MINNESOTA CONSTRUCTION MATERIALS

By

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Home Warranties

There are three types of warranties for home construction in Minnesota. First, there is a one year warranty, where the builder warrants that the home will be free from defects caused by faulty workmanship and defective materials due to non-compliance with building standards. Minn. Stat. § 327A.02, subd. 1(a). These types of defects tend to be punch list items, such as minor cracks in the walls, nail pops, and loose fixtures.

Likewise, the builder warrants that the building will be free from defects caused by the faulty installation of plumbing, electrical and HVAC components for a period of two years. Minn. Stat § 327A.02, subd. 1(b).

Most important though, is the 10-year warranty that provides that the home will be free from major constructions defects due to non-compliance with building standards. Minn. Stat. § 327A.02, subd. 1(c). This is the warranty that that is most often raised in construction litigation. These warranties attach to the property, so that even if the initial property owner sells the property before the expiration of the warranty period, the warranty survives passing of title from one owner to the next. Minn. Stat. § 327A.02, subd. 2. Even if a contractor goes out of business, the warranties and remedies for breach of warranty survive the dissolution of a contractor. Minn. Stat. § 327A.02, subd. 2a. The home warranties apply not only to new construction, but also apply to all improvements to real property. Minn. Stat. § 327A.02, subd. 3.

Definitions

An **improvement to real property** is defined as "permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs. *Lietz v. N. States Power Co.*, 718 N.W.2d. 865, 869 (Minn. 2006). An object need not be completely installed in order to qualify as an improvement to real property within the meaning of Minn. Stat. § 541.051. *Id.* at 871.

A **major construction defect** is defined as "actual damage to the load-bearing portion of the dwelling or the home improvement, including damage due to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function and which vitally affects or is imminently likely to vitally affect use of the dwelling or the home improvement for residential purposes. Minn. Stat. § 327A.01, subd. 5. The definition of major construction defect does not include damage due to movement of the soil caused by flood, earthquake or other natural disaster. *Id.*

The **warranty date** is defined as the date from and after which the statutory warranties provided in section 327A.02 shall be effective, and is the earliest of (a) the date of the initial vendee's first occupancy of the dwelling, or (b) the date on which the initial vendee takes legal or equitable title in the dwelling. Minn. Stat. § 327A.01, subd. 8.

Remedies for a Breach of Warranty

Once the homeowner claims that there has been a breach of the statutory home warranty provisions, the contractor has the right to inspect the damage, within 30 days of being notified of the damage. Minn. Stat. § 327A.02, subd. 4. The statute of limitations is tolled from the time the owner sends notice of defect to the builder until the home warranty dispute is resolved using the dispute resolution process under section 327A.051, or 180 days, whichever is later.
The contractor has the right to repair the damage, if within 15 days he prepares a bid with the scope of work, and timeline for completion; but only if the parties agree on the scope of work. If the contractor does not inspect the work, or fails to make an offer of repair, the owner can commence suit. Minn. Stat. § 327A.02, subd. 6.

Statute of Limitations and Repose

Home warranty actions, based upon Minn. Stat. § 327A.02 must be brought within two years of the discovery of the breach of warranty. Minn. Stat. § 541.051, subd. 4. Therefore, there is essentially a 12 year statute of repose for home warranty claims, commencing from substantial completion of the construction. *Brink v. Smith Companies Const. Inc.*, 703 N.W.2d. 871, 878-79 (Minn. App. 2005). This presumes that the defect is not discovered until 10 years after substantial completion of the construction, and the homeowner waits two years from that time to commence suit.

The discovery of a breach by a prior owner starts the two year statute of limitations and can bar a subsequent owner from bringing a breach of warranty claim. *Vlahos v. R&I Const. of Bloomington, Inc.*, 676 N.W.2d. 672, 678 (Minn. 2004). The question is when did an owner discover, or should have discovered the builder's refusal or inability to ensure that the home was free from major construction defects. *Id.* Therefore, a subsequent owner can be bound by knowledge of the prior owner, even if the subsequent owner does not discover the breach until more than two years after the initial owner first had notice of the breach of warranty.

Indemnity Agreements

One of the most common issues to arise in the course of litigation involving a construction defect the applicability of an indemnity agreement or an agreement to procure insurance. Construction of an indemnity contract is a question of law for the court to interpret. *Hunt v. IBM Mid America Employees Fed. Credit Union*, 384 N.W.2d. 853, 856 (Minn. 1986).

Minnesota law has long permitted construction contractors and subcontractors to employ indemnification clauses within their contracts whereby the indemnitee would be indemnified from all claims, including those claims arising out of its own negligence. *Johnson v. McGough Constr. Co.*, 294 N.W.2d. 286, 287-88 (Minn. 1980); *Farmington Plumbing & Heating Co. v. Fischer Sand & Aggregate Inc.*, 281 N.W.2d. 838, 842 (Minn. 1979). However, Courts adopt a "strict construction" standard, thereby requiring that agreements to indemnify the indemnitee from its own negligent acts clearly and unequivocally demonstrate such intent. *National Hydro Sys. v. M.A. Mortenson Co.*, 529 N.W.2d. 690, 694 (Minn. 1995).

Since 1984, all such indemnity agreements are also subject to the limitations in Minn. Stat. § 337.02. This statute provides that indemnification agreements in building and constructions contracts are unenforceable, except to the extent that the underlying injury or damage is attributable to the negligent or otherwise wrongful act or omission, including breach of a specific contractual duty of the promisor or the promisor's independent contractors, agents, employees, or delegates. *Katzner v. Kelleher Const.*, 545 N.W.2d. 378, 381 (Minn. 1996) (citing Minn. Stat. § 337.02). This provision ensures that each party will remain responsible for its own negligent acts or omissions. *Holmes v. Watson-Forsberg Co.*, 488 N.W.2d. 473, 475 (Minn. 1992).

However, there is a narrow exception to this rule that does not affect the validity of agreements whereby a promisor agrees to provide specific insurance coverage for the benefit of others. Minn. Stat. § 337.05, subd. 1; *Holmes*, 488 N.W.2d. at 474. The Court reasoned that even though such an indemnification provision may be unenforceable under section 337.02, a promise to purchase insurance to cover negligent acts by the promisee is valid and enforceable. *Id.* at 475.

Even though the general rule does not permit indemnity contracts to shift liability in the case of one's own negligence, and even though the narrow exception is strictly enforced, it is relatively simple for contractors to enter into this type of agreement if they so desire. However, in most cases, it seems that each contractor has its own set of boiler-plate contracts that tend to conflict with each other enough on this issue, so in most situations each party will be responsible for their own negligence.

Such a liability shift is permissible when a subcontractor agrees to provide another contractor with insurance coverage for "all damages to all persons, whether employees or otherwise, in any manner connected to the work on the subcontract." *Hurlburt v. Northern States Power Co.*, 549 N.W.2d. 919, 923 (Minn. 1996); *Van Vickle v. C.W. Scheurer and Sons, Inc.*, 556 N.W.2d. 238, 241 (Minn. App. 1996). This is the specific language approved by the Courts, so there may be a basis to invalidate an indemnity agreement when the language is not substantially the same.

Even if the indemnitor did not obtain the specified insurance, the indemnitee shall have indemnification from the indemnitor to the same extent as the specified insurance procurement clause. *Van Vickle*, 556 N.W.2d. at 241-32. The indemnitee is also entitled to the cost of attorney fees for the defense of the underlying claim. *Id.*; *Seifert v. Regents of Univ. of Minn.*, 505 N.W.2d. 83, 86-87 (Minn. App. 1993). The only requirement was that the defense of the underlying action must have been tendered and refused by the indemnitor. *Hill v. Okay Constr. Co.*, 252 N.W.2d. 107, 121 (Minn. 1977).

This can cause some tension between a subcontractor and their insurer, when they did not procure the insurance that was specified in the contract. The insurer is not obligated to expand coverage to that which the subcontractor agreed to provide. The subcontractor may want the insurer to pay more than the subcontractor's liability warrants, to prevent the general contractor from seeking indemnity from the subcontractor, personally.

Duties

A general contractor owes a non-delegable duty to a homeowner to construct a home in a workmanlike manner. Even though the damage was a result of the negligence of a subcontractor, there is privity of contract between the owner and the general contractor. *Brasch v. Wesolowsky*, 138 N.W.2d. 619, 624 (Minn. 1965). The buck stops with the general contractor, because the building owner hired the general contractor to build a home in compliance with building standards. Therefore, the general contractor cannot avoid liability, as a legal matter, even by proving that its subcontractors performed the poor workmanship that caused the alleged damages.

However, the general contractor has the right to indemnity against its at-fault subcontractors, even though it may have approved the subcontractors' work. *Id.* This is because presumably, the general contractor lacked the expertise to construct the whole home by itself and needed the expertise of various subcontractors to perform different portions of the construction. *Id.* Therefore, the procedural posture of a construction defect case is that the owner will sue the general contractor and the general contractor will bring third party claims against the subcontractors that it believes were responsible for causing the defects in the building.

Coverage Issues

A contractor may shift the risk of personal injury or property damage due to defective workmanship or materials by purchasing a comprehensive general liability insurance policy to protect themselves or a third party during the course of construction, or for thereafter if a "completed operations" endorsement is purchased. *Knutson Const. Co. v. St. Paul Fire & Marine Ins. Co.*, 396 N.W.2d. 229, 234 (Minn. 1986). However, insurance coverage is only available to the extent that poor workmanship causes damage to the structure. *Id.* The building owner is not entitled to repair or replacement of the building simply because of shoddy workmanship or the use of inferior building materials. *Id.* Therefore, there is generally no coverage if the building owner's claim is simply that the home was poorly constructed. There will be coverage, however, if the due to the poor workmanship, there is a water infiltration that has damaged the load bearing structural supports to the building, or caused mold to develop in the building.

Even without a specific exclusion in the policy, these types of "business risks" by their nature are not covered by a CGL insurance policy. *Bor-Son Building Corp. v. Employers Commercial Union*, 323 N.W.2d. 58, 61 (Minn. 1982). The poor workmanship and materials alone is not enough to trigger coverage; rather coverage is only triggered when such workmanship and materials cause property damage or personal injury. *Id.*

Damages

Many times, in addition to damage to the physical structure of the home, there is collateral damage to personal property within the home, when pipes burst due to faulty construction methods. In such cases, Minnesota follows the approach of the Restatement of Torts in

measuring damages resulting from harm to personal property. *O'Connor v. Schwartz*, 229 N.W.2d. 511, 513 (Minn. 1975); *Hart v. N. Side Firestone Dealer, Inc.*, 49 N.W.2d. 587, 588 (Minn. 1951). The Restatement of Torts provides:

> "Where a person is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for the difference between the value of the chattel before the harm and the value after the harm, or at the plaintiff's election, the reasonable cost of repair or restoration where feasible, with due allowance for any difference between the original value and the value after repairs." R.2d. Torts, § 928 (1939).

If the repairs have not fully restored the property, the owner is entitled to the remaining diminution in value, so long as the total damages awarded to not exceed the lesser of the two measures. *Rinkel v. Lee's Plumbing & Heating Co.*, 99 N.W.2d. 799, 783 (Minn. 1959). Tort commentators have called this approach the "option rule." 4 *Harper, James, & Gray on Torts* § 25.6 (3rd Ed. 2007). Under this approach, an injured party may choose between those measures of damages. *Waseca Sand & Gravel, Inc. v. Olson*, 379 N.W.2d. 592, 595 (Minn. 1985); *Kopischke v. Chicago, St. P., M. & O. Ry. Co.*, 40 N.W.2d. 834, 839 (Minn. 1950). A claimant chooses the measure of damages by introducing evidence of the damages. *Waseca*, 379 N.W.2d. at 595; 4A, *Minnesota Practice*, CIVJIG 92.10 (2006).

In the *Rinkel* case, the Court states the rule that the proper measure of damages to a Plaintiff homeowner, following water damage due to faulty pipes was the difference in value before and after, or the cost of restoration, whichever is the lower amount. *Rinkel*, 99 N.W.2d. at 783. (citing 5 Dunnell Dig. (3 ed.) § 2576a; 15 Am. Jur., Damages, §§ 111 to 113. The homeowner is entitled to diminution in value, only when the home is not fully restored. *Id.*

Likewise, the owner of an income-generating rental property is entitled to loss of use when the property is being repaired. *In re Commodore Hotel Fire and Explosion Cases*, 324 N.W.2d. 245, 251 (Minn. 1982).

Construction Injuries

If an injury or death for which workers compensation benefits are payable is caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the injured person can bring a liability claim against the negligent party. Minn. Stat. § 176.061, subd. 5. The property owner owes a duty of care to an independent contractor working on the on the property to inspect the jobsite and warn of concerns before turning over the jobsite. *Conover v. Northern States Power Co.*, 313 N.W.2d. 397, 401 (Minn. 1981). However, the employer of an independent contractor is not vicariously liable under the theory of non-delegable duties for the negligence of the contractor, which causes injury to the contractor's employee. *Id.* at 403. This means that a property owner must share in the negligence that injured the worker, in order to be liable for the injuries.

There must also be a temporal and geographical or causal relationship between the employee's work and the injury. *Anstine v. Lake Darling Ranch*, 233 N.W.2d. 723 (Minn. 1975). There is

only a connection between the injury and the execution of the work present where an employee of the subcontractor sustained injuries while on the job site. *Christy v. Menasha Corp.*, 211 N.W.2d. 773 (Minn. 1973).

Liability of multiple contractors is joint and several, so the solvent contractor may be liable for the full jury award, even if they are only 60% at fault for causing the accident. *Jack Frost, Inc. v. Engineered Building Components Co., Inc.*, 304 N.W.2d. 346 (Minn. 1981).

The general rule is that an employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the independent contractor or his servants. *Rausch v. Julius B. Nelson & Sons, Inc.*, 149 N.W.2d. 1 (Minn. 1967). However, the exceptions to the rule significantly limit its reach. For instance, "One who employees an independent contractor to do work which the employer should recognize as likely to create during its progress a peculiar risk of physical harm to others unless special precautions are taken, is subject to liability for physical harm caused to others by the failure of the contractor to exercise reasonable care to take such precautions, even though the employer has provided for such precautions in the contract or otherwise. Restatement Second, Section 416.

However, this exception does not apply to the employees of the independent contractor, because to hold otherwise does not give due consideration to the employer-independent contractor relationship. *Conover*, 313 N.W.2d. at 403. Therefore, the property owner may be liable to third parties who are injured during a peculiarly dangerous project, but will not be liable if the injury is to the employee of the contractor that is hired to perform the dangerous task because the independent contractor's employees are specially trained to do hazardous work, and were specifically hired to perform the hazardous work. *Sutherland v. Barton*, 570 N.W.2d. 1, 5 (Minn. 1997). It is reasonable for the landowner to expect that the independent contractor and its employee would follow necessary safety precautions, and therefore the landowner does not owe the contractor's employee a duty to protect from an obvious danger. *Sutherland*, 570 N.W.2d. at 7.

Additionally, there is less concern over the liability of the property owner in this situation, because the independent contractor has an absolute, non-delegable duty owed to its employees to provide a safe workspace and to warn of defects and hazards in the employment. *Grussing v. Binger*, 114 N.W.2d. 669 (Minn. 1962).

Property Owners Right of Contribution

Third party actions by an independent contractor or its employee against a negligent third party is necessary in order to reimburse the employer who has been forced to bear the cost of the third party's negligent activity, and to allow the employee to obtain a full common law recovery against the negligent third party, who is not subject to the limitations of the workers compensation system. *Lambertson v. Cincinnati Welding Corp.*, 257 N.W.2d. 679, 684-85 (Minn. 1977). While some states require the employer to be fully reimbursed before the employee receives anything from a negligent third party, Minnesota allows the employee to obtain a third of the judgment after litigation expenses are paid, before the employer can collect from a third party judgment. Minn. Stat. § 176.061, subd. 6.

At the same time, the third party can seek contribution from the negligent employer. *Lambertson*, 257 N.W.2d. at 689. However, the amount of contribution recoverable is capped at the amount of the employer's workers compensation benefits payable to the employee. The employer can avoid this potential liability by using the "waive and walk" procedure established in Minn. Stat. § 176.061, subd. 11. In that situation, the employer waives its right to recover workers compensation benefits already paid, but also walks away from the potential third party contribution claim.

Generally, if the employer shares a significant portion of the liability for its employee's injuries, the employer will forego its right to recoup workers' compensation benefits paid from other at-fault parties, in order to avoid the liability litigation, and the potential exposure from their own negligence.

Exceptions for When the Property Owner is Liable for Injury

Generally, an employer is not liable for the acts or omissions of an independent contractor or its agents. *Lamb v. South Unit Jehovah's Witnesses*, 45 N.W.2d. 403, 406 (1950). The general rule is riddled with exceptions. *Id.* The exceptions fall into three categories: (1) negligence of the employer in selecting, instructing or supervising the contractor; (2) non-delegable duties of the employer, arising out of some relationship toward the public or the particular plaintiff; and (3) work which is specifically, peculiarly, or "inherently" dangerous. Restatement (Second) of Torts § 409, Cmt. B. (1965).

When a landowner entrusts an independent contract to perform construction, or repair work on the land or a structure upon it, the landowner is subject to the same liability as though it retained the work in its own hands, for physical harm to others caused by the unsafe condition of the property (a) while the possessor has retained possession of the land during the progress of the work; or (b) after it has resumed possession of the land upon completion of the work. Restatement (Second) of Torts § 422 (1965).

The employer is subject to liability for physical harm to third persons caused by its failure to employ a competent independent contractor. Restatement (Second) of Torts § 411 (1965). The fact that the employer hired an insolvent independent contractor, alone, is insufficient to support a finding that the employer hired an incompetent contractor. *Lakeview Terrace Homeowners Ass'n v. Le Rivage, Inc.*, 498 N.W.2d. 68, 71 (Minn. App. 1993). This exception will apply when the property owner hires a contractor that lacks the ability to perform the task that they were hired to perform.

A property owner has a non-delegable duty to the general public, when it hires a contractor to perform work on a public space, when a negligent act or omission makes the physical condition of the space dangerous. Restatement (Second) of Torts § 417 (1965). A property owner is liable to injured pedestrian for the negligence of an independent contractor who negligently constructed a public sidewalk. *Brown v. Gustafson*, 117 N.W.2d. 763, 766-67 (1962). A property owner is liable for a pedestrian's injury caused by the negligence of a contractor connecting a building to the city's sewer main, when the pedestrian fell into a trench. However, there is no such non-

delegable duty to the public when the injury occurs entirely on private property, because there is no concern for protection of the public's safety. *Lakeview*, 498 N.W.2d. at 71.

Open and Obvious Dangers

Landowners are not responsible to their invitees for harm caused by dangers that are known or obvious to those invitees. *Baber v. Dill*, 531 N.W.2d. 493, 496 (Minn. 1995); *Peterson v. W.T. Rawleigh Co.*, 144 N.W.2d. 555, 557 (Minn. 1966). However, even if a danger is known and obvious, landowners may still be liable to their invitees if they should anticipate the harm despite such knowledge or obviousness. Restatement (Second) of Torts § 343A (1965). This language is a crucial qualifier to the general rule. *Adee v. Evanson*, 281 N.W.2d. 177, 179 (Minn. 1979). A reason to anticipate the harm may arise when the landowner has reason to expect that the invitee will proceed to encounter the known or obvious danger because to a reasonable person in that position, the advantages of doing so would outweigh the apparent risk. Restatement (Second) of Torts, § 343A, Cmt. F (1965).

However, in the case of a contractor who has specialized knowledge in the field that they are working, it is reasonable for the land owner to expect that the independent contractor and its employee would follow necessary safety precautions, and therefore does not owe the contractor's employee a duty to protect from an obvious danger. *Sutherland*, 570 N.W.2d. at 7.

Duty to Warn

Whether a duty to warn exists is a legal questions, which the court reviews de novo. *Huber v. Niagra Mach. & Tool Works*, 430 N.W.2d. 465, 467 (Minn. 1988). If the consequence is direct and is the type of occurrence that was or should have been reasonably foreseeable, a duty exists as a matter of law. *Id.* But if the connection is too remote to impose liability as a matter of public policy, there is no duty and no liability. *Id.*

Vicarious Liability

There is already a non-delegable duty of an independent contractor to its employees to use safe procedures. *Baumgartner v. Holsin*, 52 N.W.2d. 763, 765 (1952). Imposing the same duty on the employer of the independent contractor would make the employer vicariously liable for the actions of its independent contractors, which is one level of duty too far. *Zimmer v. Carlton County Co-op Power Ass'n*, 483 N.W.2d. 511, 514 (Minn. App. 1992).

Even though the general rule is that a property owner is not responsible for injuries to the employee of an independent contractor, the property owner may still be liable if it is found to be negligent, and it retains detailed control over a project and fails to exercise reasonably careful supervision of the project. *Conover*, 313 N.W.2d. at 401. In order to be liable, the property owner must retain "operative detail" of the work. Restatement (Second) of Torts, § 414, Cmt. A. (1965). It is not enough that the company has merely a general right to order the work stopped or resumed, to inspect its progress or to receive reports, to make suggestion or recommendations which need not necessarily be followed, or to prescribe alterations and deviations. There must

be such retention of a right of supervision that the contractor is not entirely free to do the work in its own way. *Sutherland*, 570 N.W.2d. at 5-6.

Governmental Immunity

Generally, municipalities are subject to tort liability. Minn. Stat. § 466.02. But they have statutory immunity from any claim based upon the performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion is abused. Minn. Stat. § 466.03, subd. 6. Although most acts by municipalities require some exercise of judgment and discretion, not every governmental act is entitled to immunity protection. *Angell v. Hennepin County Reg'l Rail Auth.*, 578 N.W.2d. 343, 346 (Minn. 1998).
Statutory immunity protection is limited to discretionary acts that constitute policy-making activities that are legislative or executive in nature. *Id.* at 345-46. These involve the evaluation of factors such as the financial, political, economic, and social effects of a given plan or policy. *Terwilliger v. Hennepin County*, 561 N.W.2d. 909, 912 (Minn. 1997). In contrast, operational or day-to-day decisions involving the application of scientific or technical skills are not protected by statutory immunity. *Angell*, 578 N.W.2d. at 346.

The professional evaluation of complex factors does not convert an operational function into policy-making, "absent a demonstration that immunity is essential to avoid judicial interference with governmental policy-making." *Sota Foods, Inc. v. Larson-Peterson & Assoc., Inc.*, 497 N.W.2d. 276, 280 (Minn. App. 1993). Further, the implementation of established policy, in contrast to formulating the policy, is generally not subject to immunity. *Angell*, 578 N.W.2d. at 346. The burden is on the government to show that the conduct was of a policy making nature involving social, political or economic considerations. *County of Blue Earth*, 422 N.W.2d. 713, 722 (Minn. 1988). When determining whether immunity is appropriate, the first step is to identify the challenged conduct. *Conlin*, 605 N.W.2d. at 400.

The issuance of a building permit is a protected discretionary function of the city building inspector. *Anderson v. City of Minneapolis*, 178 N.W.2d. 215 (Minn. 1970). The act involves an exercise of discretion in the sense that the city's employee had to make a judgment as to whether plans submitted comply with applicable law. *Id.* Building codes, the issuance of permits, and building inspections are devices used by municipalities to make sure that construction within the corporate limits of the municipality meet the standards established. *Hoffert v. Owatonna Inn Town Motel, Inc.*, 199 N.W.2d. 158, 160 (Minn. 1972). As such, they are designed to protect the public and are not meant to be an insurance policy by which the municipality guarantees that each building is in compliance with the building codes and building ordinances. The charge for building permits is to offset the expenses incurred by the city in promoting public interest and is in no way an insurance premium which makes the city liable for each item of defective construction in the premises. *Id.*

However, when it is the building inspector's own conduct towards the property owner which forms the basis for the property owner's complaint, then there is no immunity. *Gilbert v. Billman Const., Inc.*, 371 N.W.2d. 542, 546 (Minn. 1985). For instance, there may be liability when the building inspector advises the contractor to build the home in a particular way, when he should have known it would create an unreasonable risk of injury to the property owner. *Id.*

Furthermore, a private company may be entitled to governmental immunity, if they have been hired by a municipality to perform a governmental function, such a working as a city engineer or building inspector. *Kariniemi v. City of Rockford*, 882 N.W.2d. 593, 601-02 (Minn. 2016).

Liability for the Negligence of a Contractor

Generally, an employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or its employees. *Anderson v. State Dep't of Natural Res.*, 693 N.W.2d. 181, 189 (Minn. 2005).
Exceptions:

The "control" exception provides that an employer of an independent contractor may be found negligent when it retains detailed control over a project and then fails to exercise reasonably careful supervision over that project. *Anderson*, 693 N.W.2d. at 189.
Another exception to the non-liability of employers for the acts of independent contractors arises for "work which is specifically, peculiarly, or inherently dangerous. *Lakeview Terrace Homeowners Ass'n*, 498 N.W.2d. at 71. Under this exception the owner is not liable when the act which causes the injury is one which the contractor is employed to perform, and the injury results from the act of performance and not from the manner of performance. A non-delegable duty to third parties and the general public is imposed upon the employer of an independent contractor if the trier of fact finds that the work involves either a peculiar risk or a special damage. *Conover*, 313 N.W.2d. at 404-05.

Peculiar risk is defined as a special risk, peculiar to the work to be done, and arising out of its character, or of the place where it is to be done, against which a reasonable person would recognize the necessity of taking special precautions. It does not mean that the risk must be one which is abnormal to the type of work done, or that it must be an abnormally great risk. It has reference only to be a special, recognizable danger arising out of the work itself.