

No. _____

IN THE SUPREME COURT OF MINNESOTA

SAFETY SIGNS, LLC,
Petitioner,

v.

WESTFIELD INSURANCE CO.
Respondent.

On Appeal from the Court of Appeals, Minnesota
Cause No. A12-0370

APPLICATION OF *AMICUS CURIAE*
THE AMERICAN SUBCONTRACTORS ASSOCIATION, INC.
IN SUPPORT OF THE PETITION FOR REVIEW BY SAFETY SIGNS, LLC AND
FOR LEAVE TO PARTICIPATE IN THE APPEAL

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No. ___ - _____

IN THE SUPREME COURT OF MINNESOTA

TO THE HONORABLE MINNESOTA SUPREME COURT:

Amicus Curiae, The American Subcontractors Association, Inc. ("ASA"), offers the following in support of its Application for leave to participate in the appeal and to support the Petition for Review filed by Safety Signs, LLC in this matter.¹

ASA is a national organization representing the interests of approximately 3,000 subcontractor member businesses in the United States, including 108 affiliated member businesses in the State of Minnesota. ASA's primary focus is the equitable treatment of subcontractors in the construction industry, who commonly perform approximately 80-90% of the work on major construction projects like the project at issue in this case. ASA acts in the interest of all subcontractors on public and private construction in the United States by promoting legislative action and by appearing as *amicus curiae* in significant legal actions that affect the construction industry at large.

ASA is concerned with the precedent that would be set if the Minnesota Court of Appeals decision in *Safety Signs, LLC v. Niles-Wiese Constr. Co., and Westfield Insurance Co.*, Court of Appeals, A12-0370 (Sept. 17, 2012) (the "Decision") is not

¹ CERTIFICATION PURSUANT TO RULE 129.03 OF THE MINNESOTA RULES OF CIVIL APPELLATE PROCEDURE: The ASA amicus counsel listed herein authored this Petition in its entirety. The American Subcontractors Association, Inc. made the only monetary contribution to the preparation of this brief.

reversed. The public policy implications of not granting review, the uncertainty that currently exists, and the troubling legal and equitable issues that would result if this Court does not clarify whether substantial compliance with notice requirements is sufficient to preserve a bond claim under the notice provisions of Minnesota's Public Contractors Performance and Payment Bond Act (Minn. Stat. § 574.31, the "Act") all support granting the current Petition for Review.

The primary purpose of the Act is to protect those who perform labor or furnish material to public projects (projects to which the mechanics' lien statute does not apply). Yet in the Decision the court held that substantial compliance with the Act —through serving notice on the surety and attempted service on the bond principal at its regular business address— was insufficient to preserve otherwise valid bond claims. In this regard, the court cited its decision in *Spetz & Berg, Inc. v. Luckie Construction Co., Inc. v. Luckie Constr. Co.*, 353 N.W.2d 233 (Minn.App. 1984), rev. denied (Minn. Nov. 9, 1984). In *Spetz*, it had "reluctantly" held that strict compliance was necessary after noting that "[a]lthough it appears that the substantial compliance doctrine *should be extended* to Section 574.31 and public project bonds, *that is for the Minnesota Supreme Court to decide*" Decision, at p. 8-9 (citing *Spetz & Berg*, 353 N.W.2d at 235 (emphasis added)).

The public policy implications caused by the Decision contravenes the intent of the Act, affects the small and mid-sized businesses that will suffer severe harm and prejudice from such an interpretation of the Act, and would create an incentive for collusion between the surety and contractor to (as occurred here) list different notice

addresses for the contractor in the subcontract and bond, and then refuse to accept certified mail service of claims. ASA is concerned about maintaining consistency and integrity in Minnesota case law since there are already cases applying the substantial compliance doctrine to the Act, which the Minnesota Court of Appeals dismissed as implicitly overruled. As an *amici* participant ASA could provide valuable perspective and information on the use of payment bonds on construction projects, the importance of such bonds to subcontractors, the practical concerns regarding payment on construction projects, and the risks of nonpayment to subcontractors.

ASA and its members support the position of Appellee Safety Signs, LLC in defending the district court's ruling that substantial compliance with a payment bond notice requirement is sufficient and a technical defect in service should not give a bond surety the right to refuse to pay meritorious claims for unpaid work, especially where actual notice exists. There is no compelling legal or equitable reason why, given the remedial purposes of the statute, the doctrine of substantial compliance should not be extended to the Act. For these reasons, ASA respectfully asks the Court to grant Safety Signs, LLC's Petition for Review and ASA's Application for Permission to file an amicus brief in this case.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been served via personal service on this 31st day of October, 2012.



Matthew D. Resch