

MISSOURI

JURY VERDICT WIN FOR CARRIER IN \$4,000,000 FIRST PARTY SUIT FILED BY INSURED



WATTERS WOLF
BUB HANSMANN



Bob Brady

636.798.0575
rbrady@wwbhlaw.com



Alexa Lester

636.798.0585
alester@wwbhlaw.com

In a \$4,000,000 First Party Builder Risk lawsuit filed by a general contractor insured, Bob Brady, with assistance from Alexa Lester, brought in a large victory for the WWBH client insurance carrier, convincing a jury to return a verdict of only \$331,000. Going into trial, the insured was seeking \$4,000,000, consisting of \$2,500,000 in alleged property and consequential damages, \$1,000,000 in pre-judgment interest and \$500,000 in vexatious refusal penalties and attorney fees for alleged bad faith handling of the claim under a Builders Risk Policy of insurance.

The insured sustained a total loss of a 500-foot-long, 30-foot-tall retaining wall that was built on unstable soil as a result of faulty construction. Specifically, prior to construction of the wall, the general contractor, and its subcontractors, failed to ensure that soil borings were taken in the area beneath the footing of the wall. As a result, the wall was built on soft soils ranging in depth from 3 feet to 20 feet. After standing for 4 months, the wall sustained a complete global stability failure. Bob convinced the jury that the insured's claimed damages included costs associated with a completely redesigned wall, including multiple betterments and improvements utilized by the insured during reconstruction to ensure that a similar failure would not occur again. The betterments and improvements included the installation of a massive concrete footing, and the use of granular backfill instead of the dirt fill that was used during original construction. Bob argued that the insured was seeking to replace a Chevy with a Cadillac, contrary to the terms of the policy, which allowed only for replacement with comparable material and quality.

After a week-long jury trial with days of expert testimony and 8 hours of jury deliberations, the jury came back at 11:15pm on a Friday night with a verdict of only \$311,000 reflecting the comparable material and quality replacement values and evidence Bob had put before the jury during the trial and presented to the jury in closing arguments.