

## Notre Dame Beats Subpoena In \$9M London Building Dispute

By Jack Newsham

*Law360, New York (April 28, 2016, 4:57 PM ET)* -- The University of Notre Dame convinced an Indiana federal judge on Wednesday to quash a subpoena that would have required its employee to be deposed in an English arbitral dispute between the school and two companies that it says bungled renovation work at its London campus.

U.S. Magistrate Judge Christopher A. Nuechterlein said a law that can be used to aid discovery in foreign cases didn't apply to the private arbitration between Notre Dame's London affiliate and student-housing developer TJAC Waterloo LLC, meaning he couldn't order Amy Coughlin, who oversaw construction work for Notre Dame, to be deposed.

Boston-based TJAC and its builder ZVI Construction Co. LLC are trying to avoid an award of up to \$9 million after an English expert arbitrator found — and a U.S. court confirmed — that the companies were liable for construction flaws in Conway Hall, which houses Notre Dame students in London. But even if the foreign-discovery law applied, Judge Nuechterlein said, the Coughlin subpoena would have come way too late, 16 months after the arbitration began and after TJAC and ZVI had already been found liable.

"TJAC could have presented testimony and documents from Coughlin in its liability submission or at the oral argument regarding liability," the ruling said. "It did not. Similarly, TJAC could have included Coughlin's testimony and documents in its damages submission. It did not. Instead, TJAC filed its ex parte application in this court nine months after the English expert issued a liability determination, two weeks after TJAC served its damages submission, and one week after the liability determination was confirmed by the District of Massachusetts."

According to TJAC and ZVI's subpoena request, Notre Dame paid nearly \$16 million for the building near London's Waterloo station in 2011 after about a year of renovation work. By 2014, however, after the companies complained they still hadn't been paid the full purchase price, the school's London affiliate, University of Notre Dame (USA) in England, initiated arbitration under their contract and said more than 100 defects remained.

The companies said Coughlin has information that would be pertinent to \$3.3 million Notre Dame seeks to collect over alleged fire-safety risks and damage to the building's facade. They also argued that there was no requirement to depose Coughlin earlier in the proceedings, and the arbitrator could still consider her testimony during the damages phase, but Judge Nuechterlein disagreed.

The defeat on the subpoena issue comes about three weeks after a Massachusetts federal judge confirmed the arbitrator's finding of liability and allowed the university to attach \$7.2 million in TJAC and ZVI's assets to secure potential damages. The companies have appealed that ruling to the First Circuit.

Notre Dame is represented in the subpoena proceedings by James M. Lewis of Tuesley Hall Konopa LLP and Robert B. Lovett and Michael J. McMahon of Cooley LLP.

TJAC Waterloo is represented in the subpoena proceedings by Zachary D. Prendergast of Roetzel & Andress.

The subpoena proceedings are In re: The Application of TJAC Waterloo LLC, case number 3:16-mc-00009, in U.S. District Court for the Northern District of Indiana. The main case is the University of Notre Dame (USA) in England v. TJAC Waterloo LLC et al., case number 1:16-cv-10150, in the U.S. District Court for the District of Massachusetts.

--Editing by Brian Baresch.