



Adventures in Advocacy

Visit www.sbcmag.info for legislative updates and alerts.
Questions or article topics can be sent to sshields@sbcmag.info.

Knowing the Courts: Part 2 of 2

by Kent J. Pagel

In the August issue of **SBC**, this column provided a brief overview of our nation's multi-layered judicial branch. It described how this branch of government, at both the state and federal levels, is responsible for enforcing and interpreting laws otherwise adopted by the other two branches—legislative and executive—of government.

The structure appears simple enough. Legislatures adopt legislation which becomes statutes. If regulation over a certain activity or industry is viewed as necessary, legislatures will authorize the executive branches to do the regulating (for example, agencies like OSHA are contained within the Department of Labor run by the White House).

In short, these statutes and regulations constitute the laws that govern the conduct of you and your company. Under this "organizational structure," only in rare instances does the judicial branch need to go beyond law enforcement to step in and clarify what has been decreed by either of the two other branches. Why then is understanding the function of the judicial branch so confusing?

Perhaps there would be less confusion if all statutes and regulations were fully and clearly written. However, at times, a statute or regulation does not address all the possible outcomes under the law. In other instances, a statute or regulation is drafted through a series of negotiations where the give and take among politicians and lobbying groups results in language gaps, vagueness and ambiguity.

Furthermore, courts at times choose to "legislate from the bench." Rather than merely enforce and occasionally interpret statutes and regulations, they end up actually establishing "new" law through the judicial opinions they publish. This impacts the component manufacturer through what is referred to as judicial or legal precedent. Read the **Case Break** in the sidebar at right for an example of how the courts can establish law through judicial or legal precedent.

Setting a Precedent

What is meant by judicial or legal precedent? This is a practice dating back to early British courts. Loosely translated, it means that as courts hand down rulings, those rulings establish a precedent other courts are obliged to consider if they find themselves ruling on the same or similar law.

When deciding the appeal, the appeals court may write case opinions that address the legal decisions made by the trial court. These case opinions often contain comprehensive legal analysis. The case opinions are usually published and these published decisions enable other courts to follow their rulings through what we have been referring to as judicial or legal precedent.

Continued on page 112

Case Break

A construction defect lawsuit is filed by a homeowner against a roof truss manufacturer. The lawsuit is filed ten years after the trusses are manufactured and installed. The homeowner complains of roof truss design and manufacturing defects. The manufacturer's business is located in Texas, the trusses were installed in a home constructed in Texas, and the lawsuit is filed in Texas.

The manufacturer's attorney consults Texas statutes and finds the Texas legislature has previously passed a law which provides what appears to be an absolute defense to the lawsuit. The statute states that construction defect lawsuits **MUST** be filed within four years of the date the products complained of were sold. If not filed within that timeframe, a lawsuit is barred (a law which bars a lawsuit filing after a certain prescribed date is commonly referred to as a "statute of limitations").

Relying on this statutory law in Texas, the manufacturer's attorney files a comprehensive motion with the court seeking dismissal of the lawsuit. The motion is based on the statute of limitations barring lawsuits filed more than four years of the date the trusses were sold. The trial court, where the lawsuit was filed, agrees with the roof truss manufacturer and dismisses the case.

However, the homeowner plaintiff appeals the case dismissal. Not unlike other states, although the terminology may differ, appeals of orders or judgments entered by a trial court are processed and resolved by courts of appeals. An appeals court will neither re-conduct the trial nor will witnesses testify. Instead, these are functions of the trial court.

In deciding an appeal, the appeals court will either affirm, modify or reverse the judgment made by the trial court. The appeals court at times may order the trial court to reconduct a trial because of mistakes made. Appeals courts are to focus only on whether the legal decisions made in the case by the trial court are in conformance with the statutory law or whether they are in line with judicial or legal precedent. At times, and we will see how this can occur, there is a blurring of the difference between statute and precedent.

*You can find more **Case Breaks** and discussion like the ones we've seen here in the **ORisk** program. Find details of this program on page 28.*

Southern Pine Lumber: Your Choice for Trusses



Southern Pine is preferred for roof and floor trusses because of its high strength and density for superior connector-plate holding power. Grown in the USA, it's readily available in a variety of sizes and strong visual, MSR and MEL grades....reasons why Southern Pine earns 55% of the truss market.



Online, the Southern Pine Council is your source for design information, even a product locator. Visit: www.southernpine.com



504/443-4464 • Fax 504/443-6612

For reader service, go to www.sbcmag.info/spc.htm

An Association's Coming of Age

Continued from page 43

When Dan Holland (Clearspan Components) took over the reigns from Arquilla in 2004, the BCSI experience was still young. Holland took full advantage of yet another opportunity to partner with TPI. "The Joint Publications Agreement was drafted and signed during my term," he said. "That and the closer relationship with TPI was major news in 2004." The Joint Publications Agreement was significant for both groups in that it split BCSI net profit down the middle.

The Future & Beyond

As he writes in his farewell message (see page 7), current President Kendall Hoyd's (Idaho Truss & Components) hallmark will likely be starting a WTCA research and truss testing center. "It will pay huge dividends in our industry for years to come," he predicts. But as you can see, there really is no predicting where WTCA's future might lead, given the strong leadership and commitment of its component manufacturer members. Without question, the many changes made since 1983 have cemented WTCA's future as a credible, influential and persistent force in the building components industry. Cheers to the leaders who have helped light the way. **SBC**

Adventures in Advocacy

Continued from page 110

If a state appeals court issues case opinions, these become case precedent applicable to that particular state. Federal appeals courts are likewise at times called upon to interpret state laws and regulations. When they do, the case opinions they issue will also become case precedent for that particular state. Generally, however, federal appeals courts interpret only federal law and their case decisions are binding as federal case precedent. To the extent one federal appeals court issues a case opinion interpreting federal law one way, and another federal appeals court issues a case opinion interpreting federal law differently, it is up to the United States Supreme Court to resolve this difference. When the U.S. Supreme Court issues a case opinion, it becomes a federal law case precedent that applies to all states.

Going back to the example, as we recall the trial court has ruled that the existing statute of limitations bars the lawsuit. In this case, on the appeal of the plaintiff homeowner, the appeals court reverses the judgment in favor of plaintiff. In reversing the judgment the appeals court issues a case opinion

describing the reasons to support the reversal. The case opinion describes that although the lawsuit was filed ten years after the trusses were sold, the plaintiff homeowner did not discover problems with his trusses until less than four years prior to filing his lawsuit.

Even though the statute itself does not in any way mention that discovery of problems is any kind of test, the appeals court is persuaded that homeowners may very well not be able to know of problems within the four-year timeframe set forth in the statute. In doing so, the appeals court establishes a law that otherwise did not exist. The law they establish is what becomes later referred to as the "discovery rule." In other words, on a sale of trusses and subsequent complaints of design or manufacturing defects, the statute of limitations does not run from the date of sale as the statute may state, but from the date of discovery or the date the homeowner should have reasonably discovered the problems.

As you can see, an active judicial system can work and impose law that directly affects component manufacturer. The net result of all of this for the roof truss manufacturer is no certainty as to when they can be sued for product defects and corresponding property damages. The statute of limitations runs from a date of discovery as imposed by the courts and not a transaction date as set forth in a statute adopted by a legislature. **SBC**

Kent J. Pagel is the President and Senior Shareholder of Pagel, Davis & Hill, a professional corporation. Mr. Pagel serves as the outside counsel for WTCA.

STRUCTURAL BUILDING COMPONENTS™

THE FUTURE OF FRAMING

www.sbcmag.info

Dear Reader:

Copyright © 2005 by Truss Publications, Inc. All rights reserved. For permission to reprint materials from SBC Magazine, call 608/310-6706 or email editor@sbcmag.info.

The mission of Structural Building Components Magazine (SBC) is to increase the knowledge of and to promote the common interests of those engaged in manufacturing and distributing of structural building components to ensure growth and continuity, and to be the information conduit by staying abreast of leading-edge issues. SBC will take a leadership role on behalf of the component industry in disseminating technical and marketplace information, and will maintain advisory committees consisting of the most knowledgeable professionals in the industry. The opinions expressed in SBC are those of the authors and those quoted solely, and are not necessarily the opinions of any of the affiliated associations (SBCC, WTCA, SCDA & STCA) .



6300 Enterprise Lane • Suite 200 • Madison, WI 53719
608/310-6706 phone • 608/271-7006 fax
www.sbcmag.info • admgr@sbcmag.info