

Case Study

Trial Victory / Construction Defects

High School with Leaks and a Trial Against a Sub-Subcontractor

The Problem

The project is a private high school constructed by a Design-Build Contractor working for the Owner (the school). The building is approximately 33,000 square feet (SF) total, with slab-on-grade and concrete tilt-up construction. Approximately 15,000 SF of the building is a gymnasium with wood flooring placed on the slab-on-grade, which is 2-feet lower in elevation than the remainder of the building, and directly adjacent to and at the bottom of a sloped hillside. The Concrete Subcontractor contracted with the Design-Builder for the concrete (tilt-up) walls, slabs and foundations, including a 5-inch (specified 2,000 PSI) slab over 2-inches of sand over sheet plastic, for approximately \$400,000. After construction, a traditional construction defect litigation case ensued with many defect allegations, including roof and wall leaks, moisture damaged gym wood flooring, and paint adhesion problems, with a \$1.8 million cost to repair estimate from the Owner's experts. The allocation of responsibility to the Concrete Subcontractor was \$1.5 million.

The Solution

We were hired by the attorney and insurance company for the Concrete Subcontractor to evaluate the allegations, investigate the project performance, draw conclusions, and allocate responsibility. During the document analysis portion of the investigation we found that the Concrete Subcontractor tried to exclude caulking of the wall panel joints, but it was hand-written back into the contract by the Design-Builder and initialed by all. We found that the Concrete Subcontractor subcontracted with a "Sub-Subcontractor" to perform this caulking (wall panel-to-panel sealant joints) as well as the "sack & patch" (smoothing of the concrete walls) in preparation for paint.

Our investigation concluded that the concrete work was high quality, installed conforming with the plans and specifications, and performing well in service; but the caulking and paint preparation (sack & patch) work was not. A key issue was the moisture damaged flooring that was being allocated primarily to the Concrete Subcontractor. We argued persuasively in mediation for a 0% wood floor allocation, and the Design-Builder's experts adjusted their allocations, in writing, from \$1.5 million down to \$300,000, all of which was related to the caulking and paint preparation and a settlement was made.

Unfortunately the Sub-Subcontractor who performed the defective work refused to participate in the settlement, so the insurance company for the Concrete Subcontractor hired the Defense Attorney to sue them for all costs and the settlement amount paid. Late in the game a well-known and normally reputable expert was hired; but his conclusions were ludicrous. We wrote a 5-page response to his report, and testified persuasively at trial proving our point that the entire settlement with the Owner and Design-Builder was based on the poor work by the Sub-Subcontractor. The jury agreed and awarded 100% of the settlement amount, 100% of defense fees and costs for the underlying construction defect litigation, and 100% of fees and costs for the trial.

