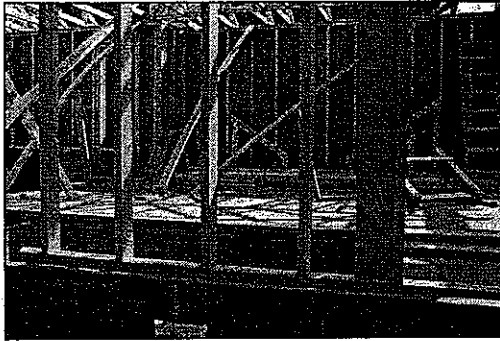


based in part on Alber's user manual, which promised to provide training to the end user when the unit was delivered. See *Asahi Metal Industry Co. v. Superior*

discoverable. Judge Harris mediated the claims against Alber. Although the mediation with Alber was initially unsuccessful, it laid the groundwork for resolution

## Builder, surveyor complaint settled by mediation for \$120K

Plaintiffs, homeowners, contracted with defendant builder to construct a four-story house in Arlington County. Plaintiffs retained defendant surveyor to perform a stakeout and wall-check survey during construction. After the house was under roof with roughed-in plumbing, electrical and HVAC systems, the surveyor's plat revealed that the house was in violation of Arlington County's height restriction and setback limitations on two sides of the house and was cockeyed on the lot.



Plaintiffs' builder expert opined that the builder was responsible for ensuring that a wall check was performed before framing commenced on the house. Plaintiffs also alleged that the builder built the basement wall one foot higher than reflected on the approved plans.

Plaintiffs also alleged that the surveyor failed to timely provide its wall-check survey results to the builder and/or plaintiffs before construction progressed further. Plaintiffs

alleged that the surveyor provided cut sheets to plaintiffs that permitted the house to be built one foot higher than on the approved grading/site plan. Plaintiffs proposed alternate measures of damages, including the cost to correct the defective construction at \$276,000 (the cost method) and the lost profit on the sale of the home at \$580,000 (the value method of damages) plus other damages, including carrying costs for the construction loan and attorneys' fees charged by prior counsel who attempted unsuccessfully to obtain a variance.

Defendants alleged that plaintiffs themselves acted as their own general contractor at the early, critical stages of construction and mismanaged the work, causing the basement floor to be 3.1 feet too high and the basement walls to be poured in violation of the setbacks. Defendant surveying expert alleged that the stakeout was performed correctly and that neither the owners nor the builder had the right to proceed with framing or other construction before receiving the wall-check survey results. Plaintiffs presented no surveying expert testimony. Defendants argued that the bulk of plaintiffs' damages resulted from their own errors and plaintiffs' sole measure of recovery was the cost to correct any work improperly performed.

The fact that the builder had no applicable liability insurance policy and the fact that plaintiffs believed that the builder was most responsible for the construction errors in this case was a significant factor in plaintiffs' willingness to settle for the ultimate amount. Trial would have involved about a dozen experts and up to three weeks of testimony.

**Type of Action:** Construction defect case

**Name of Case:** Sayed Majeed, et al. v. Cecco, Inc., et al.

**Court:** Arlington Circuit Court

**Case No.:** 06-721

**Tried Before:** Mediation

**Name of Judge:** Retired Judge William Ledbetter

**Special Damages:** Approximately \$150,000

**Verdict/Settlement:** Settlement

**Amount:** \$120,000 (\$55,000 from defendant surveyor and \$65,000 from defendant builder)

**Verdict Date:** 3/27/07

**Experts:** Alan Korobkin, Class A contractor - for plaintiff

**Insurer:** None for defendant builder; Lloyd's for defendant surveyor

**Plaintiffs' Attorney:** Brandon Gladstone, Fairfax

[07-T-075]

This case was settled prior to the filing of Chesterfield County Circuit Judge Michael C. Allen approving the settlement.

**Type of Action:** Wrongful death and personal injuries

**Injuries Alleged:** Cause of death to plaintiff: broken clavicle, blunt force trauma

**Name of Case:** Alice R. Clark, Executrix of Estate of Alice R. Clark, Deceased

**Court:** Chesterfield Circuit Court

**Tried:** Settled before trial on March 15, 2007

**Name of Judge:** Michael C. Allen

**Special Damages:** Decedent: \$46,255.03; Plaintiff: \$1,000,000

**Verdict/Settlement:** Settlement

**Amount:** Decedent: \$1,000,000; Plaintiff: \$1,185,000

**Offer:** \$1,185,000

**Insurer:** State Farm

**Plaintiff's Attorneys:** Stephen V. Sommer

[07-T-074]

## Court upholds \$1.1 million in fees for directors

Partners in a closely held real estate development company resolved some personality and business conflicts after several years. One of the partners—a 40 percent shareholder—was removed from the board of directors and as an officer of the company. The ousted partner and other board members continued to manage the company and performed all of the management activities and performed all of the management activities for the very successful company. Prior to the removal, the ousted partner received salaries paid to the two managers who were a significant part of the company's revenue. Following the removal of the ousted partner, the board determined that it was fair and appropriate to continue to pay the ousted partner a management fee equal to the revenue generated by the company's real estate development. The management fees paid to the ousted partner from 2001 to 2006, the management fees paid to the ousted partner, were \$1,904,495.

The ousted board member filed suit claiming that the ousted director conflict of interest under Virginia Code § 13-150. The ousted director nonsuited his case after several months. The two managers/directors ultimately agreed to a settlement action seeking confirmation that the payment of the management fee was "fair to the corporation" under Virginia Code § 13-150.

During the two-day trial, the plaintiffs called several witnesses in the field of real estate development. The defendant presented a survey of his findings that the management fee of 6 percent was reasonable in the Tidewater area.

The trial court ruled that the management fee was "fair to the corporation" under the Code section since the management fee was from the compensation vote. However, the Court ruled that the management fees paid over the two-year period were otherwise consistent with the payment of management fees in the Tidewater area.

**Type of Action:** Declaratory judgment - contract

**Name of Case:** G.C.R., Inc., et al. v. James

**Court:** Williamsburg/James City County Circuit Court

**Case No.:** CL0600-501

**Tried Before:** Judge

**Name of Judge:** Michael C. Allen, Judge I

**Verdict/Settlement:** Verdict

**Amount:** \$1,904,495 compensation approved

**Verdict Date:** February 1, 2007

**Plaintiffs' Experts:** Michael J. Davenport,

Warren, Newport News; Michael Youngblood

**Defendant's Expert:** Myrl L. Hairfield, Norfolk

**Plaintiff's Attorney:** H. Aubrey Ford III, Norfolk

[07-T-070]