Retroactive Revival Of Liability By Legislation

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The US Supreme Court sometimes makes news by refusing to hear cases, not by taking them. That was certainly the case on May 29, 2012 when the Supreme Court declined to hear a case in which Minnesota's high court upheld state legislation that made a design and engineering firm liable for a bridge collapse even though liability had previously ended under another statute.

Essentially, the State found itself on the hook to third parties for $36.6 million related to the bridge and the legislature decided to pass a new law, changing the rules and making the design and engineering firm liable, even though they were no longer liable under existing statutes.

The court's rationale was that the interest of the State in reimbursement outweighed the property interest of the design and construction firm. What property interest, you ask? The property interest the design and engineering firm obtained when the old statute expired.

This case makes you wonder what limits there might be on state action that retroactively revives liability on private parties who operate on the assumption that extinguished liability is not subject to resurrection.

In the case at hand, the Minnesota high court held that the revival statute was (as noted in an article from ConstructionPro Network) "narrowly tailored to address a unique catastrophe that created a compelling state interest."

Still, does this mean a state legislature can ignore existing laws which extinguish liability and use new legislation to revive liability on private parties whenever the state finds itself on the hook as a result of damage or loss?

The implications of the Minnesota case go beyond the construction industry and potentially impact any type of business that operates in a legal environment in which liability has been extinguished. How does one plan for the possibility of revived liability? How do insurance companies address this possibility? Does the Minnesota case represent a wide-ranging problem for commercial enterprise? Or is it a unique and rare occurrence of limited impact.

Time will provide a clearer answer. Until then, commercial enterprise of all sorts need to consider the potential of revived liability in business planning and financial reserves to counter any adverse consequence.

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