

ALABAMA CONSTRUCTION LAW NEWSLETTER



Inside this issue

Alabama Supreme Court Limits Disqualification for Minor Bid Irregularities - 1

Acceptance of Warranty Benefits Binds Homeowners to Arbitration Provision - 2

Insurance Company Refuses to Defend Claims for Faulty Subcontractor Work - 3

Latent Defect Leads to Negligence Claims in Bryant-Denny Stadium - 4

Insurer Denies Claim for Property Loss Under Commercial "Installation" Policy - 5

Alabama Supreme Court Limits Disqualification for Minor Bid Irregularities

Nearen Construction Company, LLC v. Armory Commission of Alabama
2025 WL 3560190 (Alabama, December 12, 2025)

The distinction between "minor irregularities" and disqualifying defects in public bidding was at issue in a recent case involving an unsuccessful bidder on a military construction project.

Nearen Construction submitted a sealed bid for the Huntsville Readiness Center, a military construction project overseen by the Armory Commission. At a pre-bid meeting, bidders were told the Commission "preferred" submission of two orig-

inal bid forms. Nearen submitted only one, an omission it characterized as an oversight. Otherwise, its bid met the project's requirements.

When the bids were opened, the Commission rejected Nearen's submission outright because of the missing second bid form, declined to read it publicly, and excluded it entirely from the official bid tabulation. Nearen alleged that its proposal was the lowest bid sub-

mitted and could have potentially saved more than \$750,000 in public funds compared to competing bids.

After exhausting administrative remedies, Nearen filed suit seeking to block the award of the contract and recover its bid-preparation costs.

The company argued that it was the “lowest responsible and respon-



sive bidder” under Alabama’s public-works bidding laws (Ala.Code 1975 § 39-2-6) and that the missing second bid form was merely a tech-

nical defect that should not have disqualified its proposal.

The trial court dismissed the case at the pleading stage, finding that Nearen had failed to state a viable claim. Nearen appealed the ruling to the Alabama Supreme Court, which examined whether Nearen’s failure to submit a second bid form constituted a material defect or a minor irregularity.

Under Alabama law, public contracts must be awarded to the lowest responsible and responsive bidder, and “minor irregularities” in form do not in themselves defeat a bid’s responsiveness.

Nearen argued that their bid should have been considered since the bid was submitted in a timely manner and otherwise complied with all requirements, the company was fully qualified and experienced to perform the work, and the defect (one instead of two forms) was purely procedural and did not affect price, substance, or competitiveness of the bid.

The Alabama Supreme Court did not decide who should ultimately win the contract. Instead, it focused on whether Nearen’s allegations were sufficient for the lawsuit to proceed. The court held that they were.

Because courts must accept a plaintiff’s allegations as true at the motion-to-dismiss stage, the court concluded that Nearen had plausibly alleged a violation of the competitive-bid laws. Specifically, it could be proven that the missing second form was a “minor irregularity” and that the Commission improperly refused to consider the bid at all.

As a result, the court reversed the dismissal and remanded the case for further proceedings.

For contractors, the decision reinforces that losing bidders may have viable claims where agencies disregard bids without considering whether defects are truly material.

Acceptance of Warranty Benefits Binds Homeowners to Arbitration Provision

Franklin Structures, LLC v. Williams
2025 WL 2487531 (Alabama, August 29, 2025)

The Alabama Supreme Court has made it clear that homeowners are bound by arbitration provisions embedded in a manufacturer’s warranty, even if they never signed the warranty itself.

Karl and Tonya Williams purchased a \$353,000 modular home manufactured by Franklin Structures and sold through Whitson Builders, LLC. After the home was delivered and assembled by Whitson, the buyers alleged serious defects ranging from structural misalignment to malfunctioning sys-

tems and even a “door to nowhere” opening onto the roof.

The buyers sued Franklin and other parties, asserting a wide range of claims, including breach of contract, fraud, negligence, and breach of warranty.

Franklin countered by moving to compel dispute resolution under a provision in its homeowner’s manual requiring nonbinding mediation and, if unsuccessful, binding arbitration. However, because the Williamses

never signed the homeowner’s manual, the core question was whether they had nevertheless agreed to the arbitration provision. The trial court denied the motion in part, declining to send all claims to arbitration, and Franklin appealed.

In reversing the lower court’s decision, the court found that the buyers were bound by the arbitration clause for two reasons. First, the homeowners had effectively consented to the mediation/arbitration requirement contained in the warranty

benefits when they requested and received warranty repair services from Franklin multiple times.

Second, the court reasoned that when buyers sue for breach of express warranty, they cannot seek the benefits of a warranty while rejecting its burdens, such as an arbitration clause.

While the court agreed that arbitra-

tion was required, it clarified that the contract mandated a two-step process: mediation first, then arbitration if necessary.

Because the trial court failed to compel mediation in accordance with the agreement's terms, the order was reversed and the case remanded for proper enforcement of the dispute-resolution process.

This decision reinforces a practical but critical principle: parties can become bound to arbitration clauses not only through signatures, but also through their conduct, especially by invoking warranty rights or asserting warranty-based claims.

Accordingly, contractors should document all warranty services provided and warranty claims pursued.

Insurance Company Refuses to Defend Claims for Faulty Subcontractor Work

Accident Insurance Co., Inc. v. Mathews Development Company, LLC
2025 WL 842078 (11th Circuit, March 18, 2025)

The Eleventh Circuit ruled on whether a general contractor's failure to comply with policy conditions can eliminate an insurer's duty to defend in a construction defect lawsuit.

Mathews Development Company built a home in a Montgomery-area subdivision, relying entirely on subcontractors to perform the construction work.

Two years later, the homeowners sued, alleging widespread defects, including foundation cracking, drainage problems, misaligned walls and floors, HVAC issues, and improper installation of interior features. They asserted multiple claims, including negligence, breach of contract, fraud, and negligent hiring and supervision of subcontractors.

Mathews sought a defense under its commercial general liability policy issued by Accident Insurance Company (ACI). ACI argued that it owed no duty to defend based on policy limitations in the "Contractors Special Condition Endorsement," which governed subcontractor work.

That endorsement required Mathews, as a condition of coverage for any claims arising from subcontractor work, to obtain specific documentation before construction began. This included

written indemnity agreements and certificates showing that subcontractors carried insurance naming Mathews as an additional insured. However, Mathews conceded it had not obtained the required documentation.



The central question for the court was whether the homeowners' claims were "based, in whole or in part, upon work performed by independent contractors."

This mattered because the endorsement applied only to claims involving subcontractors, and compliance with its requirements was a prerequisite to coverage.

Mathews argued that some claims, such as negligent supervision or

pre-construction site evaluation, were based on its own conduct rather than subcontractor work and therefore still triggered a duty to defend.

The Eleventh Circuit rejected Mathews' argument and affirmed summary judgment for ACI, finding that all of the claims arise from work performed by subcontractors. It was undisputed by Mathews that subcontractors performed all construction work on the home, and the court found that all alleged damages flowed from construction defects.

Mathews' claims that were framed as "direct" liability, such as negligent supervision, still depended on proving wrongdoing by subcontractors. As a result, every claim was at least partially based on subcontractor work and therefore fell within the scope of the endorsement.

By its own admission, Mathews failed to comply with the endorsement's documentation requirements, so the court held that ACI had no duty to defend the lawsuit.

This decision underscores the strict enforcement of policy conditions tied to subcontractor work. For contractors, it serves as a cautionary reminder to confirm that required insurance documents are collected before work begins.

Latent Defect Leads to Negligence Claims in Bryant-Denny Renovations

Atlantic Specialty Insurance Company v. Goodman Decorating Co., Inc.
2024 WL 2194461 (N.D. Alabama, May 15, 2024)

Goodman Decorating Co. Inc. was subcontracted by Caddell Construction to paint interior and exterior surfaces, wall cover-

west display and the surrounding areas.

Goodman told Caddell that “the paint could be cleaned with soap and water, alcohol, or by pressure washing,” but the Board of the University of Alabama decided not to attempt to clean the overspray after speaking with Daktronics.

Eventually, a decision was made to replace all of the LED modules in the southwest display and replace the damaged ones in the northwest display at a cost of \$555,450. Subsequent disputes led the Board’s insurance carrier, Atlantic Specialty Insurance Company, to file a complaint against Goodman for breach of contract and negligence.

The parties agreed to a two-year statute of limitations for damage to real or personal property arising out of a defect, damage, or deficiency in the construction of an improvement to real property by a licensed contractor. However, Goodman claimed that ASIC’s initial filing of the complaint on May 27, 2022 was beyond the two-year period since the last day of their painting work was on May 8, 2020.

ASIC countered that the overspray was not discovered until roughly one month later, so it fit “within the definition of latent defect or latent damage,” and was therefore a cause of action covered under Alabama Code § 6-5-220(e), which states that “the claim for relief shall be deemed to arise or accrue at the time the damage or injury is or in the exercise of reasonable diligence should have been first discovered, whichever is earlier.”

Although the statute does not define the term “latent,” Black’s Law Dictionary describes it as “[a] hidden or concealed defect” that “could not be discovered by a reasonable inspection.”

ASIC argued that the overspray was a latent defect because it was not discovered by any of the workers who passed by it daily, and also because Goodman itself described it as “invisible.”

Ultimately, the court found that although the evidence did prove that a large number of people working on the renovation could have passed by and easily have seen the overspray damage, ASIC did not prove that it was “hidden, concealed, or unable to be discovered by reasonable and customary inspection.”

As a result, the court ruled in Goodman’s favor by finding that the Alabama two-year statute of limitations precluded the breach of contract and negligence claims of ASIC.

This case highlights how seemingly small timing differences can determine the fate of construction-defect claims. Even where damage is discovered later, courts may look to when the underlying work—and resulting injury—actually occurred, particularly if the condition was observable with reasonable inspection. For contractors, insurers, and owners alike, the decision underscores the importance of early investigation and prompt legal action when project-related damage is suspected.



ings, and high-performance coatings during renovations of Bryant-Denny Stadium from December 2019 to August 2020.

For the ceilings of the sixth-floor mezzanine adjacent to the southwest Jumbotron, Goodman’s painters used Sherman Williams B42 Flat Dryfall interior paint, which is designed to dry and turn into a sweepable dust within ten feet of the discharge point of a paint sprayer.

On June 23, 2020, one month after the painting was completed, an employee of another contractor (Daktronics) hired to work on the Jumbotrons installed in each corner of the stadium noticed overspray paint on the display, and upon further inspection, paint was also observed on the north-

Insurer Denies Claim for Property Loss Under Commercial "Installation" Policy

Travelers Property Casualty Company of America v. Talcon Group LLC
 88 F. 4th 1371 (11th Circuit, December 20, 2023)

An underground utility contractor, Talcon LLC, which specializes in installing sewers, storm drains, and treatment plants built two single family homes that it intended to put on the market for sale. However, before the nearly completed homes received certificates of occupancy, a wildfire swept through the area and completely destroyed them.

Talcon then submitted a property loss notice to its insurer, Travelers Property Casualty Company of America, which denied the claim. Travelers' decision to deny the claim was based on the fact that while in the year prior to the fire Talcon had renewed its commercial insurance policy, the coverage did not extend to residential work.

In its application to renew the policy, Talcon listed its primary operation as an "underground utility contractor," and did not indicate any residential projects it expected to be working on.

Talcon admitted that construction of the homes began before the renewal of the policy, and also acknowledged that it did not disclose the residential construction work to Travelers. These

omissions were the basis for Travelers' denial because the definitions section of the policy specifically excluded buildings or structures that existed at the job site prior to the inception of the policy.

Talcon filed a claim for breach-of-contract after Travelers filed a complaint seeking a judgment that the two homes were not covered by the policy.

In Travelers' subsequent motion for summary judgment, it "acknowledged that that the policy used the word 'primarily' to describe property covered under the term 'Installation,' but it argued that coverage could not extend to undisclosed business activities unrelated to Talcon's underground utility work."

Talcon's response argued that the policy's coverage was ambiguous due to how the word "primarily" described covered property, and that excluded buildings under "Installation" might not extend to the two homes that were constructed after the policy began.

The U.S. District Court for the Northern District of Florida granted summary judgment to Travelers by finding that there was no ambiguity that the policy did not cover the construction of the two residential homes because Talcon was covered by the policy as an underground utility contractor, not a residential contractor.

It also determined that a full reading of the definition of "Installation" meant that the excluded buildings were not covered.



Talcon appealed the ruling on the grounds that the district court erred in ruling that the policy unambiguously did not cover the residential homes.

However, the appeals court noted that the policy did not contain even a hint of residential construction to be done by the insured, and Talcon did not inform Travelers that it was currently engaged in that type of construction.

Thus, the court found that Talcon's argument that the residential construction should be covered, even though it was not a primary work of the company, was not valid, and affirmed the decision of the lower court.

This court's decision underscores the importance of accurately describing business operations in insurance applications. Coverage for construction-related losses will often be limited to the specific types of work disclosed to the insurer.

For contractors, the decision highlights that branching into new or different types of projects—especially without updating insurance disclosures—can leave those activities uninsured, even when the underlying cause of loss would otherwise fall within policy coverage.



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