State	Case	Standard of Interpretation
Alabama	*Borders v. Alabama Powers Co.*, 547 So. 2d 446 (Ala. 1989).	An exculpatory clause included in an easement granted to a power company does not violate public policy because the purpose of the easement was to conveyed an ownership interest in the land and provided protection to the power company from its own negligence.
Alaska	*City of Dillingham v. CHM Hill Northwest, Inc.,* 873 P.2d 1271 (Alaska 1994).	Exculpatory clause that limits liability for a party's "negligent acts, errors, or omissions" should be construed to limit liability for "negligent acts, errors, or omissions" only. The clause only applies to breaches of contract and fiduciary duty to the extent the breaches are negligent. Liability for "knowing" or "bad faith" breaches can never be limited. Further, anti-indemnity statute, AS 45.45.900 prohibited enforcement of limitation of liability clause found in engineer's contract with owner.
Arizona	*Mendel v. Mountain States Telephone & Telegraph Co.*, 573 P.2d 891 (Ct. App. 1977).	Suit to recover lost profits arising from errors and omissions by advertising company. Limitation on liability in written agreement is reasonable and not against public policy in the absence of bad faith, fraud, or willfully wanton misconduct
Arkansas	*Byran v. City of Cotter*, 2009 Ark. 457, 344 S.W. 3d 654, 658 (2009)	Contracts that exempt a party from liability for negligence are not favored by the law. Exculpatory clauses are strictly construed against the party relying on them, and the contract must clearly set out what negligent liability is to be avoided. In addition to these two rules of construction, the Arkansas Supreme Court has stated that it is not restricted to the literal language of the contract but "will also consider the facts and circumstances surrounding the execution of the release in order to determine the intent of the parties." Court considers three factors in reviewing exculpatory clauses. An exculpatory clause will be enforced "(1) when the party is knowledgeable of the potential liability that is released; (2) when the party is benefitting from the activity which may lead to the potential liability that is released; and (3) when the contract that contains the clause was fairly entered into."

State	Case	Standard of Interpretation
California	*Markborough California, Inc. v. Superior Court*, 227 Cal. App. 3d 705, 277 Cal. Rptr. 919 (1991).	Engineering contract provision limiting liability to engineer's fee was unambiguous and expressed the parties' intent. As long as an opportunity to negotiate existed, even if the parties did not negotiate the specific provision, it was nevertheless enforceable.
Colorado	*University Hills Beauty Academy, Inc. v. Mountain States Telephone & Telegraph Co*., 554 P.2d 723 (Colo. Ct. App. 1976).	Limitation of liability clause in yellow pages advertising contract upheld, because parties should be entitled to contract on their own terms even though such contracts may lead to hardship on one side. Such a clause is unconscionable only where one party is penalized to the extent that no decent, fair-minded person would view the ensuing result without being possessed of a profound sense of injustice.
Connecticut	Conn. Gen. Stat. § 52-572k; *Cirrito v. Turner Construction Co*., 458 A.2d 678 (Conn. 1983); *Hyson v. White Water Mountain Resorts of Conn., Inc., 829 A.2d 827 (Conn. 2003); Nat'l Sur. Corp. v. Minchin Buick Pontiac GMC, Inc., 3:10-CV-1330 JCH, 2011 WL 3164845 (D. Conn. 2011); Hanson Development Co. v. East Great Plains Shopping Center, Inc.*, 485 A.2d 1296 (Conn. 1985).	An indemnification clause in a construction contract that holds the indemnitee harmless "for damage arising out of bodily injury to persons or damage to property" caused by the sole negligence of the indemnitee is void as against public policy. In a case involving an express limitation of liability to $500, the court held such clauses in contracts for the provision of fire alarm system services are enforceable. Liquidated damages clauses are enforceable for breach of contract, but will not be enforced if serving as a penalty or if the party seeking to recover suffered no damages.

State	Case	Standard of Interpretation
Delaware	6 Del. C. § 2704; *All-State Investigation & Sec. Agency, Inc. v. Turner Constr. Co.*, 301 A.2d 273 (Del. 1972); *Middlesex Mut. Assur. Co. v. Delaware Elec. Signal Co.*, CIV.A. 07C-12-005THG, 2008 WL 4216145 (Del. Super. Sept. 11, 2008); *Gilbane Bldg. Co. v. Nemours Found.*, 666 F. Supp. 649, 652 (D. Del. 1985).	Indemnification agreements that hold a party harmless for damages caused partially or solely by its own negligence are enforceable in Delaware except as limited by 6 Del. C. § 2704, which provides that a contract related to construction that purports to indemnify a party "for damages arising from liability for bodily injury or death to persons or damage to property" "resulting partially or solely" from the negligence of the indemnitee is void as against public policy. However, this statute is inapplicable as between contractors and subcontractors involved in the actual construction process if the indemnification clause is "crystal clear and unequivocal" in requiring the non-negligent party to assume all liability for all claims. In a case involving an express limitation of liability to $250, the court held that such clearly written clauses for the provision of fire alarm system services are enforceable. Liquidated damages clauses are enforceable if a fair estimate of the actual damages that resulted from the breach.
District of Columbia	D.C. Mun. Regs. tit. 27, § 3102; *W.M. Schlosser Co., Inc. v. Maryland Drywall Co., Inc.*, 673 A.2d 647, 653 (D.C. 1996); *Lesmark, Inc. v Pryce*, 334 F.2d 942 (D.C. Cir. 1964); *Unisys Corp. v. Legal Counsel, Inc.*, 768 F. Supp. 6 (D.D.C. 1991), aff'd 15 F.3d 1160 (D.C. Cir. 1994); *Houston v. Sec. Storage Co. of Washington*, 474 A.2d 143 (D.C. 1984); *Brooke Purll, Inc. v. Vailes*, 850 A.2d 1135, 1139 (D.C. App. 2004); D.C. Mun. Regs. tit. 27, § 2604.	A contracting officer is prohibited from including a provision in a public contract in which D.C. agrees to indemnify the contractor against liability for patent or copyright infringement or misappropriation of proprietary information. Also a contracting officer cannot require an indemnity clause when the public contract is awarded using small purchase procedures or when the contract is solely for architect-engineer services. Agreements in which an innocent indemnitor agrees to indemnify an indemnitee, even for personal injury, are valid, but are narrowly construed by the courts so as not to read into them any obligations which the parties never intended to assume. In a case involving an express limitation of liability clause to $1000, the court held that the express clause contained in the driver's receipt signed by bailor was enforceable. A bargained-for liquidated damages clause is valid unless it is found to constitute a penalty. In all public construction contracts estimated to exceed $50,000, the contracting officer shall include a liquidated damages clause approved by the Director.

State	Case	Standard of Interpretation
Florida	*Florida Power & Light Co. v. Mid-Valley, Inc.*, 763 F.2d 1316 (11th Cir. 1985).	A limitation of liability clause in a contract to cover negligence will be upheld if it is expressed in clear and unequivocal terms. Furthermore, individuals who were not parties to the contract can claim the benefit of exculpatory and indemnity provisions provided they were intended third party beneficiaries.
Georgia	*Potter-Shackelford Construction Co. v. Law Engineering, Inc.*, 1996 U.S. App. LEXIS 33368 (4th Cir. Dec. 23, 1996).	A limitation of liability provision will be upheld because courts will not interfere with the freedom of contract, and a contracting party may waive or renounce that which the law has established when it does not injure others or affect the public interest. Parties to a contract are presumed to have read the provisions and to have understood the contents.
Hawaii	*Fujimoto v. Au,* 19 P.3d 699 (Haw. 2001).	Exculpatory clause in partnership agreement was permissible (but unenforceable in this instance for violation of the Uniform Partnership Act). Parties are permitted to make exculpatory contracts and no public policy exists to prevent such contracts. Exculpatory clauses will be held void, however, if the agreement is violative of a statue, contrary to a substantial public interest, of gained through unequal bargaining positions.
Idaho	*Steiner Corp. v. American District Telegraph,* 683 P.2d 435 (Idaho 1984).	Upholding $250 limitation of liability in fire alarm maintenance contract, stating that express agreements exempting one of the parties from negligence are to be sustained, except where one party is at an obvious disadvantage in bargaining power, or a public duty is involved, as with public utility companies or common carriers.
Illinois	*Hamer v. City Segway Tours of Chicago, LLC*, 402 Ill.App.3d 42, 930 N.E.2d 578 (Ill. App. 2010).	Limitation on liability clause upheld because, by its language, it clearly applied to the incident, the plaintiff accepted the risk of the injury alleged, and only acts of ordinary negligence were alleged.
Indiana	*Trimble v. Ameritech Publishing, Inc.*, 700 N.E. 2d 1128 (Ind. 1998); also *Indiana Dept. of Transportation v. Shelly & Sands, Inc.*, 756 N.E. 2d 1063 (Ind. 2nd DCA 2001)	An exculpatory clause that limits liability will be upheld because courts will not interfere with the freedom of parties to contract, provided there is equal bargaining power and the contract does not violate public policy. Exculpatory clause absolving a party of liability for its own negligence must specifically refer to that party's negligence.

State	Case	Standard of Interpretation
Iowa	*Baker v. Stewarts' Inc.,* 433 N.W.2d 706 (Iowa 1988).	Waiver signed by customer of cosmetology school before receiving services was not invalid on the basis of public policy preventing enforcement of exculpatory agreements of a party seeking to be exculpated as a professional person subject to licensure by the state. It was nevertheless unenforceable because it was ambiguous as to absolving the school itself from liability based upon the professional acts or omissions of its supervisory staff.
Kansas	*Santana v. Olguin,* 41 Kan. App. 2d 1086, 1091, 208 P.3d 328, 333 (Kan. Ct.App. 2009).	Limitation of liability provision in Real Estate Inspection Contract was not ambiguous and was enforceable since it was clear enough to advise the prospective purchaser of its purpose, potential effect and constituted a clear expression of the inspector to limit its liability.
Louisiana	*Yocum v. City of Minden*, 649 So. 2d 129 (La. Ct. App. 1995).	Limitation of liability clause was valid between the city and the engineer in a construction agreement, and a subcontractor's claim that the clause was unenforceable lacked merit because no privity of contract existed between the engineer and the subcontractor.
Maine	*Emery v. Waterhouse Co. v. Lea*, 467 A.2d 986 (Me. 1983), *Hardy v. St. Clair*, 739 A.2d 368 (1999) abrogated on different grounds by *Brown v. Crown Equip. Corp*., 960 A.2d 1188 (Me. 2008); *Brignult v. Albert*, 666 A.2d 82, 84 (Me. 1995).	Contractual indemnification is enforced if the indemnity agreement is clear. Indemnification by another for one's own negligence is enforceable if the parties are clearly identified in the clause. Liquidated damages clauses are enforceable when they are non-penalizing, reasonable, and show good faith efforts to stipulate damages in advance of a breach when the actual damages would be difficult to calculate.

State	Case	Standard of Interpretation
Maryland	Md. Code Ann., Cts. & Jud. Proc. § 5-401; *Adloo v. H.T. Brown Real Estate, Inc.*, 686 A.2d 298 (Md. 1996); *Rassa v. Rollins Protective Services Co.*, 30 F. Supp. 2d 538 (D. Md. 1998); *Baltimore Bridge Co. v. United Rwys. & Elec. Co.*, 125 Md. 208, 93 A. 420 (1915)	An indemnification clause in a construction contract that holds the indemnitee harmless for "damages arising out of bodily injury to any person or damage to property caused by or resulting from the sole negligence" of the indemnitee is void as against public policy. Otherwise, as long as the contractual provision clearly and specifically exculpates the party from its negligence, the clause is enforceable. A contractual clause limiting to $500 the liability of a company that sold and installed allegedly defective fire alarm system was enforceable. Liquidated damages clauses for breach of contract are enforceable as long as the damages are not a penalty, meaning the amount is not "grossly excessive" or "out of all proportion" to the damages that might reasonably have been expected to result from such breach of the contract.
Massachusetts	Mass. Gen. Laws Ann. ch. 149, § 29C; *Kelly v Dimeo Inc.*, 31 Mass App 626, 581 N.E.2d 1316 (1991); R-1 *Associates, Inc. v. Goldberg-Zoino & Associates, Inc.*, CIV. A. 91-7417-E, 1995 WL 517554 (Mass. Super. Aug. 16, 1995); *Sound Techniques, Inc. v. Hoffman*, 737 N.E.2d 920, 924-25 (Mass. App. 2000); *NPS, LLC v. Minihane*, 451 Mass. 417, 420, 886 N.E.2d 670, 673 (2008)	An indemnification clause in a construction contract requiring "a subcontractor to indemnify any party for injury to persons or damage to property not caused by the subcontractor or its employees, agents or subcontractors, shall be void." But in a case where a subcontractor was not itself at fault in injury to worker, it still was required to indemnify general contractor since the employee of subcontractor was found to be 10% at fault for his injury. An environmental engineer's contract that contained a provision that its liability for a negligent assessment could not exceed $50,000 was enforceable. In general, limitation-of-liability / exculpatory clauses are upheld as long as the acts are not intentional or fraudulent. A contract provision that clearly and reasonably establishes liquidated damages is enforceable, so long as the fixed damages are not so disproportionate so as to constitute a penalty.
Michigan	*Xu v. Gay*, 257 Mich. App. 263 (2003).	Limitation of liability provisions can insulate against ordinary, but not gross, negligence, must be fairly and knowingly made and should include the words "waiver" or "disclaim."
Minnesota	*Yang v. Voyagaire Houseboats, Inc*., 701 N.W.2d 783 (Minn. 2005).	Limitation on liability provisions are strictly construed against the benefited party and are unenforceable if: ambiguous in scope, a release for intentional, willful or wanton acts, or contravenes public policy which is whether there is a disparity in bargaining power and the type of service offered.

State	Case	Standard of Interpretation
Mississippi	*Thrash Commercial Contractors, Inc. v. Terracon Consultants, Inc.*, 3:11CV577TSL-MTP, 2012 WL 2407551 (S.D. Miss. 2012)	Under Mississippi law, clauses that limit liability are given strict scrutiny and are not enforced unless the limitation is fairly and honestly negotiated and understood between both parties. Subcontractor, hired to perform soil density testing, could enforce a limitation of liability provision in bold faced lettering that limited liability to $50,000 where general contractor did not prove that it did not understand the provision or that it was not fairly and honestly negotiated. Provision did not violate Mississippi statute that renders void as against public policy provisions in construction contracts that indemnify or hold harmless one person from liability for his own negligence.
Missouri	*Purcell Tire & Rubber Co., Inc. v. Executive Beechcraft, Inc.*, 59 S.W.3d 505 (Mo. 2001)	"Limitation of liability to $1,250 in airplane inspection contract was not contrary to public policy. Clear unambiguous, unmistakable, and conspicuous limitations of negligence liability between sophisticated parties do not violate public policy. Although sophisticated businesses that negotiate at arms length may limit liability without specifically mentioning negligence, fault or an equivalent, the contract must effectively notify a party that he or she is releasing the other party from its own negligence."
Montana	*Spath v. Dillon Enterprises, Inc.*, 97 F. Supp. 2d 1215 (D. Mont. 1999).	Limitation of liability clause in an outfitter's contract was held unenforceable. Montana law prohibits exculpatory phrases contained in contracts, regardless whether the activity at issue implicates the public interest. Montana law prohibits exculpatory phrases contained in contracts where a party contracts to waive all liability toward the other party. *Miller v. Fallon*, cite omitted. *Miller* was distinguished by *Keeney Const. v. James Talcott* (cite omitted) wherein the court held a contract enforceable where it did not exculpate the party from all liability; rather, it provided the party with the option to direct the timing of completion.

State	Case	Standard of Interpretation
Nebraska	*Ray Tucker & Sons, Inc. v. GTE Directories Sales Corp*., 571 N.W.2d 64 (Neb. 1997).	Upholding limitation of liability in contract for placing telephone directory advertisement, finding it not to be contrary to public policy as it posed no threat to the safety or welfare of the general public, and as there was no disparity between bargaining positions.
Nevada	*J.A. Jones Const. Co. v. Lehrer McGovern Bovis, Inc*., 120 Nev. 277, 89 P.3d 1009 (2004); also *Bernstein v. GTE Directories Corp*., 631 F. Supp. 1551 (D. Nev. 1986) aff'd, 827 F.2d 480 (9th Cir. 1987) Contractual clause limiting liability to amount of advertising contract will be enforceable if the clause is written in clear and concise language and does not seek to immunize against gross negligence or willful misconduct.	"No damages for delay" provision of construction contract is enforceable notwithstanding delays not contemplated by the parties at the time they entered into the contract. However, no damages for delay provision of construction contract is not enforceable for delays so unreasonable in length as to amount to project abandonment; for delays caused by other party's fraud, misrepresentation, concealment, or other bad faith; or for delays caused by other party's active interference.
New Hampshire	NH RSA 338-A:2; NH RSA 338-A:1; *Colonial Life Ins. Co. of Am. v. Elec. Data Sys. Corp*., 817 F. Supp. 235, 239 (D.N.H. 1993); *Technical Aid Corp. v. Allen*, 134 N.H. 1, 23 (1991); *Shallow Brook Ass'n v. Dube*, 135 N.H. 40, 49 (1991)	An indemnification clause in a construction contract that requires "any party to indemnify any person or entity for injury to persons or damage to property not caused by the party or its employees, agents, or subcontractors, shall be void." Likewise, architects, engineers, and surveyors are prohibited from entering into contracts in which they are held harmless for any negligence on their part. Express limitations on damages, at least with respect to goods, are generally enforced unless there is fraud, bad faith, or a "total fundamental breach." Liquidated damages clauses will be enforced if the provision was a reasonable estimate of difficult-to-ascertain damage at the time the parties agreed to it and upon "retrospective appraisal." Liquidated damages clauses cannot constitute a penalty provision.

State	Case	Standard of Interpretation
New Mexico	*Lynch v. Santa Fe Nat. Bank*, 97 N.M. 554, 627 P.2d 1247 (Ct. App. 1981), distinguished in *Berlangieri v. Running Elk Corp.*, 132 N.M. 332, 48 P.3d 70 (Ct. App. 2002)	An exculpatory clause is strictly construed against the promisee, but should be enforced unless the promisee enjoys superior bargaining power or the performance of a public duty or public interest is involved. But, a release signed purporting to relieve party from liability for failure to exercise ordinary care to protect against risks of physical injury was unenforceable because "public policy imposes on commercial operators of recreational or sports facilities a non-disclaimable duty to exercise due care to avoid risks of physical injury to consumers."

State	Case	Standard of Interpretation
New Jersey	*Marbro, Inc. v. Borough of Tinton Falls*, 688 A.2d 159 (N.J. Super. Ct. Law Div. 1996).	Upholding limitation of liability clause contained within the contract of an engineer and a city. Parties to a contract may agree to limit their liability so long as the limitation is not violative of public policy. The clause did not shield the firm from all liability; if found negligent, the firm could be held liable up to $32,500 or the total fee for the project. the court found the clause clear and unambiguous.
New York	*Sear-Brown Group v. Jay Builders, Inc.*, 665 N.Y.S. 2d 162 (App. Div. 1997).	Limitation of liability clause found in agreement between contractor and engineer limiting the engineer's liability was enforceable. Absent language in the agreement to the contrary, however, limitation of liability clauses do not apply to misrepresentations made to induce a party to enter into an agreement. In addition, a party may not insulate itself with a limitation of liability clause and thereby avoid damages caused by gross negligence.
North Carolina	*Fortson v. Ross McClellan*, 508 S.E.2d 549 (N.C. Ct. App. 1998).	Releases are not favored in North Carolina law but they will be enforced unless they violate a statute, are gained through inequality of bargaining power, or are contrary to substantial public interest. Waiver signed in connection with training on motorcycle course was not enforceable because the same interests in public safety addressed by statue and case law are significantly present in motorcycle safety instruction. Having entered into the business of instructing the public in motorcycle safety, a party cannot by contract dispense with the duty to instruct with reasonable safety.
North Dakota	*Construction Associates, Inc. v. Fargo Water Equipment Co.*, 446 N.W.2d 237 (N.D. 1989).	The distinguishing case involved a "no class action" clause. The case is distinguishable from *Construction Associates* because the facts failed to demonstrate that enforcement of the disputed contractual provision would leave party without an effective remedy. The court concluded that the party failed to demonstrate that the “no class action” provision was substantively unconscionable

State	Case	Standard of Interpretation
Ohio	*Askenazi v. General Electric Co.*, 1997 Ohio App. LEXIS 3560 (Ohio 2nd DCA 1997).	A limitation of liability provision will be upheld when the language in the contract is straightforward and the bargaining positions or experience of the parties did not render the contract procedurally unconscionable.
Oklahoma	*Elsken v. Network Multi-Family Security Corp.*, 49 F.3d 1470 (10th Cir. 1995).	Upheld limitation of liability in alarm services agreement where the contract was properly executed by both parties and the parties dealt with each other at arms' length; failure of the customer to read the contract did not void the clause.
Oregon	*Estey v. Mackenzie Engineering. Inc.*, 927 P.2d 86 (Or. 1996).	Limitation of liability clause did not limit an inspector's liability for the negligent inspection of a residence, because the clause did not clearly and unequivocally express an intent to limit the inspector's liability for the consequences of his own negligence. The inspector's attempt to characterize the transaction as "high risk, low cost" was not persuasive.

State	Case	Standard of Interpretation
Pennsylvania	*Valhal Corp. v. Sullivan Associates, Inc*., 44 F.3d 195 (3d Cir. 1995).	Clause limiting the liability of engineer to $50,000 or the engineer's fee for services was upheld, as the clause did not immunize the engineer from its negligence or remove the incentive to perform with due care, and the parties to the contract were sophisticated and dealt in arms-length negotiation.
Rhode Island	R.I.G.L. § 6-34-1; *E.H. Ashley & Co., Inc. v. Wells Fargo Alarm Services*, 907 F.2d 1274 (1st Cir. 1990); *Psaty & Fuhrman Inc., v. Housing Authority of City of Providence*, 68 A.2d 32, 38 (R.I. 1949)	An indemnification clause in a construction contract requiring the promisor to indemnify the promisee for "damages arising out of bodily injury to persons or damage to property proximately caused by or resulting from the negligence of the promisee" is void. A limitation of liability clause in contract for burglar alarm services that limited liability to the lesser of the annual charge or $10,000 was not an unconscionable contract of adhesion under Rhode Island law because the parties dealt at arm's length, the contract specifically stated that burglar alarm service company was not an insurer and that it would not be liable for loss through theft, customer was separately insured against theft of its merchandise, and there was no indication of unfair surprise or that contract was anything other than commercially sensible arrangement. Courts will enforce agreed-upon liquidated damages clauses provided that measuring the actual damages would be difficult to ascertain at the time of contracting and the fixed amount of damages is fair.
South Carolina	*Georgetown Steel Corp. v. Law Eng'g Testing Co*., 7 F.3d 223 (4th Cir. 1993) (unpublished opinion)	Upholding clause in soils analysis agreement limiting damages to $50,000 or the engineer's fee, including a clause providing for waiver of this limitation in the event the client agreed to pay additional consideration. Even though exculpatory clauses are disfavored, this clause was enforceable because the parties were of equal bargaining power, the other party was made aware of the limitation of liability provision, and it was plainly written and easily read in the single-page general conditions to the agreement.

State	Case	Standard of Interpretation
South Dakota	*Lucero v. Van Wie*, 598 N.W.2d 893 (S.D. 1999). *Johnson v. Rapid City Softball Ass'n.*, 514 NW 2d 63, 697-98 (S.D. 1994).	Limitations of liability in connection with sale of real property was upheld where neither party was in a superior bargaining position, the provision was negotiated, and there was no public interest involved in a private real estate purchase. Summary judgment reversed where issue of fact existed whether injured softball was aware she was signing release. A release is contractual in nature and governed by the law of contracts. To be valid, a release must be fairly and knowingly made. A release is not fairly made and is invalid if the nature of the instrument was misrepresented or there was other fraudulent or overreaching conduct.
Tennessee	Tenn. Code § 62-6-123; *Olson v. Molzen*, 558 S.W.2d 429 (Tenn. 1977); *Carey v. Merritt*, 148 S.W.3d 912 (Tenn. Ct. App. 2004); *Russell v. Bray*, 116 S.W.3d 1 (Tenn. Ct. App. 2003); *Lomax v. Headley Home*, 02A01-9607-CH-00163, 1997 WL 269432 (Tenn. Ct. App. May 22, 1997) *V.L. Nicholson Co. v. Transcon Inv. & Fin., Ltd.*, 595 S.W.2d 474 (Tenn. 1980).	An indemnification clause in a construction contract requiring promisor to indemnify promisee for "liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the promisee . . . is against public policy and is void and unenforceable." A limitation-of-liability clause may be valid and enforceable. For engineers and other construction professionals, clauses limiting or avoiding liability for professional negligence are enforceable if the clauses meet a six-factor test that includes inquiry whether there are any options to obtain additional protection by paying additional fees. One court held that a lender who had assumed a duty under the construction loan agreement to inspect the progress of the construction and to disburse funds only in proportion to its report of progress could not wholly limit its liability in connection with the inspection and completion of construction. Liquidated damage provisions will be upheld if the agreed-damages are reasonably proportionate to actual damages in contemplation of parties when the contract was made, the actual damages are uncertain and difficult of proof, and the promisee cannot be placed in as good a position as if no breach of contract had occurred.

State	Case	Standard of Interpretation
Texas	*Arthur's Garage, Inc. v. Racal-Chubb Security Systems*, 997 S.W.2d 803 (Tex. Ct. App. 1999).	Upholding limitation of liability in alarm system contract because an agreement to limit one's liability for future negligence is enforceable if the agreement does not violate public policy and there is no disparity of bargaining power between the parties.
Utah	*DCR Inc. v. Peak Alarm Co*., 663 P.2d 433, 37 A.L.R.4th 35 (Utah 1983); also *W. Engineers, Inc. v. State By & Through Rd. Comm'n*, 20 Utah 2d 294, 437 P.2d 216 (1968).	Limitation of liability clause in burglar alarm monitoring contract was vague, and failed to specify whether the limitation covered damages arising out of contract and tort, or just contract. Limitation of liability provisions are upheld only if they clearly and unequivocally express an intent to limit the defendant's liability. No damages for delay clauses are generally enforceable except in cases of fraud or active interference, delay sufficient to be deemed an abandonment of the contract, delay not specifically contemplated and delay which was not intended nor contemplated to be within purview of the clause.
Vermont	*Lamoille Grain Co., Inc. v. St. Johnsbury & Lamoille County R.R.*, 369 A.2d 1389, 1390 (Vt. 1976); 12 Vt. Stat. 181; *Housing Vermont v. Goldsmith & Morris*, 685 A.2d 1086 (Vt. 1996); *Glassford v. BrickKicker*, 35 A.3d 1044 (Vt. 2011); *New England Educ. Training Serv., Inc. v. Silver Street P'ship*, 595 A.2d 1341 (Vt. 1991)	Agreements to indemnify for another's sole negligence are not per se unconscionable and will be enforced under contract law provided there is a clear understanding and unmistakable intention between the parties. However, according to the Vermont Statute of Frauds, indemnification agreements ("special promises to answer for the debt, default, or misdoings of another") must be in writing. In a home inspection contract, a limitation of liability clause combined with a binding arbitration clause resulted in an illusory remedy for the consumer and therefore was unconscionable. Exculpatory clauses are enforceable, but cannot be against public policy per the standards from *Tunkl v. Regents of University of California*. Liquidated damages clauses are disfavored but will be enforced if damages arising from breach would be difficult to calculate, the fixed sum reflects a reasonable estimate of likely damages, and the application of the clause is not a penalty.

State	Case	Standard of Interpretation
Virginia	Va. Code § 11-4-4; Va. Code § 2.2-4335; *Fid. & Cas. Co. of New York v. Copenhaver Contracting Co.*, 159 Va. 126, 165 S.E. 528 (1932).	Provisions contained in construction contracts between architects/engineers and a public body that purport to "hold harmless another party to the contract against liability for damage arising out of bodily injury to persons or damage to property suffered in the course of the performance of the contract, caused by or resulting solely from the negligence of such other party . . . is against public policy and is void and unenforceable." In addition "any provision contained in any public construction contract that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or on behalf of his subcontractor if and to the extent the delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control shall be void and unenforceable as against public policy." Reasonable provisions for liquidated damages are enforceable.
Washington	*Conradt v. Four Star Promotions, Inc.*, 728 P.2d 617 (Wash. Ct. App.1986).	Upholding limitation of liability in release signed in connection with a demolition race as sufficiently conspicuous and unambiguous in the absence of gross negligence on the part of the party shielded from liability.

State	Case	Standard of Interpretation
West Virginia	W.Va. Code § 55-8-14; *Stonebraker v. Zinn*, 286 S.E.2d 911 (W. Va.1982); *Murphy v. North American River Runners, Inc.*, 412 S.E.2d 504 (W.Va. 1991); *Finch v. Inspectech, LLC*, 727 S.E.2d 823 (W.Va. 2012); *W.Va. Public Employees Ins. Bd. v. Blue Cross Hospital Service, Inc.*, 328 S.E.2d 356 (W.Va. 1985)	A provision in a construction contract "purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the indemnitee . . . is void and unenforceable and no action shall be maintained thereon." To invoke this prohibition, the indemnitee must be found 100 percent responsible for the injury. A limitation-of-liability provision may be invalidated as contrary to public policy if it absolves a party of liability for failure to conform to a statutorily imposed standard of conduct. Otherwise, in the absence of an applicable statute, a plaintiff who expressly and, under the circumstances, clearly agrees to accept a risk of harm arising from the defendant's negligent or reckless conduct may not recover for such harm when an express agreement is freely and fairly made between parties who are in an equal bargaining position. Liquidated damages provisions will be enforced so long as it appears that at the time of contracting damages from a breach are not capable for calculation, the fixed damages do not constitute a penalty, and the fixed damages are not grossly disproportionate to actual damages.
Wisconsin	*Wausau Paper Mills Co. v. Chas. T. Main, Inc.*, 789 F.Supp. 968 (W.D. Wis. 1992).	Limitation of liability clause excluding owner's consequential damages enforceable in construction agreement between owner and engineer. The clause did not bar the owner from seeking all damages for losses, only those for economic loss. Further, the engineering firm was not in a more powerful position than the owner when the parties were engaging in arms-length negotiations over three months.
Wyoming	*Massengill v. S.M.A.R.T. Sports Med. Clinic, P.C.*, 996 P.2d 1132, 1136 (Wyo. 2000)	Waiver of liability in contract between member and gym was enforceable. Court applies four-part test for evaluating a negligence exculpatory clause. The factors the court considers are: (1) whether a duty to the public exists; (2) the nature of the service performed; (3) whether the contract was fairly entered into; and (4) whether the intention of the parties is expressed in clear and unambiguous language.

State	Case	Standard of Interpretation