Abstract

This paper provides an overview of the laws of each state in the United States with respect to limitations of liability, exclusions of damages, disclaimers of warranties and limitations of remedies. The intended audience of this paper is contract negotiators and contracts administration staff. The reader is assumed to be familiar with the risks and contractual issues associated with commercial contracts in general and technology, outsourcing and/or consulting contracts in particular. Accordingly, the paper focuses on providing short, conclusory answers.

Because the focus of this paper is a brief overview of the laws in the fifty states, it is important to note what We did and did not cover. Our research was guided by the following questions:

- **Limitations of Liability** – Are contractual caps, ceilings, or limits on direct damages enforceable? Are agreements that attempt to exclude all indirect damages enforceable?

- **Damages** – Does the state have any blanket limits on the amount of punitive or consequential damages that a party may recover?

- **Disclaimers/Limitations of Warranty** – Are disclaimers of any and all implied warranties enforceable in the state? Can remedies be limited to those express remedies solely and exclusively provided for in a contract?

- **Dispute Resolution** – When the state is a party to a suit, does the state have in place any mandatory dispute resolution procedures such as venue requirements, jury trial requirements, or a requirement that the state must exhaust mandatory administrative procedures before filing a lawsuit?

We obtained our answers through examination of state statutes, state court cases, and Attorney General Opinions. In many of the states we did not find that the sovereign was governed by different contract rules than were private commercial entities. However, the issue has not been explicitly addressed by the highest courts of many states.

We did not include a state by state determination of whether technology contracts would be considered by a court to be a contract for the sale of goods, thereby making it subject to the Uniform Commercial Code ("U.C.C.") as opposed to a contract for services. Much of the existing body of law covers sales of goods and the enforceability of limitation of liability provisions under the common law is less clear. Because it appears that technology contracts should be governed by the U.C.C., the research in this document assumes that client contracts are contracts for the sale of goods.

In our discussion of the enforceability of limitation of liability provisions, we focused on obtaining a general answer. There are several states that will generally enforce limitations of liability but will void them if the party seeking protection has breached a contract intentionally or in bad faith. Where we came across such cases, they were included in our research results.