

QUESTION 14 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK V

Brawny Corporation ("Brawny") manufactures industrial machinery in Michigan using complex, largely robotic assembly lines. When a line breaks down, Brawny sometimes calls Speedy Service Corporation ("Speedy Service"), a nearby business that provides repair services for specialized factory equipment. After a line breakdown disrupted production about two months ago, Brawny's production manager phoned Speedy Service and asked that its representatives assess the problem and quote a price for fixing it. While Speedy Service's crew was at the plant as requested assessing the situation, a crew member was injured when he slipped on a patch of ice in Brawny's parking lot.

On January 3, Speedy Service delivered to Brawny a signed price quotation on its standard quotation form. The front of the form had a large area for a description of the job and the quoted price, which Speedy Service filled in as follows:

Complete labor and materials for troubleshooting,
repair and testing of assembly line: \$15,000 (no
overtime work, no guaranteed completion date) OR,
to guarantee completion of repairs within 3
business days: \$25,000 total labor and materials.

The back of the printed Speedy Service quotation form contained a number of terms, including these:

Customer [i.e., Brawny] shall indemnify and, if
requested, defend Speedy Service against all
claims, injuries and losses arising out of or
related to the performance of the work covered
by this quotation.

Customer's acceptance includes agreement to
all terms appearing on the back of this quo-
tation. To accept, return this form with
your purchase order number or communicate
acceptance in another reasonable manner.

On January 4, Brawny delivered one of its own purchase order forms to Speedy Service. The space on the front of the form labeled "Terms of Purchase" read:

Begin quoted assembly line repairs as soon
as possible for the price stated in your
Jan. 3 quotation, subject to all terms on
both sides of this purchase order.

One of the several terms on the back of Brawny's purchase order that differed from Speedy Service's proposed terms read:

Seller is solely responsible for, and shall defend Brawny against, any injuries or claims asserted against Brawny arising out of or related to Seller's furnishing the services covered by this Purchase Order.

Speedy Service sent a crew to Brawny to begin the repair job that afternoon. The crew worked well into the night and, using lots of overtime, completed the repairs within 48 hours. Brawny's on-site production manager was told by the Speedy Service crew leader when the team arrived that they planned on working overtime and on finishing the job as soon as they could. The production manager complimented the crew leader on the speed with which the project was finished.

Speedy Service subsequently invoiced Brawny for \$25,000. When Brawny sent Speedy Service a check for \$15,000 marked "payment in full," Speedy Service returned the check and wrote Brawny that it owed \$25,000 "in accordance with the terms of our accepted quotation."

Meanwhile, Speedy Service's injured employee has threatened to sue Brawny, claiming that Brawny's negligence caused his slip-and-fall injury. Brawny has demanded that Speedy Service acknowledge its responsibility for providing Brawny's defense to that claim, but Speedy Service has refused to do so.

Answer the following questions and fully explain your reasoning: (1) How much does Brawny owe Speedy Service for the repair job, and on what legal theory? (2) Is Speedy Service responsible for providing Brawny's defense against the negligence claim made by Speedy Service's employee?

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