

Residential Contractors' Defense Obligations In California

by Jad T. Davis



In a litigious state like California, residential contractors must be familiar with their defense obligations and keenly aware of the recent developments in the law governing such obligations.

In July of 2008, the California supreme court issued an opinion entitled *Crawford v. Weather Shield Manufacturing Inc.* The *Crawford* opinion held that a subcontractor must pay for the developer/general contractor's attorneys' fees, despite the fact that a jury found that the subcontractor was not negligent in performing its work at the residential construction project. This shocking opinion was based

upon the court's interpretation of the language of the defense obligations as defined in the subcontract between the subcontractor and the developer/general contractor.

In the *Crawford* case, JM Peters was the developer, builder and general contractor of a large residential project in Huntington Beach, California. JM Peters entered into a subcontract with Weather Shield Manufacturing Company, Inc. wherein Weather Shield agreed to manufacture and supply wood-framed windows for the project. Many of the homeowners brought construction defect claims against JM Peters, Weather Shield, and other contractors.



Shield's work was not performed in a negligent manner and it was absolved of liability. Nevertheless, the *Crawford* opinion held that Weather Shield contractually obligated itself to pay for JM Peters's attorneys' fees regardless of its own liability. Accordingly, the *Crawford* opinion presents serious problems for contractors with broadly worded defense obligations in their contracts.

In January of 2009 Assembly Bill 2738 became effective as amending Civil Code section 2782, *et seq.* This amendment attempts to address the problems associated with the *Crawford* opinion for residential contractors. The primary legislative intent of this amendment is to limit the defense obligations for residential contractors to their respective scope of work and to allow residential contractors to select the attorney and the attorney's rates. It is anticipated that this amendment will be interpreted by the courts as limiting the *Crawford* opinion by establishing a rule that defense obligations for residential contractors are limited to their specific scope of work on a project. For example, this amendment may have required Weather Shield to only pay JM Peters's legal fees to the extent that such fees were incurred as a result of Weather Shield's work. However, Weather Shield was found not negligent by the jury; and thus, it would not have had to pay for JM Peters's attorneys' fees if this amendment would have been in effect. Also, Weather Shield may have been able to select the attorney and the attorney's rates if this amendment would have been in effective. The legislative intent of this amendment, and its anticipated interpretation, attempt to address the serious problems associated with the *Crawford* opinion – nevertheless this amendment has not yet been interpreted by the California courts.

The jury returned general verdicts in favor of Weather Shield, that is the jury found that Weather Shield did not perform its work in a negligent manner. JM Peters settled with the homeowners before trial. However, JM Peters cross-complained against Weather Shield (and others) asserting that Weather Shield owed it a duty to indemnify and an immediate duty to provide JM Peters with a legal defense against the homeowners' lawsuits. JM Peters's cross-complaint was taken to the California supreme court wherein the high court issued its *Crawford* opinion.

The *Crawford* opinion did not limit Weather Shield's defense obligation to its scope of work, but rather held Weather Shield liable for all of JM Peters's attorneys' fees, despite the fact that JM Peters was the developer, builder and general contractor on the project. Whereas, Weather Shield was merely a window subcontractor on the project. Additionally, the jury found that Weather

Consequently, residential contractors doing business in California should take the time to carefully examine their defense obligations as defined in the indemnity provisions of their existing contracts.



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