

Susman Godfrey Secures Appellate Victory for Client Dig Tech in Breach of Contract Case Against Star Operations

Court Provides Precedent-Setting Guidance on Scope and Application of Federal Christian Doctrine and Miller Act in Government Contract Disputes

In a decision that has broad implications for federal government contractors across the U.S., the Texas Court of Appeals for the Third District has upheld a jury verdict for Susman Godfrey client Dig Tech in its breach-of-contract case against Star Operations, Inc. and Great American Insurance.

"We are very pleased by this decision and what it means not only for our client, but also other contractors entering into oral agreements to do work on government contracts," said Susman Godfrey partner Brian D. Melton, who served as lead counsel to Dig Tech at trial and for the appeal.

Susman Godfrey partner Chanler Langham added "This decision sets important precedent on several key federal issues that the court had never before decided."

Central Texas Highway Constructors hired Star Operations as a subcontractor to build infrastructure for the SH 130 Highway. Star Operations then entered into an oral, lower-tier subcontract with Dig Tech to do hole-boring work. Dig Tech completed the work, but Star Operations failed to pay. Dig Tech then filed a claim against Star Operations' performance and payment bonds underwritten by Great American Insurance. At trial, the jury awarded Dig Tech 100% of its claimed damages for the unpaid work, and almost all of its claimed attorneys' fees.

On appeal, Star Operations and Great American claimed the lower court erred in not applying the federal *Christian* doctrine. They argued *Christian* applied because the project was federally-funded and, therefore, the contract automatically incorporated certain federal regulations, including "statutorily compliant certified payrolls" and a written agreement. The Texas Court of Appeals disagreed.

The court held that Star Operations and Great American misinterpreted *Christian* because the doctrine "does not allow all mandatory contract clauses to be automatically incorporated by operation of law," and is "limited to those mandatory clauses expressing significant public procurement policy" written to benefit or protect the public entity seeking incorporation.

"The court ruled that, under *Christian*, no alleged mandatory clauses could be automatically incorporated into Dig Tech's oral contract," said Melton. "This is an important limitation on *Christian* that courts had not previously established and something that all government contractors should now understand."

The Texas Court of Appeals also provided guidance on the scope of the federal Miller Act. Star Operations and Great American argued that, under the Miller Act, the state trial court lacked jurisdiction. The Texas Court of Appeals disagreed and found the Miller Act did not apply and did not limit the lower court's jurisdiction. The court also found that Dig Tech complied with the Texas McGregor Act's notice provisions regarding its claim against the bond.

"In terms of much-needed guidance on *Christian*, the Miller Act and McGregor, this is a very important decision that will have implications around the country," said Langham.