

# Architect and Performance Bond Surety – No Relationships Here

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By Timothy R. Hughes & Alison R. Mullins

A recent Maryland decision helps clear up the often-confusing question, “who can sue whom?” on a construction project.

The question of which parties can sue each other can be of critical importance on a construction project. A recent decision issued by the United States District Court for the District of Maryland may potentially offer some guidance on Maryland’s somewhat muddle law surrounding the question.

**Privity In Maryland** In the seminal Jacques case, the highest court of Maryland ruled that a party must demonstrate an “intimate nexus” in order to sue for economic losses. That intimate nexus could only be satisfied by “contractual privity or its equivalent” such as third party beneficiary status. This case would seem to require privity in almost all cases.

The Court of Appeals of Maryland complicated the issue in Council of Co-Owners v. Whiting-Turner. The court ruled that cases involving dangerous conditions were an exception to the requirement of privity. The logic of the court was that we should not wait for death or injury to occur to permit a claim for repair, but rather should encourage fixing the problem by permitting a legal remedy.

In practice, the Whiting-Turner case has spawned hordes of claims alleging dangerous conditions. In one personal example, we successfully defended a claim involving



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a pool. The plaintiff claimed that efflorescence on brick at the pool demonstrated water problems which could lead to deterioration, collapse of the bricks and grievous personal injury or death.

**So Close, Yet So Far** In RLI Ins. Co. v. John H. Hampshire, Inc., the architect was hired to design exterior panel work on a building at a university. The general contractor hired a subcontractor to fabricate and install the panels. The subcontractor in turned hired a panel fabrication subcontractor.

During construction, the subcontractor fell behind schedule. The subcontractor, with the approval of the general contractor, hired the fabrication subcontractor to aid with installation. During the installation, the general contractor found the subcontractor to be in default. The subcontractor abandoned the project. The fabrication subcontractor completed the panel installation. The project architect inspected the work, and the general contractor and the owner accepted the work.

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## Schoolkids Share in Louisiana Infrastructure Construction

By Angelle Bergeron

**As Louisiana builds** its roads, rails and bridges, including those damaged in 2005 by Hurricanes Katrina and Rita, it is inviting children to watch. The new public-awareness program is intended to excite youngsters about their transportation infrastructure and attract them into future careers in construction, transportation and engineering.

The program is being coordinated through Louisiana's Transportation Infrastructure Model for Economic Development program (TIMED), the state's \$5-billion funding program. The effort allows elementary school students to interact with project staff, engage in interactive storytelling, play project-related games and actually touch materials used in construction projects.

"Kids don't always know about construction projects going on right in their own backyards," says Meghan Legaux, TIMED spokeswoman and a program organizer. "To be able to reach a part of the population that normally wouldn't seek out the information is really neat. When kids get excited, they take that home to their parents, and that increases public awareness and involvement."

The program, called TIMED to Learn, kicked off last month at Live Oak Manor Elementary School in Waggaman, La., located near the

\$989-million Huey P. Long Bridge widening project. The project is one of 16 being advanced through TIMED ([www.timedla.com](http://www.timedla.com)).

About 100 third- and fourth-graders donned yellow hardhats to learn about the history of the bridge, its namesake and the ongoing construction. "Around third grade, boys tend to lose interest in reading, and some girls start to spark an interest in science and math," Legaux says.

TIMED worked with Louisiana teachers to develop a program that would meet Louisiana Dept. of Education grade-level expectations, Legaux notes. Participating teachers have access to several curriculum ideas for science, social studies and language arts ([www.timedtolearn.com](http://www.timedtolearn.com)). The children all received a "goodie bag" that includes related follow-up activities.

The expedition even enthused adults. "This is so interesting to see how this stuff works," says Dannie Becnel, school principal. "But they couldn't pay me enough to work on that bridge," she adds, as she observes Mike Neyman, a senior project inspector, fit a student with a safety harness and inflatable vest.

Becnel says the experience will resonate with the children. "If they go across the bridge with their parents, they can say, 'Mommy and Daddy, I know about the bolts that hold this bridge up.' Or if they are stuck in traffic, they

can say, 'Oh, if this was fixed, the traffic wouldn't be there,'" she says.

The goal for TIMED to Learn is to eventually make the program available to elementary students statewide and tailor its content to the nearest TIMED project, Legaux says.

TIMED has also created other project-related programs geared to the young, including TIMED to Drive Safe, which targets high school students in areas surrounding the 229 miles of active construction on Louisiana highways. <<



Students in Louisiana learn the history of the Huey P. Long Bridge.

Hardhat-sporting kids get industry view