

## COMPARATIVE FAULT PRINCIPLES DO NOT APPLY TO CONTRACT CLAIMS

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*Fidelity and Deposit Company of Maryland v. Bondwriter Southwest*  
Ct. Appeals, Div. One, July 28, 2011

Authored by the [JSH Appellate Team](#)

Fidelity sued Bondwriter for breach of contract and negligence, after Bondwriter delivered unapproved bonds to a contractor. An agency agreement authorized Bondwriter to solicit applications for surety bonds on Fidelity's behalf. The agreement limited Bondwriter's authority to those transactions that Fidelity specifically authorized. In one transaction, Bondwriter mistakenly delivered a bond to a contractor before Fidelity had authorized the bond. When Bondwriter employees realized their mistake, they were unable to retrieve the original bond before the contractor made copies of the bond and delivered it to their customer, the City of Flagstaff. In another misstep, the City accepted a copy of the bond rather than the original. When the project was not completed, and the City attempted to collect the unapproved bond, Fidelity determined that it had to pay the City. Fidelity then sued Bondwriter for breach of contract and negligence. The trial court found Bondwriter only partially responsible and reduced Bondwriter's liability accordingly. The parties agreed that the trial court had apportioned damages pursuant to A.R.S. § 12-2506. On appeal, the court found that based on the plain language of that statute, which applies comparative fault principles to actions for personal injury, property damage, and wrongful death, comparative fault principles do not apply to an action for breach of contract. Further buttressing its conclusion, the court noted that contract law "generally operates without regard to fault."