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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Milton G. Kimpson, Circuit Court Judge

Appellate Case No. 2026-001292
Case No.: 2024-CP-40-07265

Eagle House Mitigation Bank, LLC, Respondent,

v.

WSP USA, Inc., Appellant

AND

WSP USA, Inc., Third-party Plaintiff

v.

H2O Mitigation Services, LLC and Pond & Company, Inc., Third-Party Defendants.

INITIAL BRIEF OF APPELLANT WSP USA, INC.

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STATEMENT OF ISSUES ON APPEAL

I. DID THE TRIAL COURT ERR IN DETERMINING THAT THE CONTRACTUAL CAP ON LIABILITY AND DAMAGES DOES NOT APPLY TO THE CLAIMS AT ISSUE?

STATEMENT OF THE CASE

Respondent Eagle House Mitigation Bank, LLC (“Eagle House” or “Respondent”) initiated this lawsuit on or about December 13, 2024, asserting claims for breach of contract and breach of warranties against Appellant WSP USA, Inc.¹ (“WSP” or “Appellant”) arising from services WSP and its predecessor-in-interest provided to Eagle House pursuant to a 2021 Professional Services Agreement. (*See generally*, Summons and Complaint) (R. ____). The services provided by WSP for Eagle House related to the restoration of streams and wetlands in Fairfield County, South Carolina. (Complaint ¶¶ 8-10) (R. ____).

WSP Answered the Complaint on or about March 3, 2025, denying the material allegations and asserting as its Eleventh Affirmative Defense the contractual limitation of liability and damages in the Professional Services Agreement. (*See generally*, Answer) (R. ____). WSP also asserted third-party claims against H2O Mitigation Services, LLC (“H2O”) and Pond & Company, Inc. (“Pond”).

On September 5, 2025, WSP filed a Motion for Partial Summary Judgment as to both of Eagle House’s causes of action and as to WSP’s Eleventh Affirmative Defense, arguing that the contractual limitation on liability and damages in the Professional Services Agreement limits Eagle House’s damages to no more than \$50,000.00. (*See* WSP’s Motion for Summary Judgment) (R. ____). A hearing was held on WSP’s Motion on November 4, 2025 before the Honorable Milton

¹ The initial Complaint named WSP USA Environment & Infrastructure, Inc. as the Defendant. WSP, USA, Inc. is the successor to WSP USA Environment & Infrastructure, Inc. and was substituted in as the Defendant via a February 25, 2025 Consent Motion to Substitute Parties.

G. Kimpson, Circuit Court Judge. (Transcript) (R. ____). On December 3, 2025, the circuit court denied WSP's Motion, construing the contractual limitation on damages in the Professional Services Agreement as only applicable to negligence claims. (Dec. 3, 2025 Order) (R. ____)(the "Order"). WSP timely sought reconsideration of the Order on December 11, 2025. (See WSP's Motion for Reconsideration) (R. ____). WSP's Motion for Reconsideration was denied on May 8, 2026. (May 8, 2026 Order) (R. ____). WSP filed and served its Notice of Appeal on June 4, 2026. (June 4, 2026 Notice of Appeal) (R. ____).

STANDARD OF REVIEW

The interpretation of a clear and unambiguous contract presents a question of law. *Canal Ins. Co. v. Nat'l House Movers, LLC*, 414 S.C. 255, 260, 777 S.E.2d 418, 421 (Ct. App. 2015). Questions of law are reviewed by this Court de novo. *Town of Summerville v. City of North Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

Likewise, an order granting or denying summary judgment is reviewed de novo when, as here, the appeal turns upon the interpretation of an unambiguous contract rather than the resolution of disputed issues of material fact. *Rodarte v. University of South Carolina*, 419 S.C. 592, 600–01, 799 S.E.2d 912, 916 (2017).

Accordingly, this Court owes no deference to the circuit court's construction of the Professional Services Agreement and must determine for itself whether the contractual limitation of liability and damages is enforceable according to its plain language.

STATEMENT OF FACTS

Eagle House is a mitigation banker that restores degraded streams and wetlands in exchange for environmental mitigation credits. (Complaint ¶¶ 7-10) (R. ____). After a degraded area is restored to an adequate state, a mitigation banker like Eagle House may be permitted to sell

mitigation credits to others who intend to engage in construction projects that will negatively affect a stream or wetland within the approved service area. (Complaint ¶ 8) (R. ____). The United States Army Corps of Engineers (“USACE”) determines whether mitigation credits will ultimately be released for sale. (Complaint ¶ 10) (R. ____).

On September 21, 2021, Wood Environment & Infrastructure Solutions, Inc. (“Wood”), WSP’s predecessor-in-interest, entered into a Professional Services Agreement (“PSA”) with Eagle House to provide professional consulting services for Eagle House’s mitigation bank project in Fairfield County, South Carolina. (Complaint, Ex. A) (R. ____). The PSA required Wood to provide, among other things, pre-construction support, construction quality assurance, and preparation of an as-built report. (*Id.*) (R. ____).

In its Complaint, Eagle House admits that it “agreed to the terms of Wood’s Professional Services Agreement...” which is attached to the Complaint as Exhibit A, along with Wood’s proposal for the Project. (Complaint ¶ 12) (R. ____). The PSA was negotiated and executed for Eagle House by Michael Tighe, the Manager of Eagle House and a founding member of the law firm Callison Tighe. (Complaint, Ex. A) (R. ____). Mr. Tighe is an experienced attorney and mitigation banker. (WSP’s Motion for Summary Judgment ¶ 4) (R. ____).

The PSA contains a limitation of liability which provides in relevant part:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIENT AGREES THAT THE LIABILITY OF WOOD TO CLIENT FOR ANY AND ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, CONTRIBUTION, ASSERTED BY CLIENT AND ARISING OUT OF OR RELATED TO THE NEGLIGENT ACT(S), ERROR(S) OR OMISSION(S) OF WOOD IN PERFORMING SERVICES, SHALL BE LIMITED TO FIFTY THOUSAND DOLLARS (\$50,000) OR THE TOTAL FEES ACTUALLY PAID TO WOOD BY CLIENT UNDER THIS AGREEMENT WITHIN THE PRIOR ONE (1) YEAR PERIOD, WHICHEVER IS LESS (“LIMITATION”). CLIENT HEREBY WAIVES AND RELEASES (I) ALL PRESENT AND FUTURE CLAIMS AGAINST WOOD OTHER THAN THOSE DESCRIBED IN THE PRECEDING SENTENCE, AND (II) ANY LIABILITY OF WOOD IN EXCESS OF THE

LIMITATION.

In consideration of the promises contained herein and for other separate, valuable consideration, the receipt and sufficiency of which are hereby acknowledged, CLIENT acknowledges and agrees that (I) but for the Limitation, Wood would not have performed the Services, (II) it has had the opportunity to negotiate the terms of the Limitation as part of an “arms-length” transaction, (III) the Limitation amount may differ from the amount of professional liability insurance carried by Wood, (IV) the Limitation is merely a limitation of, and not an exculpation from, Wood’s liability and does not in any way obligate CLIENT to defend, indemnify or hold harmless Wood, (V) the Limitation is an agreed remedy, and (VI) the Limitation amount is neither nominal or a disincentive to Wood performing the Services in accordance with the Standard of Care.

Wood and CLIENT each hereby waive any right to recover from the other party for any special, incidental, indirect, or consequential damages (including, but not limited to: loss of use, loss of revenue, loss of profit, loss of contracts, loss of product or production, or loss of business opportunity) incurred by either Wood or CLIENT or for which either party may be liable to any third party, which damages have been or are occasioned by services performed or reports prepared or other work performed hereunder.

(Complaint, Ex. A ¶ 10) (R. _____).

Eagle House’s Complaint alleges that WSP failed to “utilize[e] the degree of skill and care ordinarily exercised under similar conditions by reputable members of Wood’s profession practicing in the same or similar locality at the time of performance.” (Complaint ¶¶ 22-23) (R. _____). Eagle House further alleges that “[b]ecause of WSP’s defective acts and omissions, USACE has declined to release credits to Eagle House for sale...” (Complaint ¶ 24) (R. _____).

ARGUMENTS

I. The Circuit Court Erred As a Matter of Law By Refusing to Enforce the Unambiguous Limitation Of Liability Provision in the Professional Services Agreement.

This appeal concerns a question of contract interpretation. The parties negotiated a Professional Services Agreement that allocates the risk associated with professional services by limiting WSP’s liability for “any and all causes of action” arising out of or related to WSP’s

negligent acts, errors, or omissions. Eagle House expressly agreed that WSP would not have undertaken the engagement absent that limitation and further agreed to waive any liability exceeding the contractual cap.

The circuit court nevertheless concluded that the limitation applies only to causes of action expressly denominated as negligence claims and therefore has no application to Eagle House's breach of contract and warranty claims. That conclusion cannot be reconciled with either the language of the PSA or settled principles of South Carolina contract law.

The issue is not whether Eagle House labeled its causes of action as breach of contract or breach of warranty. Rather, the question is whether the claims at issue arise out of or relate to the negligent acts, errors, or omissions allegedly committed by WSP in performing professional services under the PSA. The Complaint leaves no room for doubt. The material allegations concern WSP's alleged failure to exercise the requisite degree of professional skill and care in performing its contractual obligations. Those allegations fall squarely within the conduct addressed by the limitation-of-liability provision.

A. The Plain Language of the PSA Limits Liability for Any Cause of Action Arising Out of WSP's Alleged Negligent Performance.

Because the PSA is unambiguous, it must be enforced according to its plain terms. The circuit court's ruling ignores the plain terms and rewrites the parties' negotiated allocation of risk.

The contractual limitation of liability in the PSA plainly and unambiguously limits the liability of WSP for any and all claims and causes of action arising out of or related to any negligent acts, errors or omissions in performing services to a maximum of \$50,000.00. Both parties also plainly and unambiguously waived the right to recover any special, incidental, indirect or consequential damages.

In South Carolina, contracts should be liberally construed so as to give them effect and carry out the intention of the parties, which intention must, in the first instance, be derived from the language of the contract. *Ecclesiastes Prod. Ministries v. Outparcel Assocs., LLC*, 374 S.C. 483, 497-98, 649 S.E.2d 494, 501 (Ct. App. 2007). If the language of the contract is perfectly plain and capable of legal construction, it alone determines the document's force and effect. *Id.* Moreover, the construction of a clear and unambiguous contract is a question of law for the court to determine. *See Canal Ins. Co. v. Nat'l House Movers, LLC*, 414 S.C. 255, 260, 777 S.E.2d 418, 421 (Ct. App. 2015).

In an arms-length transaction like the one at issue here, South Carolina courts do not invalidate limitation of liability clauses but instead preserve the parties' freedom to contract. *See Gladden v. Boykin*, 402 S.C. 140, 145, 739 S.E.2d 882, 884 (2013) ("Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter's evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract.").

Here, the operative language of the PSA is:

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CLIENT AGREES THAT THE LIABILITY OF WOOD TO CLIENT FOR ANY AND ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, CONTRIBUTION, ASSERTED BY CLIENT AND ARISING OUT OF OR RELATED TO THE NEGLIGENT ACT(S), ERROR(S), OR OMISSION(S) OF WOOD IN PERFORMING SERVICES SHALL BE LIMITED TO FIFTY THOUSAND DOLLARS (\$50,000)...

(Complaint, Ex. A ¶ 10) (R. ____). The circuit court's analysis focuses almost exclusively upon the phrase "negligent acts, errors, or omissions." But that approach overlooks the remainder of

the sentence. The provision does not state that it applies only to negligence claims. Instead, it expressly applies to “any and all causes of action” that arise out of or relate to specified conduct, namely, negligent acts, errors, or omissions committed in performing professional services.

The parties chose to define the limitation by reference to the factual basis of a claim rather than the legal label attached to it. Had they intended the limitation to apply only to negligence causes of action, they easily could have said so. They did not. Instead, they selected expansive language encompassing every cause of action whose factual predicate is WSP’s alleged negligent performance of its contractual duties. The PSA does not distinguish between negligence claims and breach of contract claims. It distinguishes between claims that arise out of negligent performance and those that do not. By converting that conduct-based distinction into a cause-of-action distinction, the Order materially alters the parties’ agreement. One approach focuses upon the conduct giving rise to liability; the other focuses upon the legal theory selected by the pleader. The parties chose the former. The Order substitutes the latter.

The Complaint falls squarely within the scope of the limitation. Eagle House alleges that WSP failed to exercise the degree of skill and care ordinarily exercised by similarly situated professionals and that WSP committed defective acts and omissions in performing the services required by the PSA. Whether those allegations are pleaded under the caption “breach of contract,” “breach of warranty,” or “professional negligence” does not alter the factual conduct upon which they are based. Every claim asserted by Eagle House arises from the same alleged professional errors in performing the services contemplated by the PSA. Accordingly, the contractual limitation applies according to its express terms.

B. Eagle House Cannot Avoid the Contractual Limitation by Labeling Its Claim as Breach of Contract Rather than Negligence.

The circuit court’s interpretation rests upon the premise that Eagle House’s claims fall outside the limitation of liability because they are pleaded as breach of contract and breach of warranty rather than negligence. Recent South Carolina authority demonstrates that this distinction is unsound. Specifically, in *Carroll v. Isle of Palms Pest Control, Inc.*, the South Carolina Supreme Court explained that “[t]he cause of action for failing to perform or negligently performing a contract is breach of contract.” 446 S.C. 177, 187-88, 918 S.E.2d 532, 537 (2025).

The limitation of liability does not distinguish between contract claims and tort claims. Instead, it applies to “any and all causes of action” arising out of or related to WSP’s negligent acts, errors, or omissions. *Carroll* recognizes that when negligent conduct occurs in the performance of contractual duties, the resulting cause of action ordinarily sounds in contract rather than tort. Consequently, the fact that Eagle House asserts breach of contract claims does not remove those claims from the scope of a provision expressly addressing negligent performance.

Indeed, *Carroll* demonstrates why the circuit court's interpretation cannot be correct. If negligent performance of contractual obligations gives rise to a breach of contract claim, as *Carroll* expressly holds, then a contractual limitation governing claims arising from negligent performance necessarily encompasses breach of contract claims predicated upon that conduct. Otherwise, the limitation would rarely, if ever, apply in disputes between contracting parties because negligent performance under a contract is remedied through contract law rather than an independent negligence action.

The Complaint alleges that WSP failed to exercise the requisite degree of professional skill and care in performing the services required under the PSA. It alleges that WSP failed to “utilize the degree of skill and care ordinarily exercised under similar conditions by reputable members of Wood’s profession practicing in the same or similar locality at the time of performance.” It further

alleges that WSP committed “defective acts and omissions” that resulted in the Army Corps of Engineers declining to release mitigation credits. Those allegations describe negligent performance under a contract.

Carroll teaches that negligent performance of contractual duties sounds in breach of contract. Accordingly, Eagle House’s decision to plead breach of contract claims is entirely consistent with the language of the PSA. Those claims remain causes of action “arising out of or related to” the negligent acts, errors, or omissions alleged in the Complaint and therefore fall squarely within the negotiated limitation of liability.

The circuit court’s contrary conclusion effectively permits the scope of the contractual limitation to depend entirely upon the labels selected by the pleader. But parties do not allocate risk by reference to pleading terminology. They allocate risk by reference to conduct. The PSA reflects precisely that approach. It focuses upon claims arising from negligent acts, errors, or omissions and not upon whether those claims ultimately are pleaded as negligence, breach of contract, breach of warranty, or some other legal theory. Accepting Eagle House’s position would therefore elevate form over substance and deprive the parties’ negotiated language of its intended effect.

C. The Circuit Court’s Interpretation Violates Rules of Contract Interpretation.

The Order at issue provides that “WSP urges a broad interpretation of this clause that would require damages for even breach of contract to be limited to \$50,000. At this point, the Court believes that only causes of action arising out of negligence are subject to the limitation such that it declines to extend the damages limitation to Plaintiff’s breach of contract action.” (December 3, 2025 Order) (R. ____).

But this interpretation flies in the face of the plain language of the PSA, which clearly applies to “**ANY AND ALL CAUSES OF ACTION, INCLUDING, WITHOUT LIMITATION, CONTRIBUTION, ASSERTED BY CLIENT AND ARISING OUT OF OR RELATED TO THE NEGLIGENT ACT(S), ERROR(S) OR OMISSION(S) OF WOOD IN PERFORMING SERVICES...**” (Complaint, Ex. A ¶ 10) (emphasis added).

In so holding, the circuit court violated a cardinal rule of contract interpretation by rendering the “ANY AND ALL CAUSES OF ACTION” language meaningless. *See Stevens Aviation, Inc. v. DynCorp Int’l. LLC*, 407 S.C. 407, 416-17, 756 S.E.2d 148, 153 (2014) (interpretations that give meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous); *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977) (The parties’ intention must be gathered from the contents of the entire agreement and not from any particular clause thereof); *Herrington v. SSC Seneca Operating Co., LLC*, 435 S.C. 243, 248, 866 S.E.2d 579, 581 (Ct. App. 2021) (when construing a contract, all of its provisions should be considered.) *See also Reyhani v. Sone Creek Cove Condo. II Horizontal Prop. Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct. App. 1997) (contracts should be interpreted so as to give effect to all provisions, if practical) (citing 17A Am.Jur.2d Contracts § 385 (1991)).

If the limitation applies only to claims expressly denominated as negligence, then the phrase “any and all causes of action” performs virtually no work. It becomes surplusage because the provision no longer turns upon whether a claim arises out of negligent acts, errors, or omissions; instead, it depends solely upon the caption selected by the plaintiff. Sophisticated commercial parties do not negotiate detailed limitation-of-liability provisions only to make their enforceability depend upon the labels chosen in a complaint.

Indeed, the PSA confirms the opposite. Eagle House expressly acknowledged that WSP would not have performed the services absent the negotiated limitation of liability. That acknowledgment demonstrates the limitation was not an ancillary contractual provision. It was an essential component of the parties' allocation of risk. The circuit court's interpretation deprives that negotiated allocation of much of its practical effect by permitting a plaintiff to avoid the limitation through artful pleading alone. Nothing in the language of the PSA supports such a result.

D. Eagle House's Remaining Arguments Do Not Justify Disregarding the Negotiated Limitation of Liability.

Although the circuit court did not expressly adopt Eagle House's remaining arguments, the Order references the additional arguments raised in Eagle House's opposition memorandum. None provides a basis for refusing to enforce the PSA according to its plain terms.

Eagle House has argued that WSP cannot invoke the limitation of liability because the PSA first required WSP to re-perform its services and WSP allegedly failed to accomplish that purpose. That argument misreads the PSA and improperly imports Uniform Commercial Code principles into a professional services agreement. Essentially, Eagle House is arguing that a failure of essential purpose involving the re-performance of WSP's services precludes WSP from relying upon the separate limitation of liability. But this concept does not apply to professional services agreements.

In this regard, Eagle House may attempt to rely upon *Bishop Logging Co. v. John Deere Indus. Equip. Co.*, 317 S.C. 520, 455 S.E.2d 183 (1995). But, as the court recognized in *Bishop*, that case involved the sale of goods governed by the Uniform Commercial Code. The issue before the court concerned the failure of an exclusive repair remedy under the UCC and the availability of other remedies under the UCC following the failure of that contractual remedy.

Bishop involves an interpretation of specific Uniform Commercial Code provisions regarding the sale of goods, but the contract at issue in this case involves the provision of professional services, so the UCC does not apply. A recent case cited this fundamental difference – provision of services rather than sale of goods - as its rationale for rejecting the plaintiff’s contention that a limitation of liability should not apply to its claims because the defendant failed to successfully re-perform services. *See Oakwood Prods., Inc. v. SWK Techs., Inc.*, No. 9:20-cv-04107-DCN, 2021 WL 5235224, at *6 (D.S.C. Nov. 10, 2021) (granting summary judgment in favor of defendant enforcing limitation of liability language excluding consequential damages notwithstanding defendant’s failure to properly re-perform services). *See also Myrtle Beach Pipeline Corp. v. Emerson Elec. Co.*, 843 F.Supp. 1027, 1045-46 (D.S.C. 1993) (different contractual limitations on liability should be evaluated independently).

Bishop also involved a sale of specialty equipment and a case-specific factual finding of a “certainty of repair” underlying the entire contract. No such “certainty of repair” exists in the PSA, nor could it in the context of providing professional services that involve the inherent uncertainties associated with remediating degraded streams and wetlands.

Moreover, unlike the contract in *Bishop*, the PSA expressly provides that Eagle House “acknowledges and agrees” that WSP would not have performed the services absent the negotiated limitation of liability. This provision demonstrates that the limitation itself formed a central component of the parties’ bargain.

Courts in other jurisdictions have enforced similar limitations on liability, rejecting application of the UCC-based doctrine of failure of essential purpose and similar limitations on the applicability of limitations on liability in service contracts. *See Pichey v. Ameritech Interactive Media Servs., Inc.* 421 F.Supp.2d 1038, 1050-51 (W.D. Mich. 2006); *Mentis Scis., Inc. v.*

Pittsburgh Networks, LLC, 173 N.H. 584, 591-593, 243 A.3d 1223, 1230-31 (2020); *Great N. Ins. Co. v. ADT Sec. Servs., Inc.*, 517 F.Supp.2d 723, 746-750 (W.D. Penn. 2007).

Instead, courts apply common law principles of unconscionability to determine whether limitations on liability apply in service contracts. And the doctrine of unconscionability is plainly inapplicable in this case involving an arms-length transaction between two sophisticated parties. *See Gladden v. Boykin*, 402 S.C. 140, 145, 739 S.E.2d 882, 884-85 (2013) (“Courts should not refuse to enforce a contract on grounds of unconscionability, even when the substance of the terms appear grossly unreasonable, unless the circumstances surrounding its formation present such an extreme inequality of bargaining power, together with factors such as lack of basic reading ability and the drafter’s evident intent to obscure the term, that the party against whom enforcement is sought cannot be said to have consented to the contract.”).

Finally, the limitation of liability provision is not the only contractual protection negotiated by the parties. In addition to limiting WSP’s liability to \$50,000, the PSA provides that Eagle House:

“hereby waives and releases (i) all present and future claims against Wood other than those described in the preceding sentence, and (ii) any liability of Wood in excess of the Limitation.”

(Complaint, Ex. A ¶ 10) (R. ____). The waiver and release of all present and future claims in excess of the limitation is valid and separately enforceable. *See Abu-Shawareb v. South Carolina State University*, 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 2005).

The PSA also contains a separate waiver of consequential damages, under which both parties relinquished the right to recover special, incidental, indirect, and consequential damages arising from the services performed under the Agreement. These provisions operate independently.

Thus, even if Eagle House were correct that one contractual remedy somehow became unavailable, which WSP disputes, the remaining contractual limitations remain enforceable according to their own terms. Nothing in the PSA suggests that the enforceability of the waiver and release or the mutual waiver of consequential damages depends upon the availability or success of any contractual opportunity to re-perform services or any other provision. The parties negotiated multiple contractual mechanisms allocating and limiting risk. Each should be enforced according to its plain language

CONCLUSION

The question presented by this appeal is whether the agreement two sophisticated commercial parties executed should be enforced according to its terms. The parties agreed that WSP's liability would be limited with respect to "any and all causes of action" arising out of or related to WSP's negligent acts, errors, or omissions. Eagle House acknowledged that WSP would not have undertaken the engagement absent that limitation. It further agreed that the limitation constituted an agreed remedy and expressly waived liability exceeding the negotiated cap. The Complaint alleges negligent performance of WSP's contractual obligations. Those allegations fall squarely within the conduct addressed by the limitation.

The circuit court nevertheless declined to enforce the PSA because Eagle House elected to plead breach of contract rather than negligence. In doing so, the Order transformed a conduct-based limitation into a pleading-based limitation and substantially altered the agreement the parties negotiated. South Carolina law does not permit courts to revise unambiguous contracts in that fashion.

Because the PSA is clear and because Eagle House's claims arise directly from the conduct expressly addressed by the limitation of liability, the Order denying partial summary judgment should be reversed.

Respectfully submitted,

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