



ASA and ASA–Greater Kansas City File to Defend Little Miller Act Bond Protections

On March 8, 2011, ASA and the ASA–Greater Kansas City chapter asked the Missouri Court of Appeals Western District to allow them to file a brief so they can argue that “telescoping” is acceptable under Missouri’s Little Miller Act. In their [request](#) to file a brief in *City of Kansas City, Missouri v. Travelers Casualty and Surety Co. of America*, ASA and ASA–GKC argued that “the trial court erred in failing to apply the well-recognized public policy behind telescoping that would allow LaFarge, the concrete supplier on a public sewer project, to establish the requisite degree of privity to allow it to pursue its bond claim under Missouri’s Little Miller Act.” In the underlying case, a payment dispute arose, and LaFarge tried to make a claim under the payment bond. Since Missouri’s Little Miller Act is clear that its protections extend only to three tiers of potential claimants, LaFarge was told it was “too far removed” to “make a proper claim” on the bond as a fourth tier contractor. At trial LaFarge argued that two of the tiers above it should be “telescoped” into a single entity for purposes of determining who is entitled to the bond protections. The two tiers above it in question were closely related companies that were so intimately connected – they shared the same office, copier, lawyer, accountant and insurance agent – that federal law would likely have applied “telescoping” to extend the federal Miller Act protections to an additional tier. The trial court ruled against LaFarge, saying that Missouri law is silent on whether telescoping is acceptable. Lee B. Brumitt, Esq. and Patrick J. Kaine, Esq., Dysart Taylor Lay Cotter & McMonigle, P.C., Kansas City, Mo., prepared the request to file a brief on behalf of ASA and ASA–GKC. *To donate or to learn more about this and other Subcontractors Legal Defense Fund cases, visit www.sldf.net.*
