

*Emco Metalworks Inc. v Schaeffges Brothers Inc.* 08L-11104, Circuit Court of Cook County, Illinois  
Tried Nov. 4-12, 2010

Verdict: Not Guilty to Emco v Schaeffges Brothers on breach of contract action; \$1,141,535 to Schaeffges Brothers on its breach of contract counterclaim v Emco (\$166,147 damages paid to subcontractors; \$343,927 bond claim payments to CNA; \$12,920 expert witness fees to Wiss Janney Elstner; \$125,541 attorney's fees/costs; \$343,000 lost overhead and profit; \$75,000 loss of future business; \$75,000 damage to reputation; \$0 retainage lost on Emco escalation payment; \$0 site design payments); Not Guilty on Schaeffges' counterclaim v Emco for tortious interference with contract.

Judge: Susan J. McDunn (IL Cook-Law)

Pltf Atty: Michael P. DiNatale of *DiNatale Law Offices* (North Riverside) Offer: \$275,000

Deft Atty: Robert A. Shipley of *Shipley Law Group* Offer: none Demand: \$650,000

Deft Expert: Carl Peterson, Wiss Janney Elstner Associates Inc., 10 S. LaSalle St., #2600, Chicago, IL (312-372-0555) (Structural Engineer)

This contractual dispute arose from the Chicago Park District's development of the Steams Quarry Park (27 acres at 27th and Halsted) from a landfill. Schaeffges Brothers had been awarded the contract to develop the park following competitive bidding. Subsequently, on April 5, 2006, Schaeffges executed a subcontract agreement with Emco, under which Emco was to provide metal work for the park. In this action, Emco alleged that Schaeffges did not pay for \$29,800 in materials that had been purchased for the project, while Schaeffges insisted that payment had been made, and provided proof. Schaeffges counterclaimed against Emco for breach of contract, asserting that, in 2008, the Park District had terminated its contract with Schaeffges due to Emco's continued failure to perform its portion of the work. Emco denied that it had failed to perform, and argued that the project's plans/drawings, along with the RFI responses from the project's architect, had not provided it with sufficient information. However, the jury found that Emco had breached the subcontract and awarded damages to Schaeffges consisting of its out of pocket costs and payments, plus its loss of business and damage to reputation.