
ASA SUBCONTRACTOR LEGAL DEFENSE FUND UPDATE

June 2023 - Our ASA Subcontractor Legal Defense Fund has been active in 2022-2023. Below are three current cases in three states under review and supported by the Fund on behalf of our subcontractor community.

Pepper Lawson Horizon International Group, LLC v. Texas Southern University, Texas Supreme Court Case

On May 19th, the Texas Supreme Court ruled unanimously in favor of Pepper-Lawson Horizon International Group and against Texas Southern University. The American Subcontractors Association supported a friend-of-the-court brief on behalf of Pepper-Lawson last year, seeking an appeal on a decision that held that an entity could not be sued for prompt payment violations because it had not waived sovereign immunity.

This ruling has a profound impact on all contractors doing business with the State of Texas. Specifically, state government entities will no longer be able to unreasonably stonewall contractor claimants. The often-used defense practice of challenging the Court's jurisdiction to stall the case has now been properly clarified and limited. As of today, if contractors can properly state a claim under the applicable waiver of sovereign immunity statute, then the case can proceed. Further, contractors are no longer required to disprove all of the State's defenses in order to proceed with their case. This case sets an important precedent for courts across the country as it applies to prompt payment for our subcontractors.

Brian Carroll, Sanderford & Carroll, P.C., Belton, TX prepared the brief for ASA. Andrew Myers, Andrew Myers Attorneys at Law, Houston, TX represented Pepper Lawson in this case.

Acuity v M/I Homes of Chicago, LLC, on appeal to the Illinois Supreme Court

In this case, the Illinois First Court of Appeals has invited the Illinois Supreme Court to resolve the question whether an upper tier developer/general contractor has CGL coverage for property damage arising out of the work of its subcontractors. The case at issue involves an appeal by Acuity, a Mutual Insurance company ("Insurer" or "Acuity") seeking the Illinois Supreme Court's intervention to reverse an appellate court's decision. The Court of Appeals concluded that Insurer did have a duty to defend a M/I Homes of Chicago, LLC ("Developer" or "M/I Homes") lawsuit, reversing a trial court's entry of summary judgment in favor of the Insurer finding that the Insurer had no duty to defend the Developer in an underlying lawsuit stemming from damages caused by the allegedly defective construction work of one of M/I Homes' subcontractors. The Circuit Court had reasoned that there was no duty to defend because the complaint in that case did not allege "property damage caused by an occurrence" but the Appellate Court reversed and instructed the circuit court to enter summary judgment in favor of the Owner on the issue of a duty to defend.

In this case, it was voted that SLDF should join the ABC and NAHB in its amicus brief.

Twigg v. Admiral Insurance Co., Petition for Review to Oregon Supreme Court Case

The dispute at issue concerns whether an insurance company (Admiral Insurance Company, the "Insurer"), had a duty to indemnify its insured, Rainier Pacific Development LLC (Contractor), and pay a portion of an arbitration award that homeowners Weston and Carrie Twigg (the "Owners" or "Twiggs") obtained against the Contractor for breach of contract.

After the Owners obtained the arbitration award, they sued the Insurer for breaching its insurance policy with the Contractor when it failed to pay a portion of the Contractor's liability to the Twiggs under the arbitration award.

Both the trial court and Court of Appeals concluded that the Contractor's insurance policy did not provide coverage for its liability to the Owners. The courts noted that the insurance policy in question applied to property damage caused by an "occurrence," defined as an "accident" but that the Contractor's liability to the Owners arose instead from a breach of a separate settlement agreement, known as the "Repair Contract."

In this case, it was voted that SLDF should join the ABC-Oregon Columbia Chapter in its amicus brief for the Twigg case. While no funding was required for this stage of It is anticipated that support will be sought as the case proceeds through the system.