

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

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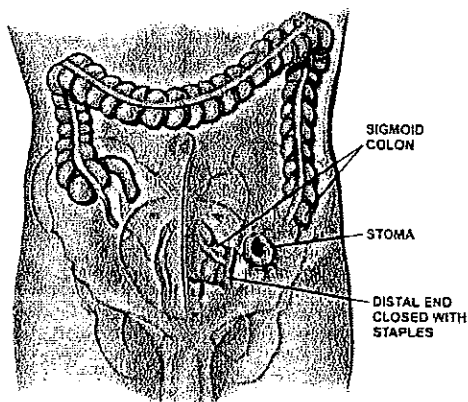
Notable Cases in This Week's Issue...

	Result	TR#
Woman critically injured by intoxicated driver	\$10,510,030	23
\$1.8 million jury award follows offer of only \$100,000	\$1,851,521	28
Settlement—City's water main breaks, causes mudslide	\$9,535,000	19
Baseball game patron punched in face by fellow patron	\$500,420	12
Settlement—Negligent U-turn results in death of two	\$3,000,000	25
Settlement—Van operator drops elderly woman	\$660,000	16
Settlement—Man dies after truck collides with disabled car	\$1,500,000	31
Female detectives accuse LAPD of discrimination	\$79,500	14
Couple on motorcycle injured in intersection collision	\$215,497	26

**Settlement—Elderly man struck in crosswalk:
\$4,000,000**

Trial Report No.: 29

Detailed Illustration: Page 4



<i>Inside</i>	<i>Page</i>
Week at a Glance.....	1
Medical Illustrations.....	4
Labor & Employment.....	14
Professional Malpractice...	19
Real Property.....	19
Vehicle Negligence	24
Other Case Types	5-32
Indexes	33-43

EXPERTS

Not reported.

COMMENTS

According to court records: The complaint was filed on April 11, 2007.

8 TD 12TH 10

Contractor fails to pay subcontractor for work performed

CONTRACTS

Breach/Construction Contracts

PLACER COUNTY SUPERIOR COURT

Summit Builders Inc. v. Habitat Construction Inc., Docket number: SCV20412. Judge: Marc S. Curry. Trial type: Bench: 5 days. Verdict/Judgment date: 11/21/2008.

DECISION: \$52,125

The court awarded judgment in favor of plaintiff and against defendant Habitat Construction Inc. in the sum of \$52,125 and in favor of plaintiff and against the release bond and defendants Pico Ranch Inc. and International Fidelity Insurance Company in the sum of \$52,125.

COUNSEL

Plaintiff: John Garcia, Penney & Associates, Roseville.

Defendant: Patrick G. McNamara, Law Offices of Patrick G. McNamara, El Dorado Hills.

FACTS/CONTENTIONS

According to plaintiff: In October of 2004, plaintiff Summit Builders Inc. provided a bid to defendant Habitat Construction Inc. for labor and to supply and install metal frame and gypsum board on building 14 and its mirror, building 15, located on Reserve Drive in Roseville, California, for the sum of \$494,470. The bid stated that it was valid for 30 days.

On March 8, 2005, plaintiff had a meeting with defendants Habitat and Pico Ranch Inc. personnel to discuss the scope of plaintiff's work on Building 14. During the meeting, it was discussed that even though the bid by plaintiff was 5 months old, general contractor Habitat had to keep the price the same as in the bid because the bid had been used to obtain construction financing. During this meeting there was also a discussion concerning the installation of a "Dryvit" system. The testimony was in conflict on this issue, with plaintiff stating that it had informed defendants prior to signing the contract that plaintiff would not perform this work and defendants stating that plaintiff had agreed to do the work and had placed a notation on the old bid form to that effect.

There was further conflicting testimony as to whether a discussion was held at this meeting concerning the "level of finish" required for the drywall. Plaintiff stated that there was no "level of finish," and the defendants contended that there was. The contract stated the scope of the work was to supply and install metal studs and drywall per the plans and that the installation of drywall to a level 4 and 5 finish was an extra. Defendants contended that plaintiff agreed to install drywall to a level 4 finish. Plaintiff completed the job but did not accomplish such a finish.

On March 15, 2005, defendant Habitat drafted the "Project Subcontract Agreement" and "Master Subcontract Agreement," which were executed by both plaintiff and defendant Habitat. The contracts called for plaintiff to "supply and install metal stud & drywall per plans" for Building 14 for the sum of \$247,235. Drees of defendant Habitat drafted the two contracts and testified that, due to her mistake in using the computer software, the contracts did not contain language concerning the "Dryvit" system.

Plaintiff completed its work on Building 14, except for some miscellaneous "punchlist" items, which it did not receive prior to Habitat replacing plaintiff with another subcontractor. Defendant Habitat backcharged plaintiff for work done by separate subcontractors to complete the "Dryvit" system and to complete what Habitat considered to be improperly performed drywall work. Habitat only paid plaintiff the sum of \$197,435 on the contract. Plaintiff recorded mechanic's liens on the property and filed suit to perfect the mechanic's liens for the sum of \$72,034.65, which included extras not paid by Habitat. Prior to trial, defendant Pico recorded a Mechanic's Lien Release Bond from defendant International Fidelity Insurance Company, and plaintiff proceeded with a collection action against the release bond.

CLAIMED INJURIES

NA

CLAIMED DAMAGES

According to plaintiff: Plaintiff filed suit to perfect the mechanic's liens and for the sum of \$72,035, which included extras not paid for by defendant Habitat.

SETTLEMENT DISCUSSIONS

According to plaintiff: Defendants' collective offer to plaintiff was \$15,000. Plaintiff agreed to take \$45,000.

EXPERTS

None.

COMMENTS

According to plaintiff: Attorney fees and costs are pending subject to post-trial procedure.