



Frank Coluccio Construction Company, Inc. v. King County

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The Appeals Court recently published the case, *Frank Coluccio Construction Company, Inc. v. King County*, No. 56594-0-1, from which all owners, contractors and subcontractors can heed a warning. In the late 1990s King County hired Frank Coluccio Construction Company, Inc. as general contractor for the construction of a small utility tunnel under Duwamish Waterway. Coluccio hired Donald B. Murphy Contractors as a subcontractor. During construction, a “blow in” occurred, causing a two-month delay to the project. The County denied Coluccio and Murphy’s claims.

The prime contract required the County to purchase an All Risk policy to cover all losses suffered by any contractor, subcontractor, sub-subcontractor or supplier in its work on the Project. Despite this explicit requirement, King County obtained a less expensive and less inclusive insurance policy but later represented that it had obtained the correct policy. Coluccio sued the County for breaching its contractual duty and its implied duty of good faith and fair dealing by failing to procure the agreed-upon insurance and then denying a claim that would have been covered.

The Court harshly condemned the County for its actions, ultimately awarding damages and interest to Coluccio of over \$1.5 million and attorney’s fees of over \$300,000. When a party fails to obtain a required insurance policy, it is responsible for all losses that would have been covered by the policy it should have purchased. The County faced liability for the losses suffered unless it could prove at trial that every All Risk policy available for purchase, without exception, would have excluded the type of losses suffered. The County was unable to meet this incredibly high burden. Even one similar policy on the market that covers the type of loss ultimately suffered pins all of the damages on the party that was supposed to obtain the insurance policy.

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