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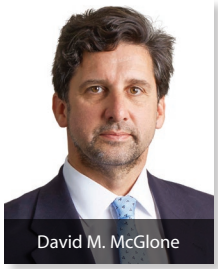
Construction Law

In This Issue…

Federal bid protests: The uncertain times of Corrective Action



David M. McGlone

If I may indulge in a basketball analogy, a bid protest filed with the General Accounting Office (GAO) is never a "layup." Success rates are not high for the Protestor.

Consequently, short of sustaining the protest after a hearing, there may be no more pleasant a surprise for a Protestor than in receiving a "Notice of Corrective Action" (Notice) from the agency whose award is protested. The protest is now "academic" or moot, as it serves no public policy, and it will be dismissed.

Statistics show that agencies are employing Notices more frequently in response to bid protests. See http://www.law360.com/articles/501451/4-takeaways-from-gao-s-annual-bid-protest-data (Abstracting from a GAO Report). Motivations for the agency in issuing a Notice of Corrective Action could include appearing more effective, more efficient use of staff, not wanting to "lose face," or just making sure they are getting the bid right.

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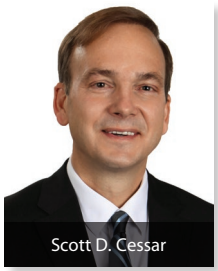
Purchase Orders and the "Battle of the Forms"



Scott D. Cessar

Much of the dollar volume of a construction project is spent for the purchase of materials and equipment from third-party vendors. These purchases are routinely made through the use of purchase orders.

While many contractors will carefully negotiate contract terms (e.g., payment, indemnity, insurance, etc.) with the owner, those contractors, in turn, oftentimes put much less time or effort into contracting with third parties for expensive materials and equipment. The consequences of doing so, however, can result in major problems.

For example, a third-party vendor's terms set forth in an acknowledgement to a contractor's purchase order, or even a packing slip contained in the carton of the shipped goods, may provide

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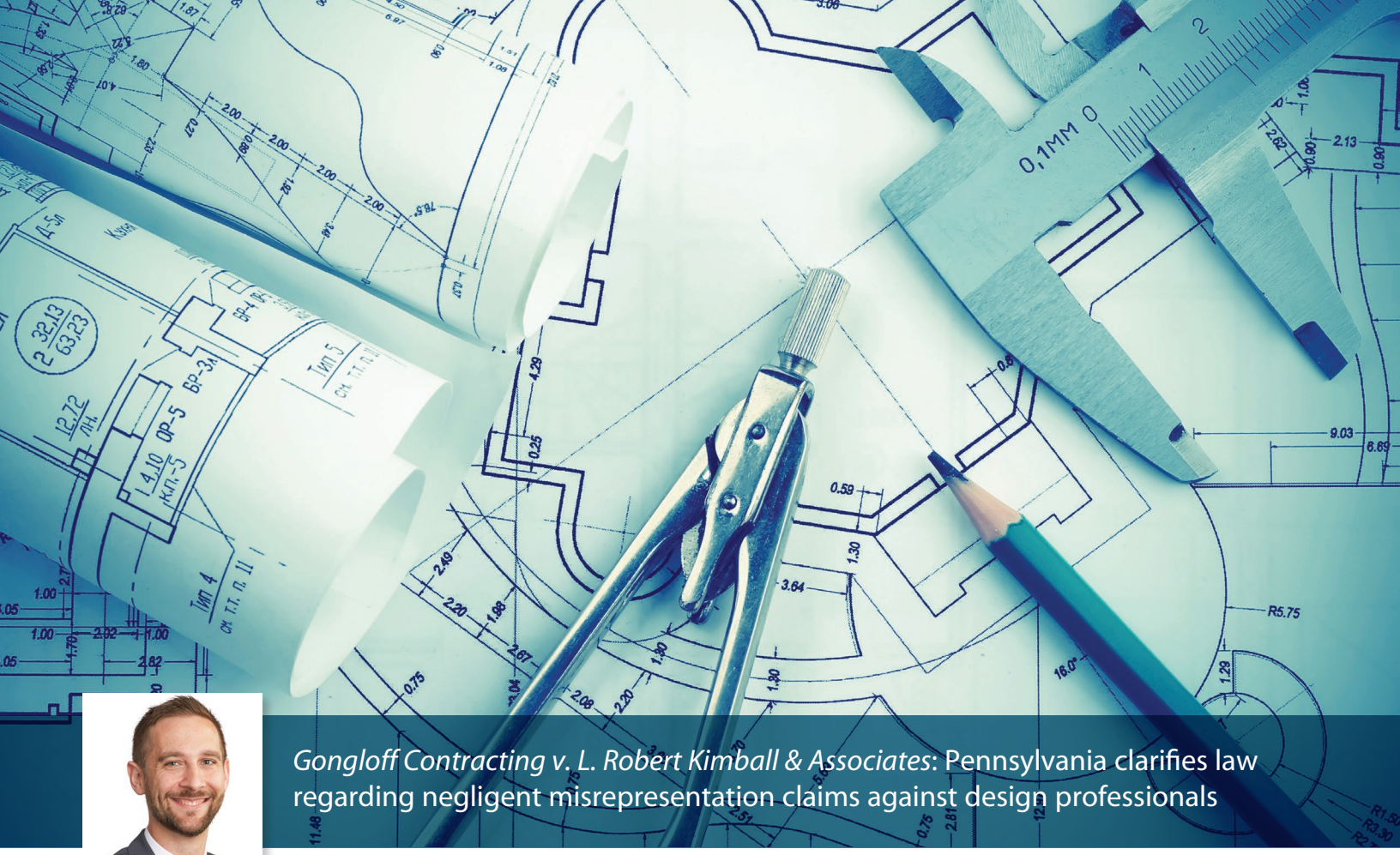

Gongloff Contracting v. L. Robert Kimball & Associates: Pennsylvania clarifies law regarding negligent misrepresentation claims against design professionals

Matthew J. Whipple

Since the landmark case of *Bilt-Rite Contractors, Inc. v. The Architectural Studio*, Pennsylvania courts have continued to shape the contours of claims against design professionals for negligent misrepresentation. Certain decisions have limited *Bilt-Rite* by paring back those entities that are "in the business of supplying information to others for pecuniary gain." However, a recent decision, *Gongloff Contracting, LLC v. L. Robert Kimball & Associates, Architects and Engineers, Inc*, has enlarged Bilt-Rite by clarifying the definition of what constitutes a "misrepresentation." In this case, the Pennsylvania Superior Court reversed a grant of judgment on the pleadings in favor of an architectural and engineering firm, holding that "express misrepresentation" by the firm was not necessary to assert a claim for negligent design.

The plaintiff, Gongloff Contracting, was a subcontractor that provided work related to the erection of the structural steel for a university convocation center project designed by the defendant, L. Robert Kimball. After work commenced, L. Robert Kimball acknowledged that the trusses, as designed, would not provide adequate structural support. Gongloff alleged that, as a result of the design deficiencies, it experienced massive cost increases to alter the as-built structure. Gongloff submitted over eighty (80) change order requests in an attempt to recover these costs, many of which were denied.

Gongloff filed a negligent misrepresentation claim against L. Robert Kimball, asserting that the drawings contained either explicit or implicit misrepresentations about the design of the structure. The trial court found that the design documents were not "express misrepresentations" necessary to support a claim. It held that Gongloff needed to point to some particular communication or document provided by Kimball that was false—essentially, an explicit misrepresentation of a specific fact.

The Superior Court reversed the trial court's decision, finding instead that the plaintiff did not need to assert an "express misrepresentation." Rather, an "actual misrepresentation," a lower standard, was sufficient to maintain a claim. The Court affirmed that the "design itself can be construed as a representation by the architect that the plans and specifications, if followed, will result in a successful project. If, however, construction in accordance with the design is either impossible or increases the contractor's costs beyond those anticipated because of defects or false information included in the design, the specter of liability is raised against the design professional." The Superior Court remanded, noting that the contractor would ultimately have to support its allegations, but that judgment on the pleadings was improper.

The upshot of *Gongloff*, therefore, is that a "misrepresentation" by a design professional need not be a specific false statement. Rather, the plans and drawings as a whole may be examined for negligence, and if a contractor relies on the plans to its detriment, a *Bilt-Rite* claim may be available. Design professionals working in Pennsylvania should, therefore, be aware that their designs may be subject to greater scrutiny and that it may be more difficult to obtain dismissal of *Bilt-Rite* claims early in litigation.

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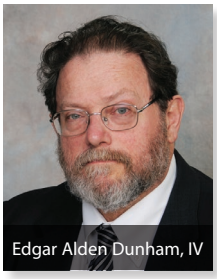
Jury demands in construction lien claim enforcement actions in New Jersey


Edgar Alden Dunham, IV

New Jersey's Construction Lien Claim Statute, 2A:44A-1, *et seq.* (the Lien Law) attempts to balance the competing interests of property owners, lenders, contractors, subcontractors and suppliers by providing a framework within which (1) unpaid contractors, subcontractors and suppliers are entitled to claim a lien against properties owned by parties they do not have contracts with, and (2) owners, general contractors or others above the claimant in the contractual chain are not obligated to pay twice for the same work. The New Jersey Supreme Court has permitted juries in construction lien cases for almost 100 years. However, juries are rarely requested. When a jury is requested, however, it raises a number of complicated issues.

In a recent matter, we defended the general contractor and the owner on a lien claim by a subcontractor's supplier, who made a jury demand. There was nothing wrong with the supplier's work. The only dispute was as to the amount of the "lien fund."

The "lien fund" concept can be difficult to understand. It is the primary protection available to parties upstream in the contractual chain from the lien claimant and the party it directly contracted with. It is the source for payment of the lien claim in an enforcement action. An upstream party can only be liable for the determined amount of the "lien fund."

The "lien fund" is the smaller of the "earned amount" of the contract of any party in the contractual chain above the claimant, minus any payments made prior to service of the lien claim. In most cases, the "earned amount" is the "value" determined under the contract. Not an easy concept to describe or comprehend. There are no applicable standard jury instructions. Typically, the relevant testimony will be on contracts, payments made, and so forth. Pretty dry stuff and difficult for a jury to concentrate on if it doesn't yet know what is important and why.

One issue was the scope of the jury's role. A jury can only decide facts. It cannot decide the law. In our case, we argued that the jury should be limited to determining the amount of the "lien fund" as it was the only thing in dispute, and that the judge must make any resulting judgment because implementing the statute once the facts have been determined is a matter of law.

Another issue arose because a bond discharging the lien claim was filed. The surety's name, as is not uncommon, sounded like an insurance company. We argued that the surety's name had to be kept from the jury for the same reasons that the New Jersey Rules of Evidence prohibit telling a jury that a defendant has insurance. The concern is that juries may recklessly decide to award damages in the belief that the carrier can simply cover it. Even though a bond is not the same as insurance coverage, the worry in our case was the same. We argued that the parties and the court should simply refer to the defendant as the general contractor when the jury was present.

Going into the trial, the claimant's position was the opposite of ours. It maintained that everything must go before, and be decided by, the jury. The case settled before any of those issues were resolved.

A jury may be advantageous for lien claimants. The natural inclination is to feel sympathy for someone who did the work but wasn't paid, particularly if there is no dispute as to the work or the filing of the lien claim. A jury demand will likely increase the cost of prosecuting an enforcement action, however.

Defendants are generally better suited without a jury, particularly with technical defenses. Without a jury, the defendant only has to explain the defense sufficiently clearly and persuade one judge, rather than six members of a jury. A judge is also likely to be more dispassionate and accepting of defenses that benefit owners and others above the claimant in the contractual chain.

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New Jersey Supreme Court addresses application of Statute of Repose to multiphase construction project


Vincent J. Paluzzi

Unlike New Jersey's statute of limitations applicable to recovery upon a contractual claim, which seeks to avoid the assertion of stale construction claims by compelling them to be commenced within six years after the claim accrues, the New Jersey Statute of Repose imposes a "hard" 10-year cap on construction claims involving defective and unsafe work. The Statute of Repose does not bar a cause of action because it is stale; rather, it prevents a cause of action from accruing by imparting immunity from suit 10 years after the completion of construction.

In *State v. Perini Corporation*, the New Jersey Supreme Court was asked to determine when the Statute of Repose begins to run with respect to claims arising out of the installation of an allegedly defective high temperature hot water (HTHW) system of a multiphase correctional facility project. The question before the Court was whether the 10-year period of repose began to run when the inmates first occupied the facility upon substantial completion of the first building/phase (May 16, 1997), or when the last building connected to the HTHW system upon substantial completion of the final phase (May 1, 1998). No separate certificate of substantial completion was issued for the HTHW system.

The State filed suit on April 28, 2008, alleging that the HTHW system failed in March 2000 and had to be replaced. The complaint asserted claims against Perini Corporation, the design/builder of the project, as well as all other parties involved in the design, engineering and installation of the HTHW system and/or the manufacture of system components. All defendants moved for summary judgment alleging that substantial completion occurred when the HTHW system first

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New Jersey Supreme Court addresses application of Statute of Repose to multiphase construction project
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began to be used, which was more than 10 years from the filing of the complaint. The State countered that its claims were not barred because the entire project was not substantially completed until May 1, 1998. The trial court agreed with the defendants and dismissed the State's complaint. The Appellate Division reversed, holding that regardless of the multiphase nature of the project, the Statute of Repose is triggered by "improvements to real property" and not individual components of a project. According to the Appellate Division, the HTHW system was merely a project component.

While the Legislature intended the Statute of Repose to be construed in favor of construction claim defendants, it is important to remember that the matter came before the Supreme Court as the result of a summary judgment requiring the Court to review the record favorably to the State as the non-moving party. While recognizing that the 10-year period of repose is generally triggered by "substantial completion," the Court reasoned that when a contractor has a "continuing responsibility" throughout the project, substantial completion does not occur until the entire project can be occupied and used for its intended purposes. Since each defendant was contractually bound until the entire correctional facility was substantially completed, the Court concluded that the period of repose was not triggered until substantial completion of the entire project, and that the State's claims were not barred. Notably, the Court rejected the Appellate Division's reasoning that the HTHW system was not an "improvement to real property," but did not rest its decision on that ground. Rather, the Court opined that the HTHW system was intended to serve all phases of the project, and the project was not substantially complete until the system was connected to the final phase.

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Federal bid protests: The uncertain times of Corrective Action
(continued)

In essence, the agency is representing to the GAO that it is going to go back and rethink the award. It can re-solicit. It can reevaluate revised proposals. It has discretion to do what it wants. There is little preventing the agency from walking away from the Solicitation altogether (although it would leave the successful bidder with Termination for Convenience Damages), or from trimming the allowable response to the reevaluation.

After the flush of victory over the Notice fades (or rather, the milder flush of effectiveness in challenging the award), it is replaced with uncertainty. Why did they issue the Notice? What is the awarding agency going to do? How broad is the reevaluation?

An initial concern may be: Is there any ground to oppose the dismissal itself? There is little to indicate in the Notice why it is occurring, and it does not specify what the agency is going to do. There is also a very short time period given to object. Since the proper remedy to oppose the agency's action is to protest the subsequent award, there is not much that can be done at this juncture, although there have been some limited circumstances where parties have objected. Objections have been asserted in the odd circumstance where the performance of the contract happened so fast after the award that the Notice itself was moot.

What information can be included in the revised proposal? The agency has discretion to limit this. However, if the Protestor has gained performance credentials since the First Solicitation, it should be considered. *DRS ICAS, LLC, B-401852.4; B-401852.5, Sept. 8, 2010, 2011 CPD ¶* (protest was sustained where the agency incorrectly assumed that it was required to ignore the passage of time between the agency's initial evaluation and its post-Corrective Action reevaluation with regard to the evaluation of the Protester's ongoing work).

Additionally, there are traps for the unwary. The Corrective Action may merely make the agency compliant with a statute or be otherwise insubstantial.

In the case of multiple Protestors, the landscape is especially treacherous, since no initial reason for the Corrective Action is given in the Notice. The agency's Corrective Action may be aimed to remedy somebody else's grievance, not yours.

The protest would need to be lodged again, hopefully yielding a truly corrective Corrective Action.

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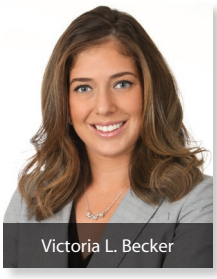
Update on the federal Prompt Payment Act


Victoria L. Becker

Congress enacted the Prompt Payment Act (PPA) to provide incentives for the federal government to pay its bills on time. The PPA covers contracts awarded by all executive branch agencies of the federal government and applies to payments made by a federal agency to a contractor pursuant to the contract. Generally, payment must be made by an agency within fourteen (14) days after the receipt of a proper invoice from the contractor for progress payments and thirty (30) days after proper invoice or the acceptance of supplies or services for final payment, whichever is later. If an agency fails to pay a contractor's invoice by the required payment date, an interest penalty is assessed and payable to the contractor on the amount due. Agencies must pay the interest penalty, without request from the contractor, for late invoice payments.

The PPA also requires that each prime contractor include a payment clause in its construction contracts with subcontractors, which obligates the prime contractor to pay the subcontractor within seven (7) days of amounts paid to prime contractor by the agency and an interest penalty for payments not made in accordance with the payment clause. Recently, courts have considered whether a subcontractor can bring a lawsuit under the PPA for amounts owed. In *U.S. ex rel. Drill Tech Drilling & Shoring, Inc. v. Lexon Ins. Co.*, the District Court for the Central District of California held that the PPA does not provide a subcontractor with an independent cause of action against a prime contractor. However, the PPA does not limit or impair any other contractual remedies available to a subcontractor in the event of a dispute involving late payment or nonpayment by a prime contractor. Thus, a subcontractor may not sue a prime contractor under the PPA, but a subcontractor may seek payment pursuant to the terms of its agreement/contract with the prime contractor.

Many states have also passed prompt payment acts, requiring payment be made on construction contracts within specified periods of time. While the federal PPA mandates payment from federal government agencies, a state prompt payment act ensures prompt payment from state agencies for public work. Additionally, some states enacted legislation for prompt payment in private construction contracts. Although the purpose of these state statutes may have a common theme, the laws and regulations vary significantly by circumstance, project type, etc., from state to state. You can reference a particular state's prompt payment act on our website via our summary: *Fifty State Survey of Prompt Payment Acts for Construction Contracts*.

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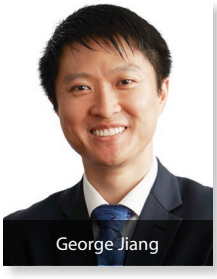
Attorneys' fees in AAA arbitrations


George Jiang

As a general rule, each party involved in a civil lawsuit in a court in the United States bears its own legal costs. This practice is called the American Rule because it contrasts with the practice in Europe and other countries, where the losing parties typically pay the prevailing parties' legal fees.

As with any rule, there are exceptions. An applicable statute may mandate the payment of attorneys' fees to a prevailing party. For example, several states have enacted prompt payment acts that provide for an award of attorneys' fees to the successful party in a legal proceeding over a payment dispute on a construction project. In addition, the court will also award attorneys' fees pursuant to a valid contractual agreement between the parties containing such a fee-shifting arrangement.

The Construction Industry Arbitration Rules of the American Arbitration Association (AAA) provide a more obscure exception to the American Rule. Rule R-48(d) of the Construction Industry Arbitration Rules provides that an arbitrator's award may include an award of attorneys' fees if all the parties to a dispute have requested such an award.

This recently occurred in *City of Chesterfield v. Frederick Constr. Inc.*, where a Missouri appellate court confirmed an arbitration award that included attorneys' fees against the City of Chesterfield. During the routine AAA arbitration proceeding, both the City and the contractor requested recovery of attorneys' fees in their legal filings. When the arbitrators resolved the dispute in favor of the contractor, the award included a total of $329,037 in attorneys' fees. The City protested that its requests for fees were mere boilerplate pleadings and that its attorney did not have authority to bind it to an agreement to pay attorneys' fees. Nevertheless, the Missouri Court of Appeals affirmed the award because the City had agreed to submit the issue of attorneys' fees to arbitration by incorporating the AAA rules into the contract.

It is important, both in presenting and defending claims, to be aware of the applicable AAA rules in construction arbitrations, as well as the other exceptions to the American Rule.

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Purchase Orders and the "Battle of the Forms"

(continued)

for interest on unpaid amounts at 18 percent and for exclusive jurisdiction and venue of disputes in a far-flung state. Under such terms, the contractor could find itself a party to a lawsuit thousands of miles away from its offices and, even when the vendor has provided non-conforming equipment, subject to the risk of paying the vendor's attorney's fees and interest at a high rate for any unpaid balance claimed by the vendor.

There are two common poor practices by contractors in purchasing materials and equipment for construction projects.

In the first scenario, the contractor uses a purchase order that contains only the basic terms of the purchase: quantity, price and date of delivery. This simple purchase order does not contain any of the customary commercial terms and conditions that are essential to protecting the contractor, such as terms that address performance, warranty, risk of loss during transport, remedies for breach, insurance and dispute resolution.

Terms like these that address common and basic legal issues are essential in today's competitive world of interstate commerce. These terms should not be dismissed as "boilerplate." The terms serve as "plating" to both parties by providing certainty as to obligations, risks and liabilities. This certainty is necessary and beneficial in obtaining performance by both parties and avoiding disputes.

In the second scenario, the contractor sends to a vendor a purchase order, with extensive commercial terms, for signature and return by the third-party vendor. The vendor, however, does not sign the purchase order, but sends back to the contractor an acknowledgement that contains extensive terms, some of which conflict with the terms of the purchase order.

The exchange of forms with competing terms is extremely common and is known as the "Battle of the Forms." When this Battle of the Forms occurs and a dispute ensues, the resolution of the dispute is governed, in most cases involving the sale of goods, by § 2-207 of the Uniform Commercial Code of each state. Section 2-207 provides a framework for analysis of the battling forms in order to determine if the parties have a contract and, if so, to determine the governing terms by way of a series of questions:

1) Do the parties have a contract?
2) If so, are the different terms in the vendor's acknowledgement to be considered proposals for addition to the contract?
3) If there is a contract and the different terms are considered proposals for addition, are those additional terms "material alterations" and/or contradictory?
4) If so, are those terms "knocked out" under the "knockout" rule in § 2-207?
5) Based on all the foregoing, what are the terms that remain and that form the contract?

This analysis is not usually simple or straightforward, and many times a lawyer will need to be consulted to work through the questions.

What then can a contractor—and, on the other side of the equation, material and equipment suppliers—do to avoid the pitfalls and problems of these two common scenarios?

1) Have a purchase order (or acknowledgement if a supplier) prepared that fits the company's needs. The purchase order should contain "magic words" limiting its acceptance to its terms and consider company-specific issues like insurance requirements and a forum as to dispute resolution. This is the time, prior to negotiations and contracting, that these issues should be addressed in order to establish the terms of the bargain that are favorable to the contractor.
2) Establish a purchase order tracking system and have a person experienced and trained in procurement to oversee purchase orders. Many times the purchasing function is left to project managers and project engineers who are focused on mobilizing the project and addressing submittals and other issues and who do not have the time or the experience to properly handle procurement.
3) When you receive back an acknowledgement to a purchase order with conflicting terms or strikeouts to your purchase order, respond back and negotiate the terms to an agreed resolution that is signed by the parties or agreed upon through a confirming email. This is the time to resolve the "Battle of the Forms" or to otherwise find a new vendor.

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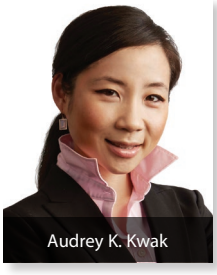
Watch what you waive: Ambiguity in release results in loss of claim


Audrey K. Kwak

Recent attempts to limit a release in a settlement agreement arising from the planned construction of condominiums and a hotel (the Project) in Louisiana proved fruitless. In *Traxler Construction v 300 Mile Investments, Ltd.* (300 Mile), 300 Mile (the original defendant and partial owner of the hotel developer) attempted to file a crossclaim against Brandon Architects (Brandon) for allegedly defective design work. But 300 Mile and Brandon (and others on the Project) were also parties to a compromise agreement that was intended to resolve disputes arising from the Project. Despite 300 Mile's best arguments otherwise, the sweeping language in the agreement proved to be the ultimate undoing of 300 Mile's claims against Brandon.

The Project was divided into four contracts, two of which (the first and fourth) involved design work to be performed by Brandon. The other two contracts were for the purchase of retail and residential condominiums by Brandon from the hotel developer. Ultimately, only the first contract (the First Contract) was completed and Brandon was paid in full for that work.

After some services had been performed under the fourth contract, the parties decided to part ways. In so doing, Brandon was released from the two purchase agreements. As to the fourth contract, Brandon accepted a sum certain for partial performance and released its plans and drawings to 300 Mile.

In the settlement agreement itself, 300 Mile (and the hotel developer) agreed to release and waive claims "whether known or unknown, now existing or hereafter arising," against Brandon arising out of "any engagement to provide any services" with respect to the property on which the hotel and condominiums were to be constructed. Upon execution of the settlement agreement, the parties executed release and waivers, and no further services were performed by Brandon.

Despite the agreement, 300 Mile sought to file crossclaims against Brandon (the litigation was filed originally by Traxler, the general contractor on the Project) relating solely to work performed under the First Contract. When Brandon argued that the settlement agreement barred the claims, 300 Mile argued that the parties did not intend for the release to apply the First Contract, citing to the fact that the agreement did not call out the First Contract specifically.

The Court disagreed, finding that the failure to mention the First Contract equated instead to an intent not to reserve rights as to the First Contract. In so finding, the Court emphasized the use of the broad and inclusive word "any" to describe "engagement" and "services." Further, because the Project only involved two "engagements," the Court found that the use of "any" indicated an intent that the release would apply to both.

The lesson from this case? Better safe than sorry: if you are the releasing party, and there is doubt in your mind to what you are releasing and—equally importantly—what you are not, speak up before you sign the papers. Make your intentions known and explicit. Failure to reserve those claims will likely result in losing them for good.

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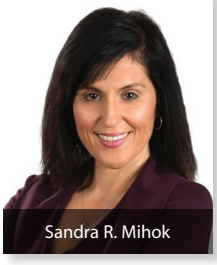
Affordable Care Act Update: Healthcare reporting for employers


Sandra R. Mihok

Beginning in 2016, many employers will need to report on the healthcare coverage offered and provided to employees in 2015. These new healthcare reporting requirements can be found under Internal Revenue Code ("Code") §§ 6055 and 6056. The information required to be tracked and reported depends on the size of the employer and what type of healthcare coverage, if any, the employer provides to its employees.

Small employers with less than 50 full-time and full-time equivalent employees (as determined under Code § 4980H, also known as the employer shared responsibility rules) are generally not subject to the new healthcare reporting requirements. The exception is, if a small employer self-insures its healthcare coverage, it must track and report on each employee and any dependents that were enrolled in the healthcare coverage on a monthly basis.

Large employers with over 50 full-time and full-time equivalent employees must track and report whether each fulltime employee and his or her dependents were offered healthcare coverage that is affordable and provides minimum value (also as determined under Code § 4980H) for each month in the year. In addition, if a large employer offers self-insured health coverage, the employer must track and report on each employee and any dependents that were enrolled in the healthcare coverage on a monthly basis.

Large employers will also need to track and report on the number of full-time employees per month, total employees per month, and the premium amount an employee would need to pay per month for self-only coverage.

There are some simplified reporting options that may allow employers to forego reporting on premium amounts and/or full-time employees' status. For example, employers that offer affordable, minimum value coverage to 98 percent of reportable employees will be able to report without identifying which employees are full-time.

Generally, reports will be provided on the Forms 1095-C and 1094-C. Reports must be provided to both the IRS and the applicable employees early in 2016. The IRS allowed for optional reporting in 2015. The IRS also released a summary of the monthly tracking requirements for large employers. All of the aforementioned forms and instructions may be found at www.irs.gov under the "Forms and Publications" tab.

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Construction Law Group NEWS

Eckert Seamans' Construction Practice Group was once again selected for inclusion in *Chambers USA: America's Leading Lawyers for Business* for Pennsylvania. According to *Chambers USA* sources, "They are creative and not afraid to think outside the box." and "They are collaborative and unbelievably responsive."

In addition, **Chris Opalinski** and **Scott Cessar** were selected individually for inclusion in *Chambers*. Excerpts from sources follow below:

> Christopher Opalinski handles a wide array of construction litigation. He receives plaudits for being an "extraordinarily talented trial lawyer" and "a strong advocate for his clients."
>
> Practice head Scott Cessar has experience in disputes relating to both private and public projects. He receives praise for his "very sound business acumen" and his pragmatic and strategic approach to solving legal issues.

The publication's rankings are based upon the recommendations of more than 10,000 clients and lawyers throughout the United States. *Chambers USA* researchers conduct thousands of interviews to obtain opinions about the lawyers and law firms the interviewees have dealt with over the past year. The leading law firms and attorneys are then compiled and ranked based on the comments in the interviews.

Chris Opalinski, Scott Cessar and **Neil O'Brien** were selected for inclusion in the 2016 edition of *The Best Lawyers in America*® for Construction Law. Best Lawyers® compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. Inclusion in *The Best Lawyers in America 2016* is determined by more than 5.5 million detailed evaluations of lawyers by other lawyers.

David McGlone was selected for inclusion in the 2015 edition of *Massachusetts Super Lawyers*.

Audrey Kwak was named a "2015 Fast Tracker" by the *Pittsburgh Business Times*. The award honors business and non-profit leaders from the Pittsburgh region under the age of 40 who have had significant impact on the growth, scope or impact of their organization.

Matthew Whipple was elected treasurer and **Kate Pomerleau** was elected as a council member of the Allegheny County Bar Association's Construction Law Section.

Several members of the group have been published in recent issues of *Construction Executive* magazine and *Construction Business Owner* magazine.

Victoria Becker recently joined Eckert Seamans as an associate in the Construction and Litigation practice groups in the Pittsburgh office. She concentrates her practice on complex commercial litigation with an emphasis on construction and environmental law. Additionally, Victoria provides counsel in commercial real estate transactions and development. Prior to joining Eckert Seamans, she served as judicial extern to the Honorable Nora Barry Fischer of the United States District Court for the Western District of Pennsylvania and judicial intern to the Honorable Jacqueline O. Shogan of the Pennsylvania Superior Court. Victoria earned her J.D. from the University of Pittsburgh School of Law, where she served as Editor-in-chief of the *Pittsburgh Journal of Environmental and Public Health Law*; she also received a B.A. from the University of Pittsburgh, magna cum laude.

A team of lawyers from the firm's Princeton office, led by **Vince Paluzzi**, were re-selected as outside counsel to the New Jersey Schools Development Authority. In addition to the areas of law in which Eckert Seamans has served as Special Counsel since 2002, including real estate (voluntary acquisitions, condemnations and other real estate-based transactions), construction litigation and errors and omissions/cost recovery, the firm has been selected to receive matters involving insurance coverage and suretyship and governmental contracting, including procurement issues and bid protests.

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