

New ruling shifts liability onto contractors

■ Construction firms are now liable for negligent work after owners sign off on a project.

By DANIEL SWEDLOW

Stanislaw Ashbaugh

On Jan. 18, in a 6 to 3 decision of *Davis v. Baugh Indus. Contrs., Inc.*, the Washington Supreme Court abandoned



Swedlow

the ancient doctrine of completion and acceptance. Historically once an owner accepted the work of an independent contractor, that contractor was cut off from tort liability to injured third parties, even for negligent work. The only one left liable was the owner. This is no longer the law in Washington.

The case involved a leak in underground piping that resulted years later in a noticeable pond. When a crew was dispatched to unearth the leak, several heavy cement blocks fell into the hole and a nearby wall collapsed, ultimately killing the foreman on the site.

The court decided to join 37 other states that have abandoned the completion and

acceptance rule. It cited five reasons for doing so:

1. The completion and acceptance doctrine was grounded in the privity requirement in tort law whereby a negligent builder or seller of an article was liable to no one but the buyer. This requirement has been abandoned in all United States jurisdictions since 1916.
2. The doctrine was also grounded in the theory that the owner's negligence in failing to remedy a dangerous condition on the land is an intervening cause which breaks the chain of causation and cuts off the contractor's liability. The court noted that Washington has long abandoned that theory of proximate cause, sometimes called the "last wrongdoer" rule, except in cases where the intervening cause is totally unforeseeable.
3. The doctrine no longer makes sense in an age where construction is increasingly scientific and complex. The court explained that the old law was based on the assumption that the owner could inspect the work and decide whether it

was free of defects. Today's complicated construction materials and techniques are beyond the average owner's ability to evaluate.

4. Washington's statute of repose that cuts off contractor liability for tort claims six years after substantial completion is a better way to protect contractors from long periods of uncertainty.
5. The doctrine weakens the deterrent effect of tort law on negligent builders.

The dissent focused primarily on the importance of predictability in the law. Additionally, the dissent raised an interesting point about the importance of allowing voluntary contractual arrangement for risk allocation. Under the new law, an owner could choose a cheap construction product knowing that it will not last as long as a more expensive product, and when it fails, the owner can sue the contractor.

Under the new law, a prudent contractor should not use owner-requested products or methods unless the contractor is willing to fully stand behind them.

Daniel Swedlow is an attorney at Stanislaw Ashbaugh where his practice focuses on construction and labor law.