

TITLE 4: ECONOMIC RESOURCES
DIVISION 3: BUSINESSES AND PROFESSIONS

§ 3438. Privity of Contract.

(a) This section applies to all causes of action of the type specified herein filed on or after the effective date.

(b) This section governs any action based on negligence brought against any accountant or firm of accountants practicing in the CNMI by any person or entity claiming to have been injured as a result of financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant accountant or in the course of an engagement to provide other public accountancy services.

(c) No action covered by this section may be brought unless:

(1) The plaintiff: (1) is issuer (or successor of the issuer) of the financial statements or other information examined, compiled, reviewed, certified, audited or otherwise reported or opined on by the defendant and (2) engaged the defendant accountant to examine, compile, review, certify, audit or otherwise report or render an opinion on such financial statements or to provide other public accountancy services; or

(2) The defendant accountant or firm: (1) was aware at the time the engagement was undertaken that the financial statements or other information were to be made available for use in connection with a specified transaction by the plaintiff who was specifically identified to the defendant accountant, (2) was aware that the plaintiff intended to rely upon such financial statements or other information in connection with the specified transaction, and (3) had direct contact and communication with the plaintiff and expressed by words or conduct the defendant accountant's understanding of the reliance on such financial statements or other information.

Source: PL 13-52, § 19, modified.

Commission Comment: The Commission made conforming changes to the above subsection pursuant to 1 CMC § 3806. See the comment to 4 CMC § 3401 regarding PL 13-52.