**Ceiling Collapse**[[1]](#footnote-1)

**Information for the Mediator**

You were a litigation attorney for 20 years, primarily for the defense but occasionally the plaintiff's side, before taking up mediation five or six years ago. What you know about the ceiling collapse case was gleaned solely from the parties' submissions. The substance is summarized in the General Information sheet.

In preparation for the mediation you have reviewed the state Wrongful Death Statute. The statute limits the recovery of the decedent’s estate to (1) the deceased's pain and suffering, if any, and (2) the value of loss of the deceased’s financial support, companionship and consortium to members of the estate—the deceased's family. It does not permit recovery for grief and suffering by the family members.

Because you understood that one of the defendants has raised an indemnification claim against the other, you also briefly reviewed the relevant case law to confirm that the courts in this state are unlikely to permit parties to contract away responsibility for their own negligence. Although courts have enforced such provisions in very specific circumstances—where the clause was the subject of careful and informed negotiation, and where circumstances would make it impossible to fairly allocate or control future liability—they are loathe to do so. Rather, the courts have recognized a strong public policy in favor of making negligent parties bear the consequences of their negligence.

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