



Minnesota Subcontractors Association

MSA Members

Press Release

January 23, 2013

The Minnesota Supreme Court has issued its ruling on ECI v. Bolduc. Briefly put, L.H. Bolduc won; the Appeals Court ruling was reversed. Minnesota Subcontractors Association Chapter Attorney Curt Smith authored an Amicus Curiae brief in support of subcontractor L.H. Bolduc in the matter. MSA is very pleased to see that Subcontractor L.H. Buldoc will not be held liable for the costs in this matter. Broader subcontractor concerns regarding indemnification continue to need a clear resolution.

The Court held that ECI did not qualify as an Additional Insured under the Travelers Policy. This was based on the express language of the Travelers Additional Insured Endorsement, which the Court held is limited to situations where the Subcontractor (Bolduc) is found to be negligent. Since Bolduc was found by the jury to be not negligent, ECI does not qualify as an Additional Insured.

The Court determined that the Indemnity Clause violated the Anti-Indemnity Act, Minn. Stat. Sec. 337.02, because it: (a) required Bolduc to indemnify ECI for ECI's own fault, and (b) was not saved by the insurance exception because it determined earlier in the opinion that ECI was not covered by the Additional Insured Endorsement.

HOWEVER, the Court said that ECI waived its argument that Bolduc was liable for breach of contract, and did not decide whether Bolduc could have been liable to ECI for breach of a specific contractual provision without being negligent. Accordingly, the issue is undecided as to whether a subcontractor could be liable under the "breach of a specific contractual duty" language in the Anti-Indemnity Act.

The Court held that ECI waived its argument that Bolduc was liable under Minn. Stat. Sec. 337.05, subd. 2, for failing to procure contractually mandated insurance. This provision could have rendered Bolduc liable if the insurance provision of the Subcontract was interpreted to require Bolduc to procure insurance covering ECI's own negligence. This is more typical of provisions found in Minnesota subcontracts. The Court declined to decide the issue in this case because ECI did not properly raise it in the lower courts. Accordingly, the issue is still out there.

Smith argued in his brief that: *"The [Supreme] Court has the opportunity in this case to clarify the law regarding the construction of indemnity clauses," so that "subcontractors and other non-lawyers can better understand the extent and nature of the risk they are being asked to assume. If a general contractor wants to be absolved from responsibility for its own negligence or fault, then it should clearly say so."* The Buldoc contract was unclear and this decision does not provide the plain resolution MSA sought.

The Minnesota Subcontractors Association holds that each party should be responsible for their own negligence and that subcontractors should not be required to purchase insurance for the mistakes of others. We have introduced a bill to stop illegal indemnity transfer. Opponents of the bill have held that action should be delayed while the matter is before the court. This is no longer true. MSA will continue to work for passage of the bill. It was introduced last year before the Minnesota legislature and it was passed by the Senate Commerce Committee. The matter has broad subcontractor support.