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## \$7.3M verdict in steel spat

Fabricator alleged fraud, defamation, breach of contract

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A Cook County jury awarded more than \$7.3 million to an East Hazel Crest steel fabricator who alleged breach of contract, fraud and defamation against a southern Illinois general contractor.

The verdict was reached May 15 after a trial before Circuit Judge Bridget A. Mitchell. It included more than \$2.3 million in compensatory damages and \$5 million in punitive damages.

The plaintiff, Advance Iron Works Inc., won a state contract in 2011 to fabricate steel for the construction of the Illinois State Police crime lab in Belleville. The successful bid was submitted by AIW Vice President Robert V. Sutphen.

The Illinois Capital Development Board monitored the project, and Contegra Construction Co. LLC served as the general contractor in downstate Edwardsville.

From late December 2011 through January 2012, AIW and Contegra communicated through “requests for information” about various issues related to the “shop drawings” prepared by the architect, Harley Ellis & Devereaux,

according to court records.

On Jan. 12, 2012, AIW expressed concerns to Contegra about the construction schedule given the delays and Contegra’s inability to promptly respond to its questions.

Contegra filed a UCC-1 financing statement — a document filed by creditors to provide notice of a security interest in debtors’ property. AIW alleges it did not agree to the statement nor did they know it existed until September 2012, according to their attorney, Edward R. Moor of Moor Law Office P.C.

AIW continued delivering steel to Contegra and submitting invoices for its work.

In August 2012, the Capital Development Board met and informed Contegra it was not going to pay for any steel changes related to the initial errors.

Later that month, with the revised information, AIW restarted the fabrication process on half of the main framing structural steel that was delayed.

On Sept. 6, 2012, Contegra informed the state it was trying to replace AIW with another steel fabricator. AIW contends the move was “part of a scheme to avoid paying certain change orders out of its own pocket” and to “make AIW the scapegoat for the multiple delays in the [p]roject

caused by Contegra’s own conduct,” the complaint stated.

AIW continued to send invoices to Contegra for its work, but in October 2012 Contegra accused AIW of not shipping steel that was already paid for and claimed AIW was billing fraudulently.

Contegra filed a replevin action against AIW, seeking to recover property it contended was wrongfully taken.

AIW later agreed to allow Contegra to inspect the steel, and Contegra agreed to pay its balance no later than Nov. 6, 2012.

Instead, a Contegra employee who went to the facility to inspect the steel allegedly falsely testified AIW “severely overbilled” Contegra given the work that had been produced, Moor said.

On Nov. 16, 2012, an additional order was entered allowing the Cook County Sheriff’s Office to collect steel from AIW’s property on Contegra’s behalf.

Moor argued at trial that on Nov. 20, 2012, instead of waiting for sheriff’s deputies, Contegra representatives allegedly cut the lock on AIW’s fence and seized steel from the south suburban yard.

The project’s construction was halted that month, and AIW filed for Chapter 11 bankruptcy.

The defense argued at trial

that Contegra paid for a majority of the contract’s value but AIW did not complete its job, Moor said. Contegra also contended AIW lied about how much steel had been fabricated when it sent bills.

Jurors found in favor of AIW on its claims of breach of contract, fraud, trespass, wrongful replevin, defamation and slander of title, but rejected a trade-secret claim.

The jury also rejected Contegra’s breach of contract counterclaim.

Moor said the former AIW vice president is interested in getting back into the steel business.

“[Sutphen] has been through so much with this case, it’s great to finally get some justice,” he said.

The defense was represented at trial by Christopher D. Baucom of Armstrong Teasdale LLP in St. Louis as well as John L. Leonard and Michael H. Erdman of Teeple Leonard & Erdman.

Now representing Contegra and its insurer, Travelers, are Todd A. Rowden, John J. Cullerton, James L. Oakley and Holly H. Campbell of Thompson Coburn LLP.

They could not be reached for comment.

The case is *Advance Iron Works Inc. v. Contegra Construction Co. LLC, et al.*, 13 L 9267.