

Texas Supreme Court Rules that General Contractor is Not a Seller Entitled to Statutory Indemnity

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You just built a building or a pipeline with materials that were defectively manufactured. You're protected by statutory indemnity, right? Wrong!

Summary:

On June 17, 2016, the Texas Supreme Court delivered an opinion in the case of *Centerpoint Builders, LLC v. Trussway, LTD*. The Court considered whether a general contractor may seek statutory indemnity from a product manufacturer under the Texas Products Liability Act as a "seller" of materials used in a building's construction.

The Court held that a general contractor is not a "seller" within the indemnification clause of the Texas Products Liability Act if a general contractor is not a retailer or wholesale distributor of any particular product that is incorporated into its construction projects.

The Court acknowledged that some general contractors may be in the business of selling both products and services, but "one is not engaged in the business of selling a product if providing that product is incidental to selling services." Cautioning against a one-size-fits-all approach, the Court stated that determining whether a general contractor is a seller for statutory indemnity purposes depends on the specific facts at issue. The Court determined that Centerpoint was not a seller, but rather a provider of services and therefore was not entitled to statutory indemnity from Trussway under the Texas Products Liability Act.

Background:

Glenmont Madison Beaumont LLC hired Centerpoint Builders, LLC ("Centerpoint") as a general contractor to build the Beaumont Trace Apartments. Centerpoint hired a number of contractors for the construction and purchased trusses from manufacturer Trussway, LTD ("Trussway").

The lawsuit began when an independent contractor was injured after a truss broke and fell. The contractors sued Trussway for negligent design, manufacture, and testing of the truss, among other related claims. After settling with all of the defendants, Centerpoint filed a cross-action against Trussway seeking statutory indemnification pursuant to Chapter 82 of the Texas Civil Practices and

Remedies Code, known as the Texas Products Liability Act (the “Act”). The Act entitles the *seller* of a defective product to seek indemnification from the product manufacturer for certain losses.

The Court ultimately found that “one is not engaged in the business of selling a product if providing that product is incidental to selling services.” By applying its standard, the Court held that Centerpoint is not a truss seller, and, therefore, is not entitled to seek indemnity from Trussway. Furthermore, the Court held that a general contractor that is not a retailer or a wholesale distributor of a particular product is not a seller of every material that he uses for construction projects. Cautioning against a general application to all general contractors, the Court stated that determining whether an entity is a seller of a service, a product or both is dependent on the specific facts at issue.

What this means for you:

This case is an important products liability case for contractors.

- In Texas, in order for a general contractor to be entitled to indemnity from a product manufacturer for an allegedly defective product under the Texas Products Liability Act, the general contractor will have to submit sufficient evidence that it is engaged in the business of selling the allegedly defective product(s) at issue and not just selling its services.

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