate liability of company and company representatives (and

maximum amount client may recover) and applies regardless of the legal theory plead or asserted.

**Response:**

A professional engineer is expected to comply with the Texas Engineering Practice Act (the Act) and applicable Board rules at all times. However, the Act does not address contractual liability. Therefore, the Board cannot opine on the legality of any attempt to limit liability through contracts. You may consider consulting with an attorney for guidance on your questions.

**Conclusion:**

No new Policy Advisory Opinion will be developed for this request as the question seeks guidance on a matter outside the jurisdiction of the Board.

If you have any further questions, please contact Mr. Michael Sims, P.E., Director of Compliance & Enforcement at 512.440.7723.

Sincerely,

A handwritten signature in black ink, appearing to read "Lance Kinney". The signature is fluid and cursive, with a long horizontal stroke at the end.

Lance Kinney, Ph.D., P.E.  
Executive Director

LK:MZS:asm