



BASSFORD REMELE

# Legal Foundations

A Publication of the Construction Practice Group

**NOVEMBER 2023**

**Save the Date**  
For the  
Bassford Remele  
Construction  
Summit 2/8/24

**Special Analysis**  
of the Legislative  
Update



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Nothing in this publication creates an attorney-client relationship between the reader and Bassford Remele, P.A. This publication is an advertising material that contains educational content, but this content is not to be construed as legal advice.



# From the Practice Group Chairs

On behalf of Bassford Remele's construction practice group, we are excited to announce the first edition of *Legal Foundations with Bassford Remele*—a quarterly publication that is tailor-made for leaders in the real estate and construction industries.

This Quarterly contains insights into the law that may directly or indirectly affect the everyday issues that our readers are facing. It also contains an update on what the members of our construction practice group are doing and upcoming planned events.

This issue focuses on Minnesota's historic 2023 legislative session. Democrats took control of both chambers of the Minnesota legislature for the first time since 2014. Democrats' majority is extremely slim, creating immense pressure on the Party's leaders to get their legislative goals done before Republicans retake the House, Senate, and/or the Governor's mansion. This sense of urgency has led to an unusually high number of bills being put up for a vote, many of which have been or are expected to be signed into law by Democratic Governor Tim Walz. For better or worse, this resulted in many changes in the law that will have far-reaching effects on the real estate and construction industries.

In this issue you will find articles on some of the most important changes to the law that are going to affect the real estate and construction industries: changes to the "anti-indemnity statute", the legalization of marijuana and the impact that will have on employee rights, Minnesota's ban on non-compete provisions, and Minnesota's Wage Theft Prevention Act's new provision that is specific to the construction industry.

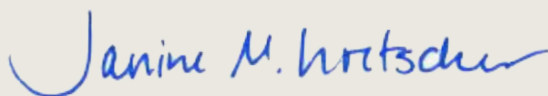
We are also excited to announce a number of recognitions that our construction practice group members have received, such as Real Estate Attorney of the Year finalist, *Best Lawyers in America*, Ones to Watch, Super Lawyers and Rising Stars. Lastly, we hope that you save the date for our inaugural Construction Law Summit. It is scheduled for the afternoon of Thursday, February 8, 2024 at the Oak Ridge Country Club. You can email us with a request for a Save the Date, and more details will be sent out in an invitation. Thank you for your time and attention!

Best Regards,



Kyle Willems  
kwillems@bassford.com

*Construction Practice Group Co-Chairs*



Janine Loetscher  
jloetscher@bassford.com



# Team Member Intro

## **MICHAEL PFAU**

Michael Pfau recently joined Bassford Remele. Michael is a litigator, focusing his practice in the areas of commercial litigation, construction, consumer law defense, and employment law. He has first-chair trial experience and conducted oral arguments at the Minnesota Court of Appeals. Michael also has handled administrative appeals at both the Minnesota Department of Revenue and the Internal Revenue Service.

### **Where are you from?**

Fargo.

### **What do you do in the construction industry?**

I help construction and construction-related companies navigate complex and evolving legal and regulatory challenges so that they may continue to grow and build with peace of mind.

### **How would you describe your job to a five-year-old?**

I argue my side of the story to a judge or a group of people and then the other lawyer argues his/her side of the story; then we get told which side wins at the end.

### **What did you want to be when you grew up?**

It was always between an architect and a tornado chaser.

### **What is the best superpower?**

Teleportation.

### **Do you play any sports?**

I am in a dodge ball league and I regularly lift weights. I also did my first Tough Mudder this year and will definitely be doing that annually.

### **You can only eat one food for the rest of your life. What is it?**

New York Strip Steak.

### **What is a weird food you have tried?**

Not the weirdest, but I do really like escargot.

### **Favorite season?**

Summer.



## **BASSFORD REMELE CONSTRUCTION TEAM**

Janine M. Loetscher, Co-Chair

Kyle S. Willems, Co-Chair

Andrew L. Marshall

Steven M. Sitek

Kristin L. Kingsbury

Bryce D. Riddle

James C. Kovacs

Beth L. LaCanne

Benjamin D. Gilchrist

Michael J. Pfau

# Accolades



**Kyle Willems** was a Real Estate Lawyer of the Year finalist for the 2023 Minnesota Real Estate Awards. He has been named to the Minnesota Rising Stars list by *Super Lawyers* and Best Lawyers: Ones to Watch. Kyle was also

selected to the 2023 *Minnesota Monthly* Top Lawyers list in Construction Law. This list was generated from a survey collectively run by Professional Research Services and *Minnesota Monthly* in which actively practicing attorneys were eligible to vote for their fellow attorneys that they believe are the best in their field of law. Kyle serves on the Minnesota State Bar Association Construction Law Section Council and the Associated General Contractors of Minnesota's Legislative and Contract Documents committees.



**Janine Loetscher** was selected to serve as the Legal Advisor of the Association of Women Contractors. She was also named to the Minnesota *Super Lawyers* and *Best Lawyers* lists in the Construction arena.



**Andrew Marshall** was selected to the Minnesota *Super Lawyers* list. Andy is committed to serving the community in which he works and lives and is recognized as a North Star Lawyer by the Minnesota State Bar Association. The program recognizes members who provide 50 hours or more of pro bono legal services per year to people who otherwise could not afford representation.



**Steven Sitek** was selected to the Minnesota *Super Lawyers* and named to the 2023 *Minnesota Monthly* Top Lawyers list. Steve is a Minnesota State Bar Association Certified Civil Trial Specialist, a certification awarded to less than 3% of trial attorneys in Minnesota.



**Kristin Kingsbury** was selected to the Minnesota *Super Lawyers* list.



**Bryce Riddle** was named to the Minnesota Rising Stars list by *Super Lawyers*.



**Beth LaCanne** was named to the Minnesota Rising Stars list by *Super Lawyers*. The Minnesota Supreme Court appointed Beth to serve a four-year term on the Commission on Judicial Selection for the Tenth Judicial District. Beth was also elected Treasurer of the Hennepin County Bar Foundation.

# Recent Articles

Our Construction team has been busy monitoring the legislative changes.

## **Tightening the Screws on Wage Theft: Minnesota's Wage Theft Prevention Act**

Beth LaCanne

In March 2023, the Minnesota Attorney General's Office indicated an intent to increase its efforts to enforce Minnesota's Wage Theft Protection Act ("WTPA"), which has been effective since July 2019. Shortly after the WTPA became law in July 2019, the Minnesota Attorney General's Office identified industries where wage theft was most problematic, and one of the industries called out was the construction industry. With the increased enforcement, and the recent legislation that expands liability under the WTPA to general contractors, those in the construction industry should be vigilant about compliance with the WTPA.

*For a more detailed discussion regarding the WTPA, you can read the full article here: [www.bassford.com/uploads/announcements/Bassford-Wage-Theft.pdf](http://www.bassford.com/uploads/announcements/Bassford-Wage-Theft.pdf).*

## **Preparing for the Legalization of Marijuana**

Beth LaCanne

August 1, 2023, marks a new era in Minnesota. Recreational cannabis and its metabolites are no longer illegal to consume for individuals over 21. With the legalization of cannabis and its metabolites for anyone over 21, employers may need to adjust their policies as they relate to their employees' use of cannabis and its metabolites, particularly if the use occurs during an employee's personal time.

*For more a detailed discussion regarding the impact of the legalization of cannabis and its metabolites on employers, please read Beth's article at [www.bassford.com/uploads/announcements/Bassford-DATWA-and-Legalization-Marijuana.pdf](http://www.bassford.com/uploads/announcements/Bassford-DATWA-and-Legalization-Marijuana.pdf).*

Kyle Willems and Beth LaCanne also presented *Getting Into the Weeds: Navigating Cannabis Legalization in Minnesota* for the Associated General Contractors of Minnesota. Kyle and Beth provided important details on what companies need to understand regarding the new law legalizing adult-use cannabis and how it applies to the construction industry. If you are interested in the materials from this presentation, please contact Kyle or Beth.

## **Minnesota Bans Non-Compete Provisions and What It Means for Minnesota Construction Companies** | Janine Loetscher and Michael Pfau

The close of Minnesota's 93rd legislative session brought some major changes to Minnesota law, and in particular, employment law in various contexts. Read about how changes to non-compete provisions, which applies to both employees and independent contractors, may directly affect construction companies and learn how to be best prepared for the anticipated industry changes: [www.bassford.com/uploads/announcements/Bassford-Covenant-Not-to-Compete-Laws.pdf](http://www.bassford.com/uploads/announcements/Bassford-Covenant-Not-to-Compete-Laws.pdf).

## **An Important Change for Minnesota's Anti-Indemnity Statute and What It Means for Minnesota Construction Companies**

Kyle Willems and James Kovacs

One of the most important statutes governing construction contracts is Minnesota Statute § 337.02, commonly referred to as the "Anti-indemnity Statute." The Anti-indemnity Statute applies to public and private construction contracts, and it governs the enforceability of a construction contract's indemnity provision.

The Anti-indemnity Statute has not been changed since 2013, meaning there has been some stability about what the statute means and how it is to be applied by construction professionals when they are negotiating contracts. The Minnesota legislature revised the Anti-indemnity Statute a second time in 2023. The revisions came into effect on May 25, 2023. The primary change to the Anti-indemnity Statute is not actually a change to the Anti-indemnity Statute itself. It is the addition of the word "defend" to the definition of "indemnification agreement" under Minnesota Statute 337.01, Subd. 3, which is the statute you should look to when you are interpreting the anti-indemnity statute.[1] The new definition of "indemnification agreement" is as follows:

"Indemnification agreement" means an agreement by the promisor to indemnify, **defend**, or hold harmless the promisee against liability or claims of liability for damages arising out of bodily injury to persons or out of physical damage to tangible or real property.

Id. (Emphasis added on the change).

The addition of the word "defend" to the definition of "indemnification agreement," and

in light of the provisions of the anti-indemnity statute, now means that a promisor (i.e., a property owner, general contractor, etc.) cannot require a promisee (i.e., a subcontractor or material supplier) to defend and indemnify the promisor for indemnity and now defense costs that do not arise out of the promisee's wrongful acts. The full article gives some real world examples of how the change to the duty to defend might work.

You can read it here: [www.bassford.com/uploads/announcements/Bassford-Changes-to-MN-Anti-Indemnity-Statute.pdf](http://www.bassford.com/uploads/announcements/Bassford-Changes-to-MN-Anti-Indemnity-Statute.pdf)

**Keeping An Eye on the Clock: Important Legal Deadlines That Construction Professionals Should Be Tracking** | Kyle Willems and Benjamin Gilchrist

Construction is an industry obsessed with deadlines, and seasoned professionals are used to tracking project-related deadlines. But, even the most seasoned professionals might not be as good at tracking legal deadlines as they are at tracking normal project-related deadlines. Perhaps this is because legal disputes are not very common and therefore not part of routine practice. It might be because it is more fun to track deadlines that have to do with getting paid versus those that might require a call to your lawyer. While legal deadlines are not fun to track and you hope they never become relevant, the failure to track them can have devastating consequences.

This article provides construction professionals with 1) a summary of two categories of legal deadlines and how to find them, 2) a summary of best practices for tracking deadlines, and 3) a table that can serve as a cheat sheet for some of the most common legal deadlines.

**Minnesota Insurance Deskbook**  
Janine Loetscher and Beth LaCanne

Janine Loetscher and Beth LaCanne authored the "Construction Litigation Coverage" chapter of the Minnesota Insurance Deskbook, 5th Edition. Janine also co-authored the "Bad Faith and Wrongful Refusal to Settle: Liability in Excess of Policy Limits" chapter.

**The full articles can be found at [www.bassford.com/practice-groups/construction](http://www.bassford.com/practice-groups/construction) or here:**



# Presentations

**Construction Contracts**, Associated General Contractors of Minnesota, September 2023 (Kyle Willems)

**Exploring the Legal Landscape of First-Party and Third-Party Bad Faith**, Minnesota CLE, September 2023 (Janine Loetscher)

**Minnesota Employment Legislative Updates**, Insuperity, July 2023 (Kristin Kingsbury and Beth LaCanne)

This year's Minnesota legislative session was the most active in recent memory. During this webinar, the presenters reviewed and answered questions about the new employment laws that were passed this year.

**The Impact of Cannabis Legalization in the Workplace**, The Work Week with Bassford Remele, July 2023 (Beth LaCanne)

**Getting Into the Weeds: Navigating Cannabis Legalization in Minnesota**, Associated General Contractors of Minnesota, June 2023 (Kyle Willems and Beth LaCanne)

Kyle and Beth provided important details on what companies need to understand regarding the new law legalizing adult-use cannabis and how it applies to the construction industry.

**Office Market Update - State of the Market**, Minnesota Real Estate Journal Mid-Year Forecast Summit, June 2023 (Kyle Willems, moderator)

**High Exposure from High Tech: Preparing for Legal Risks Posted by High Tech Advancements in the Construction Industry**, Associated General Contractors of Minnesota, January 2023 (Kyle Willems)

The presentation addressed some of the latest technological developments in the construction industry and the legal risks they pose for contractors. It also addressed contractor strategies related to contracts, insurance, and best practices to mitigate risks while utilizing these technologies to increase efficiency, reduce cost, and promote safe worksites.

**Avoiding Disputes, Winning Disputes & Construction Finance**, Minnesota Real Estate Journal Construction Summit, January 2023 (Kyle Willems)





# 2024 ANNUAL Construction Law Summit

**SAVE THE DATE** for Bassford Remele's 2024 Annual Construction Law Summit, presented with WIPFLI and Lockton

Thursday, February 8, 2024 | Noon—5:30 p.m. | Oak Ridge Country Club

## SCHEDULE

- |             |  |
|-------------|--|
| 12:00-12:30 | Registration and lunch   |
| 12:30-1:15  | Welcome and <i>Strategies and Considerations for Construction Professionals Who Are Thinking About Investing and Succession Planning in Closely-Held Companies</i> |
| 1:25-2:05   | <i>Legislative Update</i>  |
| 2:15-3:00   | <i>Hot Trends in the Construction Industry and What You Need to Know About These Trends</i>  |
| 3:00-4:00   | <i>The Cutting Edge: Important Technological Developments in an Industry That Can Give Your Company an Edge</i>  |
| 4:00-5:30   | Happy Hour   |

## RSVP TO

<https://mailchi.mp/bassford.com/construction-summit-2-8-24>



**WIPFLI**

