

In The News

Akerman Lawyer Daniel Miktus Warns of Broad Damage Waivers in Construction Contracts

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In a *Law360* article titled, “Beware Broad Damage Waivers in Construction Contracts,” construction lawyer [Daniel Miktus](#) in Washington, D.C. pointed to a shift in bargaining power between project owners and contractors, largely driven by a booming construction market. While project owners in the past were able to negotiate more favorable risk allocation terms that contractors would accept, the intense market demand provides contractors the leverage to negotiate friendlier terms, including narrower indemnity provisions, broader waivers of consequential damages and reduced liquidated damage exposure.

Miktus wrote, “With all of this occurring, project owners should carefully review the interplay of these common risk-shifting provisions, and all other negotiated risk allocation terms, to ensure each clause harmonizes with other elements of the contract. Otherwise, certain remedies — including liquidated damages and indemnity protections — might be compromised.

“Similarly, contractors should review these provisions to ensure they match their risk tolerance and expectations related to consequential damages, liquidated damages and the scope of any indemnification for various categories of damages.”

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