ECKERT SEAMANS
ATTORNEYS AT LAW

Fall 2025

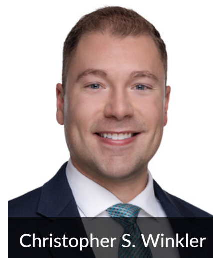
www.eckertseamans.com

CONSTRUCTION LAW

In This Issue...

Page 1
The “artificial” future of alternative dispute resolution
Heightened immigration workforce enforcement: Preparedness plans for employers and contractors
Page 3
Contractors beware: Commonwealth Court confirms strict compliance with notice and claim provisions required on public projects
Page 4
Statute of repose: A tool in the toolbox of designers, planners, and contractors of improvements to real property
Page 5
No “agreed sum,” No lien: Pennsylvania Superior Court clarifies lien law
Page 6
Swatt v. Nottingham Village: Pennsylvania Superior Court opens the door to asserting contract and tort claims for the same conduct in construction disputes
Page 7
Construction Law Group News

The “artificial” future of alternative dispute resolution


Christopher S. Winkler

We’re all too familiar with one of the hot-button topics in today’s era of modern technology: the injection of artificial intelligence (AI) into everyday life. We see it depicted (oftentimes negatively) in books, movies, and television shows. We experience it ourselves with the use of products developed by Apple, Microsoft, and other major players in the tech industry. Lawyers now even have the option to use AI as an aid for legal research on platforms such as Westlaw. But never before has AI been used to render binding legal decisions in a dispute between parties. That is, until now.

Anyone with experience in the realm of construction law undoubtedly has engaged in alternative dispute resolution. Indeed, many construction contracts explicitly call for adjudication of disputes via alternative methods instead of enduring the often lengthy (and costly) process of traditional litigation.

continued on page 2

Heightened immigration workforce enforcement: Preparedness plans for employers and contractors

Min S. Suh

Shaun Staller

Federal worksite enforcement actions are on the rise, as illustrated by the recent large-scale Immigration and Customs Enforcement (ICE) raid at the Hyundai EV plant construction site in Georgia, during which government authorities detained hundreds of workers, and which sent shockwaves across the industry.

Approximately 475 workers were detained during the raid as a part of what has been described as one of the largest single-site enforcement actions in U.S. history. The purported focus was on potential unauthorized employment among subcontractor laborers, highlighting the increased scrutiny on complex, multi-tiered construction projects.

This development underscores a renewed focus by federal authorities on workforce verification of employment authorization, subcontractor oversight, and immigration compliance in the construction sector. In the Georgia raid, the site involved many layers of subcontractors, making compliance oversight challenging. However, such complexity is

continued on page 3

The “artificial” future of alternative dispute resolution

continued from page 1

A common method of alternative dispute resolution is arbitration, where a neutral arbitrator (or a panel of neutral arbitrators) presides over the parties' dispute. The arbitrator (or panel) hears and reviews evidence from both sides, asks questions, and ultimately determines the outcome of the dispute by rendering a binding decision. Parties to a construction dispute often engage the arbitration services of the American Arbitration Association (AAA), the largest private global provider of alternative dispute resolution services.

The AAA now intends to revolutionize the world of alternative dispute resolution with the implementation of an “AI-Native Arbitrator.”

Beginning in November 2025, the AAA will use artificial intelligence as an arbitrator to render binding legal decisions in “documents-only construction cases.” This announcement is part of the AAA's ongoing commitment to deliver “AI-driven solutions that transform how legal issues are resolved for the better.”

According to the AAA, the AI arbitrator was developed and trained on human arbitrator reasoning via the review of more than 1,500 construction awards. When presiding over construction disputes, the AI will supposedly evaluate the merits of claims, generate explainable recommendations, and prepare draft awards that, per the AAA, will “maintain alignment with expert human legal judgment.” This will all proceed under the supervision of a human arbitrator to ensure valid outcomes and safeguard trust, transparency, and due process.

The AI arbitrator will preside exclusively over documents-only construction cases through the remainder of 2025. However, the AAA intends to implement AI decision-making into additional industries, dispute types, and higher-value claims in 2026.

Ultimately, the AAA's goal with the use of AI is to promote speed, efficiency, and accuracy in the arbitration process. Diana Didia, the Executive Vice President and Chief Technology and Innovation Officer of the AAA, claims the AI arbitrator will “emulate human judgment” and can “provide a whole new path to dispute resolution.”

Those skeptical of this announcement—particularly those in the construction law industry, which will serve as the proverbial test subject for this AI model—are justified in their caution. Many questions arise regarding whether AI can capably perform a task ordinarily left to humans, particularly a task that requires detailed analysis and nuanced discretion. Will the AI arbitrator sufficiently match the reasoning, logic, and critical-thinking skills that a human arbitrator may possess? Will the judgment of a machine, developed via the apparent review of past cases and outcomes, adequately replace the judgment of a human arbitrator, particularly where that arbitrator has extensive legal training and experience on which to rely?

Time will tell whether the AAA's newest arbitrator lives up to the task. If all goes as planned, the AI arbitrator could alter the future of the legal landscape, both in alternative dispute resolution and beyond.

Christopher S. Winkler may be reached at cwinkler@eckertseamans.com

Heightened immigration workforce enforcement: Preparedness plans for employers and contractors

continued from page 1

quite common across the construction industry, which often deploys workers through subcontractor relationships. Even if a general contractor is technically in compliance, the use of subcontractors who are not in compliance can create serious exposure for the general contractor and project owner alike. Therefore, it is imprudent for general contractors to deprioritize compliance issues under the mistaken belief that it is somebody else's responsibility.

A raid or audit can result in project delays, reputational harm, and significant monetary penalties, including:

- Paperwork/I-9 violations: typically $272 to $2,701 per form; and
- Civil fines for hiring or continuing to employ unauthorized workers: approximately $676 to over $27,000 per violation, depending on the employer's history and the severity of the offense; and
- Potential criminal penalties for patterns of knowingly hiring or continuing to employ unauthorized workers.

Companies operating in the construction space should be aware that government audits and site inspections are expected to expand nationwide. The raid at the Hyundai site underscores that federal workforce enforcement units like ICE are willing to carry out large-scale operations at construction sites and, indeed, appear to be spurred on by the publicity associated with cracking down on a global brand name. Therefore, companies engaged in major infrastructure or manufacturing projects should proactively assess their exposure and review their readiness plans for potential site visits or responding to ICE administrative subpoenas for immigration-related documentation, as having designated individuals and a preparedness plan in place are critical to mitigating the negative business impacts that can accompany a visit by the U.S. government.

Our team is closely monitoring these developments and advising clients on:

- Rapid response planning for inspections or raids;
- Subcontractor compliance, exposure, and contract risk allocation; and
- Large-scale employment authorization compliance preparedness projects with training on accurate Form I-9 completion and complaint record maintenance.

Please contact your Eckert team member to schedule a confidential discussion on how this enforcement trend may affect your business.

Min S. Suh may be reached at msuh@eckertseamans.com

Shaun Staller may be reached at sstaller@eckertseamans.com

Contractors beware: Commonwealth Court confirms strict compliance with notice and claim provisions required on public projects

David Meredith

The Commonwealth Court recently reaffirmed that contractors on public projects must strictly comply with the contractual requirements for presenting change orders and claims.

In *Glob. Heavy Corp. v. Univ. Area Joint Auth.*, 343 A.3d 751 (Pa. Commw. Ct. 2025), Global and UAJA entered a contract for the construction of a Biological Odor Control System (the Project). The contract required Global to achieve substantial completion by July 21, 2019, with liquidated damages to be paid for each day of delay thereafter. Global failed to complete the Project by July 21, 2029, and UAJA deducted liquidated damages from Global's request for final payment.

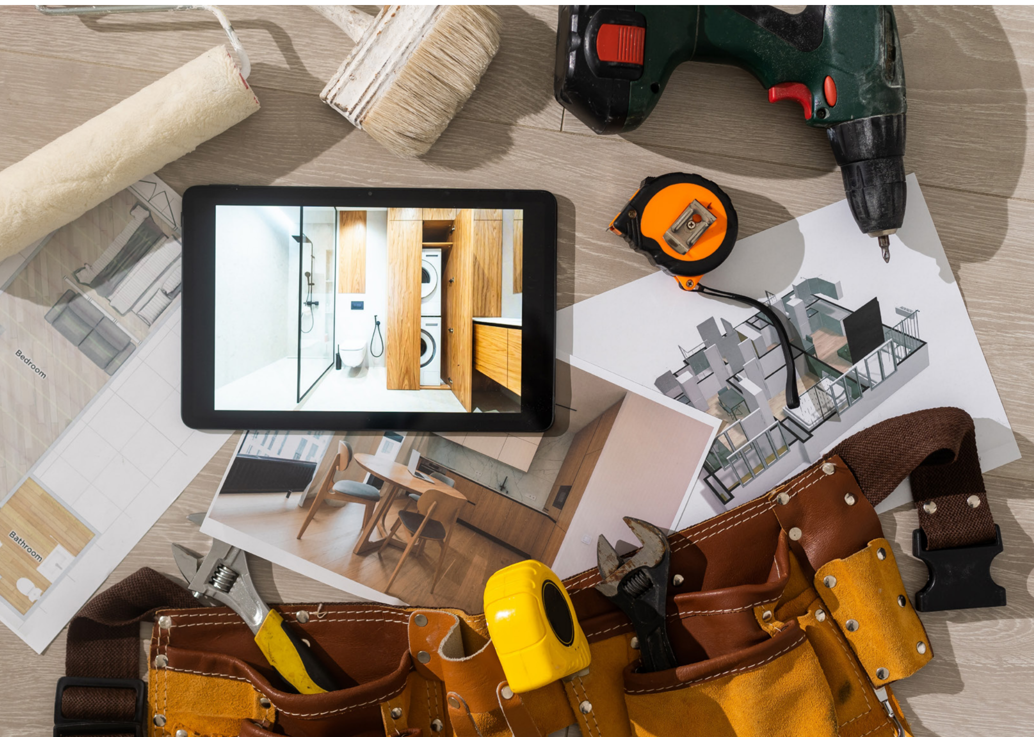
During the Project, Global had timely submitted change order requests seeking to extend the deadline for substantial completion. However, Global's contract with UAJA required Global to, first, timely request a change order from the project engineer as the initial decision-maker and, second, timely appeal any determination by the project engineer that it disputed. Although Global timely submitted its change order requests during the Project, it never appealed any of the engineer's initial determinations denying its requests to extend the deadline for substantial completion.

Ultimately, the trial court held that Global waived its request for an extension of the deadline for substantial completion by failing to avail itself of the appeal procedures in its contract with UAJA. The Commonwealth Court affirmed, observing as follows:

> It is well-established law that "[w]here a public contract states the procedure in regard to work change and extras, claims for extras will not be allowed unless these provisions have been strictly followed." *Nether Providence Twp. Sch. Auth. v. Thomas M. Durkin & Sons, Inc.*, 476 A.2d 904, 906-07 (Pa. 1984). Further, "[w]aiver of public contract provisions regulating change orders can be accomplished only by a formal written action, (i.e.[,] a new contract) by the public body authorized to enter into the contract, or the express ratification of the extra work claim by resolution of the public body." *Id.* at 907. *The Nether Providence* Court expounded: "[The Pennsylvania Supreme Court] ha[s] always rigidly imposed strict standards on contractors who deal with public bodies to prevent the unwarranted plundering of public funds, to uphold the integrity of the bidding process, and [our Supreme Court] see[s] no reason to change our long[-]established precedents …."

Based on the foregoing, contractors should be careful to strictly comply with the contractual requirements for presenting change orders and claims on public projects. Failure to do so may well result in a waiver of the contractor's right to more time or money.

David Meredith may be reached at dmeredith@eckertseamans.com



Statute of repose: A tool in the toolbox of designers, planners, and contractors of improvements to real property

Robert G. Weller

Vincent A. Palladino

Construction defendants entrenched in litigation for design, planning, and contracting services related to improvements to real property should be certain to consider whether they can avail themselves of a state's statute of repose—a legal mechanism designed to prevent liability in perpetuity for otherwise stale claims. Pennsylvania's statute of repose, 42 PA.C.S. § 5536, expressly provides that any civil actions against:

> *any person lawfully performing or furnishing the design, planning, supervision or observation of construction, or construction of any improvement to real property must be commenced within **12 years** after completion of construction of such improvement to recover damages for: (1) Any deficiency in the design, planning, supervision or observation of construction or construction of the improvement; (2) Injury to property, real or personal, arising out of any such deficiency; (3) Injury to the person or for wrongful death arising out of any such deficiency; and/or (4) Contribution or indemnity for damages sustained on account of any injury mentioned in paragraph (2) or (3).*

The application of the statute, however, depends on the circumstances of each case and whether it meets the criteria laid out in the statute as interpreted by courts and relevant judicial precedent. Considering the similarities in spirit and express language between the statutes of repose among the various states, it is both illustrative and helpful to keep abreast of sister-states' interpretation and application of their respective statutes of repose and how they may be persuasive in Pennsylvania and other states.

Recently, Massachusetts found an asbestos-plaintiff's injuries time-barred under Massachusetts' Statute of Repose, M.G.L. c. 260, § 2B, in *Catalano v. NSTAR Electric, f/k/a Boston Edison Company, et al.* (C.A. No. 2281CV02649). There, Special Master for the Massachusetts Asbestos Litigation, the Honorable Kenneth J. Fishman (Ret.), recommended summary judgment under the statute in favor of Turner Construction Co. (Turner) and Manganaro Industries, Inc. (Manganaro), two defendants in an action brought by Stephen Catalano (Catalano) and his wife for injuries sustained from his alleged exposure to asbestos during the application of spray-on insulation.

Catalano worked on the construction of the parking garage in the Prudential Center complex in 1969 or 1970. Turner was the general contractor, and Manganaro was the insulation subcontractor, at a jobsite adjacent to where Catalano worked. As Manganaro sprayed the insulation at its jobsite, insulation debris traveled from that jobsite to Catalano's jobsite, allegedly exposing Catalano to the asbestos in the insulation.

Relying on the Massachusetts Supreme Judicial Court (SJC) decisions in *Stearns v. Metropolitan Life Ins. Co.* (2019) and *Conley v. Scott Prods., Inc.* (1988), Turner and Manganaro each moved for summary judgment under the Massachusetts Statute of Repose, asserting that the insulation at issue constituted an improvement to real property that was substantially completed more than six (6) years (the time limit set by the Massachusetts Statute of Repose; Pennsylvania's is twelve [12] years) before the accrual of plaintiffs' claims.

The Special Master agreed, recognizing, as the SJC did in *Conley*, that insulation constitutes an "improvement to real property" under the statute and, as the SJC did in *Stearns*, that it applies to latent-disease matters, including asbestos. [*Stearns v. Metropolitan Life Ins. Co.*, 481 Mass. 520, 538 (2019); *Conley v. Scott Prods., Inc.*, 401 Mass. 645 (1988).] Accordingly, the Special Master concluded that since plaintiffs commenced their action over fifty (50) years after the asbestos insulation at issue was applied and that the insulation constituted an improvement to real property, their claims against Turner and Manganaro were barred under the Statute of Repose.

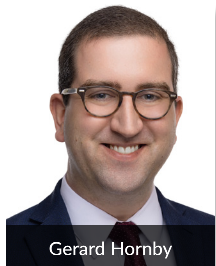
Under the statute, the essential question is whether the contracting work at issue constitutes an "improvement to real property." As exhibited by *Conley* and its progeny (*Stearns; Catalano)*, courts find Webster's Dictionary particularly instructive in this regard, which defines an "improvement" as "a permanent addition to or betterment of real property that enhances its capital value and that involves the expenditure of labor or money and is designed to make the property more useful or valuable as distinguished from ordinary repairs." [*Conley*, 401 Mass. at 647.] Thereafter, it is then determined whether the number of years prescribed by the statute has passed since the improvement was completed/substantially completed.

Catalano exemplifies the application of a statute of repose in the context of a latent disease and provides worthy guidance to construction litigants on how courts may apply the statute and interpret its criteria—namely, whether a particular construction project or work is, indeed, an improvement.

Robert G. Weller may be reached at rweller@eckertseamans.com

Vincent A. Palladino may be reached at vpalladino@eckertseamans.com

No "agreed sum," No lien: Pennsylvania Superior Court clarifies lien law


Gerard Hornby

The Pennsylvania Superior Court recently issued an important decision for contractors and owners operating under cost-plus contracts. In *PW Campbell Contracting Co. v. Yetter*, No. 910 WDA 2024, 2025 WL 1099644 (Pa. Super. Ct. Apr. 14, 2025), the Court held that a cost-plus contract that lacks an agreed-upon total price or a determinable sum does not satisfy the "agreed sum" requirement under Pennsylvania's Mechanics' Lien Law, 49 P.S. § 1301(a).

PW Campbell entered into a cost-plus contract with the property owners, agreeing to be paid for the actual cost of labor and materials plus a percentage for overhead and profit. The contract did not include a set total price or a formula that would yield a definite sum at the outset of the project. When a payment dispute arose, PW Campbell filed a mechanics' lien to secure payment.

The property owners challenged the lien, arguing that the contract failed to establish an "agreed sum" as required by statute. The Superior Court agreed. The Court held that a contract for an open-ended and indeterminate amount—such as a cost-plus arrangement without a guaranteed maximum price or clear method to calculate the final price—cannot support a mechanics' lien claim. Under 49 P.S. § 1301(a), an enforceable mechanics' lien must rest on a contract in which the sum due is certain or can be ascertained according to the contract's terms.

This decision underscores the importance of contract language in preserving lien rights in Pennsylvania. Contractors who enter into cost-plus agreements should ensure the contract either states a maximum price or provides a clear mechanism to determine the final contract sum.

> *"Contractors who enter into cost-plus agreements should ensure the contract either states a maximum price or provides a clear mechanism to determine the final contract sum."*

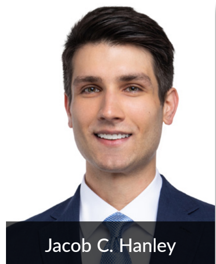
Without these provisions, a contractor's ability to file and enforce a mechanics' lien may be eliminated in the event of a payment dispute.

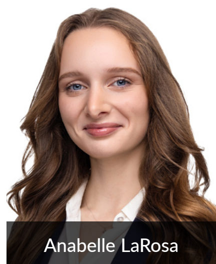
For owners, the decision highlights the reduced risk of mechanics' lien exposure on projects using unqualified cost-plus arrangements. However, all parties are well-advised to agree upon and clearly document contract terms from the outset to minimize litigation risks and protect their interests.

All parties to a Pennsylvania construction contract should carefully consider whether the pricing structure meets the "agreed sum" requirement if preserving mechanics' lien rights is a priority. Ambiguity or open-ended pricing may leave contractors without this important statutory remedy.

Gerard Hornby may be reached at
ghornby@eckertseamans.com

Swatt v. Nottingham Village: Pennsylvania Superior Court opens the door to asserting contract and tort claims for the same conduct in construction disputes


Jacob C. Hanley


Anabelle LaRosa

In *Swatt v. Nottingham Village*, the Pennsylvania Superior Court, sitting en banc, recently issued a precedential decision that will have important ramifications for construction litigation arising under Pennsylvania law.[1]

Gist of the Action Doctrine.

The gist of the action doctrine is a Pennsylvania common law rule that courts have used to distinguish between liability in tort and contract actions. Courts and counsel have often relied upon the doctrine to limit a plaintiff's recovery to tort or contract, depending on where the gravamen of the plaintiff's claim arose: from a defendant's breach of either their (1) societal duties or (2) contractual duties. The doctrine, as previously applied, served to prevent parties from recharacterizing the true nature of their tort or contract claim to benefit from more favorable remedies, damages, or statutes of limitations that may be applicable to a tort or contract claim.

Swatt Decision.

In *Swatt*, the Superior Court reversed this application of the gist of the action doctrine and overruled several Pennsylvania court decisions interpreting the gist of the action doctrine in this manner, holding that the gist of the action doctrine does not force the plaintiff to elect between a tort or contract claim arising from the same unlawful act. Stated differently, contrary to the doctrine's prior application, the Court held that a plaintiff may pursue alternative claims for breach of contract and tortious conduct arising out of the same unlawful act when the claims are each supported by distinct duties.

In reaching its holding, the Court emphasized that "there are instances when a single gist of the action (one unlawful act) breaches both a general duty of care, as well as an expressed or implied contractual duty."[2] Thus, under *Swatt*, where a plaintiff offers sufficient proof that a given act breaches both a general societal duty of care and a contractual duty, both claims may proceed to trial if timely filed—though double recovery for a single unlawful act remains prohibited.

Practical Considerations.

The *Swatt* decision represents a significant departure from recent application of the gist of the action doctrine. In the context of construction litigation, parties should be aware of the following practical considerations that may inform their litigation strategy:

- **Alternative pleading:** To increase their options for recovery and leverage, plaintiffs in construction cases may increasingly plead their defective work and delay claims alternatively as breach of contract and negligence actions.
- **Punitive damages:** Plaintiffs in construction cases may likewise increasingly seek punitive damages in construction litigation cases to increase their potential recovery. For defendants, this trend will likely increase discovery costs and potential exposure.
- **Statute of limitations:** Because tort and contract claims for the same conduct can be pled in the alternative, parties must be aware of the statute of limitations for both contract- and tort-based actions and accordingly frame their case strategy.
- **Contract provisions:** To mitigate risk, it may become commonplace to find contractual provisions in construction contracts attempting to limit a plaintiff's recovery to claims arising under contract as opposed to tort.

Jacob C. Hanley may be reached at jhanley@eckertseamans.com

Anabelle LaRosa may be reached at alarosa@eckertseamans.com

[1] *Swatt v. Nottingham Vill.*, 342 A.3d 23 (Pa. Super. 2025) (en banc).

[2] *Id.* at 52.

Construction Law Group NEWS

Construction Group Accolades

Eight members of our Construction Law Group have been honored in the 2026 edition of The Best Lawyers in America®. Recognized as one of the most respected guides to legal excellence, Best Lawyers relies on a rigorous peer-review process in which tens of thousands of leading attorneys confidentially evaluate their colleagues. This distinction is widely regarded by clients and legal professionals as a significant achievement. Congratulations to **Edward Abbot, Scott Cessar, Timothy Grieco, Anthony Moccia, Bridget Montgomery, Michael Montgomery, Christopher Opalinski,** and **Robert Zoller** for earning this prestigious recognition.

Team Secures Trial Win and Judgment Under Pennsylvania's Contractor and Subcontractor Payment Act

After the trial team of **Tim Grieco** and **Gerard Hornby** received news of a trial win for a plaintiff in an opinion handed down in April 2025, the Court also invited the plaintiff to file a motion for attorneys' fees, interest, and penalty interest pursuant to Pennsylvania's Contractor and Subcontractor Payment Act (CASPA). That Order was granted in June 2025, awarding the plaintiff attorney's fees, costs, and penalty interest under CASPA. Tim and Gerard secured a judgment of $833,129.48.

The case was tried as a bench trial over several days in 2024 in the Philadelphia County Court of Common Pleas and involved a breach of contract claim by an architect against a local developer. The Court found that the developer had breached the owner-architect agreement and awarded the architect its full contract damages, plus interest.

ECKERT SEAMANS
ATTORNEYS AT LAW

eckertseamans.com

Boston, MA 617.342.6800
Buffalo, NY 716.835.0240
Harrisburg, PA 717.237.6000
Hartford, CT 860.249.7148
New York, NY 646.513.2133
Philadelphia, PA 215.851.8400
Pittsburgh, PA 412.566.6000
Princeton, NJ 609.392.2100
Providence, RI 401.272.1108
Richmond, VA 804.788.7740
Troy, MI 248.526.0571
Washington, DC 202.659.6600
White Plains, NY 914.949.2909
Wilmington, DE 302.574.7400

The information in this publication is for the purpose of informing and educating our clients about various aspects of the law and is not intended to be used as legal advice. If you have questions concerning any of the topics, please contact your Eckert Seamans attorney. Eckert Seamans Cherin & Mellott, LLC. All rights reserved © 2025.