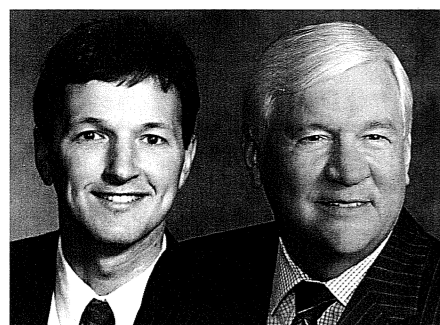


J.S.U.B. AND CGL COVERAGE FOR DEFECTIVE SUBCONTRACTOR WORK

Construction Law Section

Chairs: Neil Sivyver, Sivyver Barlow & Watson, P.A., and Stephen D. Marlowe, Marlowe McNabb & Stayton, P.A.



the contractor for damage to the completed project caused by a subcontractor's defective work, provided that there is no specific exclusion that otherwise excludes coverage."

Insurance policies are typically drafted to provide a very broad grant of coverage. Coverage is then reduced by stated exclusions. As with the subcontractor work exception at issue in *J.S.U.B.*, policies often then provide for exceptions to the exclusions. The exceptions do not create coverage, but simply prevent operation of otherwise applicable exclusions.

Relevant to this article, a post-1986 CGL policy operates as follows: (1) Grants coverage under the broad language of Section 1 – Coverages; (2) excludes coverage for the insured's

The Florida Supreme Court's decision in *J.S.U.B., Inc. v. United States Fire Insurance Co.*, 906 So. 2d 303 (Fla. 2d DCA 2005) erases any doubt that Commercial General Liability ("CGL") insurance policies cover damages caused by a subcontractor's defective work that do not manifest until after the insured contractor's work is completed or abandoned.

throughout the insurance industry,

Continued on page 13

work (including work within the insured's scope that is performed by subcontractors); and, (3) makes an exception to that exclusion for products completed-operations hazard coverage where the work was performed on the insured's behalf by a subcontractor.

The Court's interpretation of the products completed-operations hazard coverage was supported by an explanatory circular published in July 1986 by the Insurance Services Office ("ISO"), which is an insurance industry organization that promulgates standard insurance policy forms used

J.S.U.B. AND CGL COVERAGE FOR DEFECTIVE SUBCONTRACTOR WORK

Construction Law Section

Continued from page 12

including the form CGL policy at issue in *J.S.U.B.* The ISO circular stated that the 1986 revisions to the CGL form were intended to incorporate the formerly optional Broad Form Endorsement and that the post-1986 form CGL policy specifically covered "damage caused by faulty workmanship to other parts of the work in progress; and damage to, or caused by, a subcontractor's work after the insured's operations are completed."

The Florida Supreme Court's well-reasoned decision clearly explains the history and operative CGL policy language giving rise to coverage. In sum, the Court holds that a contractor's CGL policy covers property damage caused by the faulty workmanship of the insured's subcontractor(s), where the damage manifests after the contractor's work is completed or abandoned.

The *J.S.U.B.* holding is welcome news to Florida's construction and surety industries. Practitioners should review their clients' files for post-1986 CGL policies that may provide coverage for defective subcontractor work. This could result in CGL recovery by insured contractors for

remediation of a subcontractor's defective construction, or in recovery (called "salvage") by performance bond sureties that have paid latent defect claims caused by their principals' subcontractors' work.

¹ The decision is available at: 32 Fla. L. Weekly S811, 2007 WL 4440232, and 2007 Fla. LEXIS 2394.



Author: Morgan Streetman, Shumaker Loop

MARCH MEMBERSHIP LUNCHEON DOOR PRIZE WINNERS

PRESENTATION GROUP: Marva Taylor, \$25 Starbucks Gift Card

STETSON UNIVERSITY COLLEGE OF LAW:

Susan Sandler, Ann Robbins, Lunch bag and Travel mug

THOMPSON'S STUDIOS: Jeane Coleman, Photo package

FREEDMAN'S OFFICE SUPPLIES: Heather Forget, \$25 gift card

BANK OF TAMPA:

Ed Spinks, Men's golf shirt; Elva Kennis, Women's golf shirt; Carter Andersen, Men's polo shirt; Judge Rice, Umbrella

TRIAL CONSULTING SERVICES:

Bill Capaito, \$50 Visa Card; Judge LaRose, \$50 Visa Card

BAY AREA REPORTING: David Tong, \$150 off reporting; Debbie Blews, \$100; Mark Lewis, \$75 off reporting services

WEST, A THOMSON BUSINESS: Bill Coffman, Rolling bag

GARY LARSEN

Certified Circuit Civil & Federal Court Mediator



Available to mediate throughout Florida in all areas of civil litigation including Personal Injury, Wrongful Death, Business & Contract Disputes, Products Liability, Malpractice, Construction, Nursing Home & Insurance Coverage

Dickinson & Gibbons, P.A.

401 N. Cattlemen Road, Suite 300, Sarasota, FL 34232

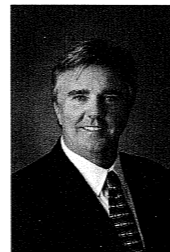
941.366.4680

www.floridamediators.org/gary-larsen

No charge for travel - 3 Hour Minimum

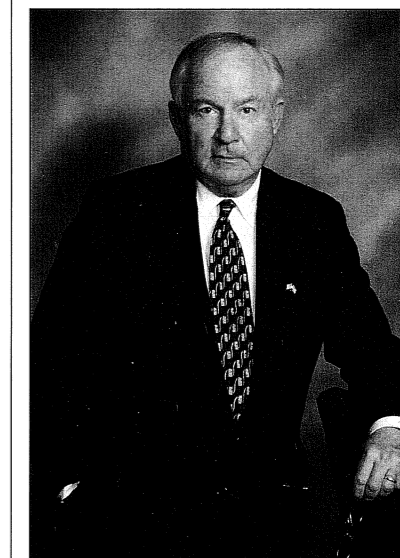
JIM ROLFES

Certified Circuit Civil Mediator



Board Certified Civil Trial Lawyers

GUY SPICOLA MEDIATOR



- Certified Circuit-Civil and Federal Mediator
- Former Chief Judge, 13th Judicial Circuit
- AV rated, Martindale Hubbell

LAW OFFICES OF GUY SPICOLA

3111 W. Dr. M.L. King Jr. Blvd.
Suite 100
Tampa, FL 33607

(813) 350-7959

Fax: (813) 269-5767

E-mail:

gspicola@tampabay.rr.com

Website:

www.guyspicolalaw.com