



ALABAMA CONSTRUCTION LAW UPDATE

Below are recent court decisions affecting those dealing in the construction industry in Alabama. A full text of these and other decisions are available on the Wallace, Jordan, Ratliff & Brandt, L.L.C. web site at www.wallacejordan.com. If you have any questions or comments about this or other matters, please contact Wallace, Jordan, Ratliff & Brandt, L.L.C. by telephone at (205) 870-0555.

Contractual Indemnity Provision Finding Subcontractor Responsible for Claims Against General Contractor Upheld

In Stone Building Co. v. Star Electrical Contractors, Inc., No. 1990085, 2000 WL 1841877 (Ala. Dec. 22, 2000) the court upheld an indemnity provision in a contract between a general contractor and an electrical subcontractor. The indemnity provision stated that the subcontractor would be responsible for all claims against the general contractor. In the suit both the general contractor and subcontractor were sued by an employee of a drywall subcontractor who was injured when he received a shock and fell from a ladder while working on a job. The court found that, based on the indemnity provision in the contract, the electrical subcontractor would have to pay the attorneys' fees of the contractor and reimburse the general contractor for \$495,000.00 that the general contractor paid in a settlement with the employee of the drywall subcontractor. The court, in making that decision, did not appear to consider whether the injury was caused by anything done by the electrical subcontractor.

General contractors not liable for acts of independent contractors; Electricity suppliers not liable for defects in electrical systems

On March 23, 2001, the Alabama Supreme Court, in McGinnis v. Jim Walter Homes, Inc., No. 1000209 (Ala. Mar. 23, 2001), upheld the rule that a general contractor is generally not liable for the alleged negligence of independent contractors. The court further ruled that mere inspection or supervision of work done by an independent contractor does not by itself open the door for liability. The Court did, however, state that by sending out a representative to inspect a problem, the general contractor involved in the case performed an "act" that could be serve as the basis for a lawsuit.

Also in McGinnis, the court followed a 1975 rule stating that "[a] supplier who merely furnishes electricity is not responsible for defects in the system to which electricity is supplied, [and] is under no duty to inspect the system to which electricity is supplied. The duty of the supplier ends when the connection is properly made, when the supplier has no control over the premises, and the supplier is without actual knowledge of any defective or dangerous condition." The case was initiated by a couple who sued a power company, a building contractor, and an independent contractor for the alleged wrongful death of their child. The court concurred that the above rule applied and that the power company was not liable.

Building company not liable for alleged misrepresentation

In Arthur Rutenberg Homes, Inc. v. Norris, No. 1990994 (Ala. Mar. 30, 2001), a couple alleged that they relied on misrepresentations of their building company when they signed their building agreement. The Alabama Supreme court ruled, however, that the couple could not have justifiably relied on the statements made by the company with whom they were contracting because of the clear expression in the contract that the company made no warranties or guarantees. The court stated that when parties to a contract clearly express an intention, the court cannot alter the agreement simply because of alleged "fairness."

Separate contracts give rise to separate claims, even though parties may treat as one

The Alabama Supreme Court recently held that, although a subcontractor accepted a single payment for work performed under two contracts, the alleged breach of both contracts gave rise to two separate claims. The case, Ex parte

Messer, No. 1982082 (Ala. Apr. 13, 2001), involved a dispute between a contractor and subcontractor in which the contractor sought to compel arbitration. The court ruled that because the alleged breach gave rise to two claims, the subcontractor's case did not reach the monetary cap beyond which the parties would not have to arbitrate.

Implied warranties in civil engineering work determined on case-by-case basis

In K.B. Weygand & Assocs., P.C. v. Deerwood Lake Land Co., Nos. 1991216 & 1991334 (Ala. Apr. 20, 2001), the Alabama Supreme Court followed the rule that, where there is no express contract, courts will determine on a case-by-case basis, the question of whether a civil engineer does work under an implied warranty. In the case, a subdivision had contracted with a civil engineer to build a road. When the road failed due to drainage problems with the underlying soil, the subdivision sued on the basis of implied warranty. The Court ruled that there was no implied warranty in this instance because, among other points, the work in question was not within the normal scope of the civil engineer's duties.

Surety who assumed rights of contract in takeover agreement also assumes duties, even duty to submit to arbitration

The Eleventh Circuit Court of Appeals recently held that a surety was required to submit to arbitration, even though the surety was not a party to the original contract. The case, Employers Ins. of Wausau v. Bright Metal Specialties, Inc., No. 98-5404 (11th Cir. May 22, 2001), involved the surety takeover of a government contracting project. The surety involved openly assumed rights under the original contract. The court ruled that, by "signing the Takeover Agreement, [the surety] assumed all the duties and responsibilities of [the original contractor,]" not just the rights.

Alabama Supreme Court addresses summary judgment and statute of limitations in class action PCB case

Payton v. Monsanto Co., No. 1990918 (Ala. May 4, 2001) involved a class action brought by a community class alleging that the lake they lived on had been contaminated by PCBs. On a question regarding summary judgment, the Alabama Supreme Court held that a prior settlement against

a different defendant (alleging similar damages, including damages caused by PCBs) in 1993 barred claims based on damages occurring before the earlier settlement. The court ruled, however, that damages occurring after the 1993 settlement that could not have been included in the earlier settlement (substantial evidence of damages caused by PCB contamination did not arise until 1997) would not constitute double recovery and could be sued for.

The Payton court also ruled on whether the community class was barred by the statute of limitations. The court held that, in this situation, because the class did not argue that the statute of limitations should be tolled (extended for reasons of ongoing conduct, fraud, etc.), the defendant's request for summary judgment on that ground was granted. The court also addressed whether the statute of limitations began to run when the earlier suit against the different defendant was brought or when the substantial evidence of damages caused by PCB contamination arose. The court followed the rule that the statute of limitations begins to run when the cause of action accrues, when the plaintiff is entitled to maintain an action. The court ruled that because the class could not pursue damages that occurred before 1993, the only relevant damages occurred in 1997. The court reasoned that because the relevant damages did not occur until 1997, the class could not have brought suit before that time and the statute of limitations did not begin to run until that date.

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