

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

AUG 26 2014

**SC Court of Appeals**

Letitia H. Verdin, Circuit Court Judge

Case No. 2011-CP-23-02028

Precision Walls, Inc. .... Appellant,

v.

Liberty Mutual Fire Insurance Co. .... Respondent.

**APPELLANT'S REPLY TO RESPONDENT'S RETURN  
TO PETITION FOR REHEARING**

Charles H. McDonald  
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Attorneys for Appellant

August 26, 2014

## ARGUMENT

**I. Even if the demolition and rebuild of the brick veneer wall constituted the work of Precision Walls under the Policy, coverage is still not barred by the operative language of the “your work” exclusion.**

Liberty Mutual contends that the work of tearing down and replacing the brick veneer wall in this instance constituted the work of the insured, Precision Walls, under the Policy definition of “Your Work,” and that such a finding alone is sufficient to support the Court’s holding that the Policy’s “your work” exclusion applies to bar coverage. Precision Walls submits that the work of the masonry subcontractor in performing the demolition and rebuild of the brick veneer wall does not meet the Policy definition of “Your Work.”<sup>1</sup> (Liberty Mutual Ex. 1—Section V – Definitions –(22); R. p. 36.) The Policy term “Your Work” is intended to mean the work performed by the insured or on the insured’s behalf in the case where the insured has subcontracted part or all of its scope of work to another person or contractor. (*See id.*). However, even if the demolition and rebuild of the brick veneer wall did meet the Policy definition of “Your Work,” that is not determinative of whether the “your work” exclusion applies to bar coverage.

The Policy definition of “your work” neither creates nor defeats coverage. It is simply one component of the relevant exclusion which contains other material terms. By the exclusion’s express terms, “your work” refers to the incorrect work of the insured

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<sup>1</sup> Clearly the construction of the brick veneer wall was not the work of Precision Walls and Liberty Mutual has never claimed that this was the case. Nevertheless, Liberty Mutual now seeks to have this Court transform the work of the masonry subcontractor into the work of Precision Walls for the purposes of avoiding coverage under the “your work” exclusion.

performed on that particular part of the property suffering damage.<sup>2</sup> There has never been any contention, nor did the trial court find, that the work associated with demolishing and rebuilding the brick veneer wall was in any way “incorrectly performed.” Thus, even if this work meets the policy definition for “Your Work,” it was not incorrectly performed; and, therefore, cannot be the basis for finding that the “your work” exclusion applies. Moreover, in order for the “your work” exclusion to apply, the “incorrectly performed” work must have been performed on the damaged property. The language of the “your work” exclusion could not be more clear in this regard. Thus, the installation of the seam and seal tape (i.e. “Your Work”) must have been incorrectly performed on the brick veneer wall (the property suffering damage) for the exclusion to apply in this instance. This was clearly not the case as the tape was installed on the insulation board, not the brick veneer wall. Therefore, as Precision Walls’ has pointed out throughout this appeal, it is impossible for the “your work” exclusion to apply under the facts of this case.

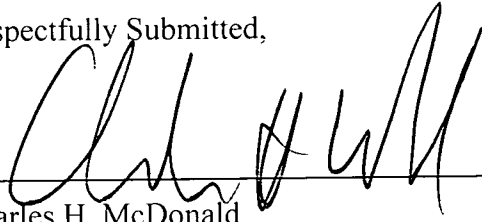
Because this Court has misapplied the “your work” exclusion and stretched it far beyond the bounds of its proper application, it should withdraw its prior opinion and issue a new opinion granting the relief requested by Precision Walls in its Petition for Rehearing.

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<sup>2</sup> This insurance does not apply to: .... (6) that particular part of any property that must be restored, repaired, or replaced because “your work” was incorrectly performed on it.

(Liberty Mutual Ex. 1—Section I—Coverages, part 2—Exclusions-subpart j; R. pp. 224-225).

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'CH McDonald', written over a horizontal line.

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Counsel for Appellant Precision Walls, Inc.

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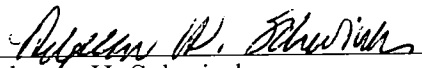
Liberty Mutual Fire Insurance Co. .... Respondent.

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**PROOF OF SERVICE**

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I certify that I have served Appellant's Reply to Respondent's Return to Petition for Rehearing by having a copy hand-delivered to the Respondent's attorney of record to his address as follows: Steven Wayne Ouzts, Turner, Padgett, Graham & Laney, P.A., Bank of America Plaza, 1901 Main Street, 17<sup>th</sup> Floor, Columbia, SC, 29201.

  
Rebecca H. Schwind  
Paralegal to Charles H. McDonald

August 26, 2014



**ROBINSON MCFADDEN**

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August 26, 2014

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**Via Hand Delivery**

The Honorable Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**Re: Precision Walls, Inc. v. Liberty Mutual Fire Insurance Co.  
Appellate Case No. 2013-000787**


Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Appellant's Reply to Respondent's Return to Petition for Rehearing in the above referenced appeal, with proof of service attached. I would appreciate you filing the original and six copies and returning the seventh copy clocked-in with our courier.

Thank you for your assistance in this matter.

Sincerely,

ROBINSON, MCFADDEN & MOORE, P.C.

  
Rebecca H. Schwind  
Paralegal to Charles H. McDonald

RHS/rhs

Enclosures

cc: Steven Wayne Ouzts – w/encl.  
Precision Walls, Inc. – w/encl.

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