



American Subcontractors Association, Inc.

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1004 Duke Street, Alexandria, VA 22314-3588 • (703) 684-3450
www.asaonline.com • www.subexcel.com • communications@asa-hq.com

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Contact: Shannon Oscar
(703) 684-3450, Ext. 1322
soscar@asa-hq.com

Subcontractors Achieve Major Breakthrough on CGL Coverage for Construction Defects under Illinois Law

ALEXANDRIA, Va.— The Illinois Supreme Court issued its opinion in *Acuity v. M/I Homes of Chicago, LLC*, Docket No. 129087 on November 30, 2023. The case involved commercial general liability (“CGL”) coverage for construction defects resulting in water damage to a townhome project. The Supreme Court responded to the request of the appellate court to clarify the law as to the existence of property damage or occurrence in Illinois. That request was supported by an amici curiae brief sponsored by the American Subcontractors Association (“ASA”) and its Subcontractor’s Legal Defense Fund (“SLDF”), in an amicus coalition effort with the Associated General Contractors of America, National Association of Home Builders, and local chapters in Illinois. The Supreme Court answered the call and embarked on a clarification that was extremely favorable to the construction industry and its broad coalition of support.

For over twenty years, courts in Illinois had interpreted the definitions of “property damage” and “occurrence” in the standard CGL policy to deny coverage for property damage arising out of defective construction as to the entire construction project itself. Those courts found coverage only in the unlikely event of damage to other real property, and perhaps to personal property of project owners. In reality this amounted to little, if any, coverage for insureds performing work in Illinois and the state has lagged behind numerous other jurisdictions in upholding coverage for unexpected and unintended property damage arising out of faulty workmanship by the insured. The Supreme Court of Illinois noted that such a narrow view of coverage is unsupported by the policy language, and it joined the majority of jurisdictions in holding that unexpected and unintended physical injury to tangible property arising out of defective work amounts to an occurrence of property damage under a CGL policy.

The court further stated that once an occurrence of property damage is found, the exclusions in the policy must be reviewed as to whether the claim is ultimately covered. This includes certain exclusions meant to apply specifically to property damage to the work. Many of those exclusions are tailored to preserve coverage based on the circumstances of a particular claim. In doing so, the Court rejected the notion that property damage arising out of defective workmanship amounts to an uninsurable “business risk,” the cost of which is to be borne by the insured contractor itself. Aligning itself with the majority of jurisdictions, the Court concluded that uninsured business risks are to be sorted out through application of the property damage exclusions. In that regard, it remanded the case to the trial court to determine issues relating to applicability of those exclusions to the facts before it.

The brief in *Acuity v. M/I Homes* was primarily authored and filed by Patrick J. Wielinski of Cokinos Young, Dallas, Texas, joined by Clifford Shapiro of Chicago. Patrick and his firm have participated in the filing of such briefs for ASA and the SLDF for many years.

ASA's [Subcontractors Legal Defense Fund](#) financed the brief. Our success in this case is the culmination of nearly twenty years of advocating before numerous state and federal courts throughout the United States on these issues through the filings of amicus curiae briefs. The American Subcontractors Association is actively involved in the promotion of legislative action across the nation and regularly intervenes in legal actions that affect the construction industry at large. The SLDF supports ASA's critical legal activities in precedent-setting cases to protect the interests of all subcontractors. ASA taps the SLDF to fund *amicus curiae*, or "friend-of-the-court," briefs in appellate-level cases that would have a significant impact on subcontractor rights. [Contributions](#) to the SLDF may be made online at www.sldf.net.

Founded in 1966, ASA promotes the rights and interests of subcontractors, specialty contractors and suppliers by building strength in community through education, advocacy, networking and professional growth. ASA adheres to and promotes quality construction, ethical and equitable business practices, safety in the work environment, and best industry practices. For more information about ASA, visit www.asaonline.com, and for more information about the SLDF, visit www.sldf.net.

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