

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

LIBERTY MUTUAL INSURANCE CO. *

Plaintiff, *

v. * Civil Action No.: 1:20-cv-01961-SAG

JESSE J. MURPHY, et al., *

Defendants. *

* * * * *

CERTIFICATION ORDER

Pursuant to Maryland Rule 8-305 and the Maryland Uniform Certification of Questions of Law Act (MD. Code, Cts. & Jud. Proc. §§ 12-601 to 12-613), the Court certifies the following question of law to the Court of Appeals of Maryland.

Question of Law to be Answered

Did the Maryland Court of Appeals act within its enabling authority under, *inter alia*, the State Constitution and the State Declaration of Rights when its April 24, 2020 Administrative Order tolled Maryland’s statutes of limitation in response to the COVID-19 pandemic?

Facts Relevant to the Questions

1. Three parties of diverse citizenship are engaged in an indemnity lawsuit arising from a payment bond, a performance bond, and a General Indemnity Agreement (the “GIA”) in the U.S. District Court for the District of Maryland under diversity jurisdiction.
2. Plaintiff issued payment and performance bonds to defendants, a concrete subcontractor for HASCON, LLC, on a construction project at the Maryland State Police Flight Training Facility at Martin State Airport (the “Project”).
3. Defendants signed the GIA at or near the time the bonds issued.

4. Plaintiff has alleged that Defendants defaulted on their obligations at the Project, causing plaintiff to incur losses under the bonds.
5. Plaintiff seeks damages for payments made for claims against the payment bond as well as attorneys' fees incurred before suit was filed and costs to investigate the claims against the bond. Plaintiff also seeks attorneys' fees and costs related to the pending indemnity action.
6. The GIA provides for indemnification by the Defendants, including associated legal fees and costs.
7. After due investigation, Plaintiff paid five claims against the payment bond and alleges it paid these claims because of Defendants' default. The claims paid by plaintiff were as follows:
 - a. On or about February 14, 2017, Plaintiff alleges it paid Schuster Concrete Ready Mix, LLC ("Schuster"), a supplier of ready-mix concrete to defendants, \$8,361.82.
 - b. On or about April 12, 2017, Plaintiff alleges it paid Neff Rental, LLC ("Neff Rental"), an equipment rental supplier for defendants, \$17,650.37.
 - c. On or about April 12, 2017, Plaintiff alleges paid Barker Steel Mid-Atlantic, LLC ("Barker Steel"), a supplier of rebar steel to defendants, \$11,341.11 in full and final resolution of its claim.
 - d. On or about August 8, 2017, Plaintiff alleges it paid Maryland Concrete Foundations, Inc., ("Maryland Concrete"), a supplier of rental dumpsters and equipment, \$16,200.00 in full and final resolution of its claim.
 - e. On or about August 24, 2017, Plaintiff alleges it paid Merritt Development Consultants, Inc. ("Merritt"), a project management services company for defendants \$30,100.00 in full and final resolution of its claim.

8. In investigating these and other payment bond claims, Plaintiff alleges that it incurred an additional \$11,273.56 in consultant fees that it paid in successive payments on February 8, 2017, March 22, 2017, and April 20, 2017.
9. In investigating and administering these payment bond claims, Plaintiff alleges that it incurred attorneys' fees. Two of five payments for attorneys' fees were made to counsel for Plaintiff before July 2, 2017.
10. Plaintiff alleges that defendants failed to indemnify and reimburse plaintiff for these payments made for bond claims and costs as required by the GIA.
11. Plaintiff filed an indemnity action in the U.S. District Court for the District of Maryland on July 2, 2020, to recover its alleged losses.
12. Defendants, through multiple motions, argued that many of Plaintiff's contractual claims are time-barred and subject to Maryland's three-year statute of limitations under Md. Ann. Code, Court & Jud. Pro. § 5-101 that accrues at the date of payment of the claim, rendering the federal court without subject matter jurisdiction.
13. Plaintiff maintained that the April 24, 2020, Administrative Order and subsequent related orders tolling the statutes of limitation in response to the COVID-19 pandemic (the "Emergency Orders") applied to its case, filed in diversity applying Maryland law, extending the applicable statute of limitations and making all claims timely.
14. In its order and memorandum opinion dated July 2, 2021, the U.S. District Court for the District of Maryland "determined that the Emergency Order is substantive law that tolls Maryland's . . . statute of limitations" so long as the Emergency Orders were validly enacted under, *inter alia*, the Maryland Constitution, the State Declaration of Rights, and other enabling authority.

15. Defendants contend that the Emergency Orders tolling the statutes of limitation overstep the Maryland Court of Appeals' limited authority under the State Constitution "to adopt rules and regulations concerning the practice and procedure in and the administration of the appellate courts and in other courts of this State," and/or constituted an unlawful assumption of legislative power.

16. Plaintiffs counter that the Emergency Orders do not overstep the Maryland Court of Appeals' authority and are a proper exercise of the court's emergency powers.

Statement Pursuant to Section 12-606(a)(3)

The parties hereto, through their counsel, acknowledge that the Court of Appeals of Maryland, acting as the receiving court, may reformulate the question.

Names and addresses of counsel of record

Plaintiff, Liberty Mutual Insurance Co., is represented by:

Shannon J. Briglia, Esquire
Shoshana Elise Rothman, Esquire
SMITH, CURRIE & HANCOCK LLP
1950 Old Gallows Rd., Suite 750
Tysons, VA 22182

Defendants Jesse J. Murphy and J.M. Murphy Enterprises, Inc., are represented by:

Joseph Larry Katz
KATZ LAW
6701 Democracy Boulevard, Suite 300
Bethesda, MD 20817

Party to be Treated as Appellant

Pursuant to Maryland Rule 8-305(b), Jesse J. Murphy and J.M. Murphy Enterprises, Inc., shall be treated as the appellants in the certification procedure.

Instructions to Clerk of this Court

Pursuant to Maryland Rule 8-305(b), the Clerk of this Court is instructed to forward to the Clerk of the Court of Appeals of Maryland the original and seven copies of this Order under this Court's official seal, together with a check in the amount of \$61.00, payable to the Clerk of the Court of Appeals of Maryland.

SO ORDERED this 15th day of July, 2021.

_____/s/_____
Stephanie A. Gallagher
United States District Judge