

For Immediate Release

SFAA Contact: Peter Roth, Vice President – Strategic Communications, Marketing & Research
Phone: (703) 401-0676 E-mail: proth@surety.org

Supreme Court of Washington State Upholds SFAA Position on *Spearin Doctrine* *Defective Design Upheld as a Defense Even if Contractor is Partially at Fault*

September 9, 2021 (WASHINGTON, DC) – [The Surety & Fidelity Association of America \(SFAA\)](#) commends the decision of The Supreme Court of The State of Washington to reverse the lower court ruling in the case of Lake Hills Investments, LLC vs. Rushforth Construction Co. As argued by SFAA, the Supreme Court found the contractor should not be responsible for damage caused by the defective design provided by the owner even where the contractor was responsible for certain defective work. In addition, the contractor is not completely barred from asserting this defense if the defects were caused by a combination of deficient performance by the contractor and deficient design, and proportional liability should be determined.

The SFAA, along with the National Electrical Contractors Association Puget Sound Chapter (NECA), Mechanical Contractors Association of Western Washington (MCAWW) and SMACNA-Western Washington (SMACNA), issued an Amici Curiae in support of Petitioner AP Rushforth Construction Co., Inc. d/b/a AP Rushforth, and Adolfson & Peterson, Inc.'s (collectively "AP") Petition for Discretionary Review. In the brief they argued the Court should grant the Petition because the decision by the lower court is contrary to precedent of limiting a contractor's liability when the owner's defective plans and specifications caused the defective work, and upsets settled expectations of allocation of risk and liability between contractors, owners and architects (among others) on construction projects. This allocation of risk and the principle of limiting the contractor's liability for defective work based on defective plans and specifications is long settled doctrine in Washington State and throughout the country, a doctrine based on the US Supreme Court's landmark decision in *U.S. vs. Spearin* more than 100 years ago.

"I am extremely pleased that we were able to work with our construction industry partners in support of their efforts demonstrating to the courts why it was appropriate to leave this well-established allocation of risk unchanged," said Julie Alleyne, vice president, policy and general counsel of the Surety & Fidelity Association of America. "The court's decision is a commonsense solution – each party is responsible for its own mistakes."

###

[The Surety & Fidelity Association of America \(SFAA\)](#) is a trade association of more than 425 insurance companies that write 98 percent of surety and fidelity bonds in the U.S. SFAA is licensed as a rating or advisory organization in all states and it has been designated by state insurance departments as a statistical agent for the reporting of fidelity and surety experience. www.surety.org