

B&B REVIEW

Product Liability and Casualty Litigation Update

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ANOTHER CHANGE IN ALABAMA LAW: ENGINEERING EXPERTS ONCE AGAIN DO NOT HAVE TO BE LICENSED IN ALABAMA BEFORE TESTIFYING AT TRIAL

Engineers No Longer Must Be Licensed In Alabama To Provide Expert Testimony

Alabama has returned to the long-held practice that licensure in Alabama is not a “condition precedent” to an engineer’s ability to provide expert testimony. But, Alabama law now requires that the proposed expert be a licensed engineer in at least one jurisdiction.

As reported in the October 2006 B&B Review, a mid-2006 combination of actions by the Alabama Legislature and the Alabama Supreme Court for the first time mandated that an engineer providing expert testimony be licensed in Alabama. *See Board of Water and Sewer Commissioners v. Hunter*, No. 1050067, 2006 WL 2089914 (Ala. July 28, 2006) (application for rehearing overruled October 20, 2006) (Upholding a prior amendment to Ala. Code. § 34-11-1(7) providing, in part, that an engineer must be licensed in Alabama before testifying in this state). This change in the law stalled or halted many cases in this state where out-of-state experts were being used. After *Hunter*, various groups (including both the Alabama Trial Lawyer’s Association and the Alabama Defense Lawyer’s Association) joined forces to remove the Alabama license requirement.

On June 8, 2007, Governor Bob Riley signed amended Section 34-11-1(7), removing the Alabama licensure requirement as a pre-requisite to engineers providing expert testimony in this state. The revised statute removes the word “testimony” from the definition of “practice of engineering,” providing instead that:

[I]n qualifying a witness to offer expert testimony on the practice of engineering, the court shall consider as evidence of his or her expertise whether the proposed witness holds a valid Alabama license for the practice of engineering. Provided, however, such qualification by the court shall not be withheld from an otherwise qualified witness solely on the basis of the failure of the proposed witness to hold such valid Alabama license.

While the trial court will still consider whether or not the expert is licensed in Alabama in determining whether or not he is qualified, an Alabama license is not determinative.

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While the amended statute removes the prerequisite that an engineer be licensed in Alabama before providing expert engineering testimony, it adds a new provision requiring that the expert be a licensed engineer in at least one jurisdiction. Amended Section 34-11-1(7)(d) now provides that:

The practice of engineering shall include the offering of expert opinion in any legal proceeding in Alabama regarding work legally required to be performed under an Alabama engineer's license number or seal, which opinion may be given by an engineer licensed in any jurisdiction.

Because this new amendment was just recently signed into law, there is no Alabama case-law interpreting this provision. With this new addition, the potential exists that some recognized experts in "engineering" fields will not be allowed to testify in Alabama if they are not, for any number of reasons, licensed as Professional Engineers in any state.

Conclusion

Alabama's amended engineering licensing statute once again does not require an Alabama license before an engineer can provide expert engineering testimony in Alabama state court, but a license in at least one state is now required.

**Balch & Bingham, LLP – Product Liability and Casualty
Litigation Practice Group**

The attorneys in Balch & Bingham's Product Liability and Casualty Litigation Practice Group possess a long history of handling complex personal injury, property damage and wrongful death litigation throughout the country. Current cases include a wide variety of products such as asbestos, automotive parts, chemicals, child restraint systems, electrical devices, exercise equipment, hand tools, manufacturing equipment, mold, office furniture, lead paint, medical devices, motorcycle helmets, pharmaceuticals, saw mill equipment and tractor equipment. In the past year, Balch & Bingham's attorneys have successfully litigated several matters involving these and other products, obtaining victories through motions to dismiss, summary judgment, verdicts at trial and through appeals.

Balch & Bingham's litigation section is the largest in the firm. Balch & Bingham's litigators represent clients in a variety of matters including nationwide and statewide class actions, mass actions, litigation arising out of product recalls and multidistrict litigation, often serving as national coordinating counsel in high-profile matters. Balch & Bingham attorneys enjoy membership in a number of professional associations, including the highly-selective American College of Trial Lawyers, the International Association of Defense Counsel (IADC), the Federation of Defense and Corporate Counsel (FDCC), DRI, and the Alabama Defense Lawyers Association (ADLA), including one partner currently serving as President and two partners serving on its Board of Directors. A number of Balch & Bingham litigators are listed in *The Best Lawyers in America*, with several included in the new category of "Bet The Company" litigators. Balch & Bingham's more than 250 attorneys serve our clients from offices in Alabama, Georgia, Mississippi and Washington, D.C.

