ECKERT SEAMANS
ATTORNEYS AT LAW

Fall 2018

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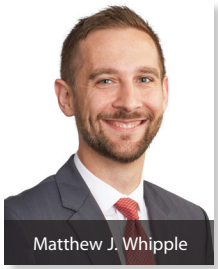
Construction Law

In This Issue…

Project delay, now and later: New decision affirms contractors may not need to wait to assert delay claims


Matthew J. Whipple

When it comes to claims for project delay, most disputes are backward looking. Delay claims are predicated on identifying the project's critical path and isolating those activities that caused the critical path to extend. Usually this involves comparing the original project duration to the final project timeline. For example, the original project schedule was 100 days, the work was completed in 125 days, and that 25-day difference is used to calculate the contractor's damages, often as a function of a daily rate. Often, the dispute comes down to who is responsible for that 25-day difference, and whether there were any concurrent delays.

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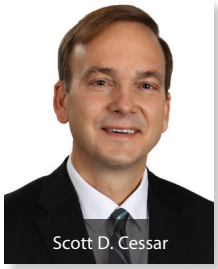
Pay if paid clauses and the prevention doctrine


Scott D. Cessar

Pay if paid clauses make payment from the owner to the contractor an express condition precedent of the contractor's duty to make payment to the subcontractor. The purpose of a pay if paid clause is to shift the risk of the owner's nonpayment under the contract from the general contractor to the subcontractor. Pay if paid clauses are routinely held to be enforceable.

Along with indemnity clauses, pay if paid clauses represent one of the most significant contractual risks to subcontractors. Savvy subcontractors will attempt to negotiate language in the pay if paid clause that allows the contractor to withhold payment only if the owner's withholding of payment from the contractor is tangentially related to the subcontractor's performance.

But what if the subcontractor has not negotiated such a limitation on the enforcement of the pay if paid clause? Must the subcontractor wait forever? Does the subcontractor have any possibility of redress? The answer is perhaps yes.

While the common law allows parties to make owner payments a precondition to payments by the contractor to the subcontractor, the law also recognizes—under what is known as the prevention doctrine—that there is an implied duty on the contractor to not prevent the fulfillment of the condition precedent. In other words, the law imposes on the contractor an implied duty not to frustrate

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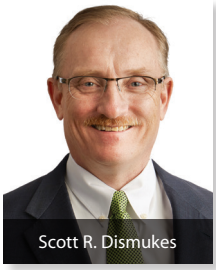
Do I need to worry about lead paint?


Scott R. Dismukes

If you are a contractor, property manager, or anyone disturbing a painted surface, then you may be required to comply with the Renovation, Repair, and Painting (RRP) Rule under the Toxic Substances Control Act (TSCA). This rule applies to work completed in houses, apartments, and child-occupied facilities, like a school or day care, so long as the building was constructed before 1978.

If the above describes you and your possible job site, then the RRP Rule requires that you obtain certification. This certification requirement applies to all firms and sole proprietorships. For example, residential rental property owners or managers, general contractors, painters, plumbers, carpenters, and electricians are all covered under the RRP Rule. If you do not obtain the proper certification, the RRP Rule prohibits you from advertising or performing such renovation activities in places covered by the rule.

What types of activities are covered by the rule?

Generally, any activity that disturbs paint in both pre-1978 housing and child-occupied facilities is covered. Some examples of activities that are included under the RRP Rule are: remodeling, repair and maintenance, electrical work, plumbing, painting preparation, carpentry, and window replacement.

Not all housing is covered by the RRP Rule. Some examples of dwellings that are not covered are: homes built in or after 1978, homes built specifically for elderly or disabled people—unless children under the age of 6 either reside or are expected to reside there—and "zero-bedroom" homes (e.g., studio apartments or dormitories). Additionally, if the housing or potentially affected area is declared lead-free by a certified inspector or risk assessor, by an EPA-recognized test kit, or by sending collected paint samples for analysis to an EPA-recognized laboratory, then the home is not affected by the RRP Rule. Also, any minor repair or maintenance activity that disturbs 6 square feet or less inside or 20 square feet or less outside is not covered by the rule (except for window replacement, full or partial demolition activities, and any "prohibited" activity).

The above describes both me and my line of work, what do I need to do?

The rule prescribes specific informational, certification, and recordkeeping requirements.

The Pre-Renovation Education (PRE) rule requires renovation firms to provide a lead hazard information pamphlet, "Renovate Right," to the owners and occupants of target housing before beginning renovations. Specifics of the requirement can be found at 40 C.F.R. § 745.84.

In conducting such renovations, a firm must ensure that: (1) it is certified; (2) the renovations are performed by Certified Renovators, or people who have been trained by a Certified Renovator; (3) that a Certified Renovator is assigned to each renovation; (4) the abovementioned pre-renovation education requirements have been met; and (5) necessary recordkeeping requirements have also been met.

The certification requirement instructs that such renovations be completed by certified firms, certified renovators, or trained individuals. Certification entails the submission of an application, along with a fee, and recertification every 5 years. More information on training and certification requirements for Renovators and Dust Sampling Technicians can be found at 40 C.F.R. §§ 745.225, 745.90(a) and 745.89. Additional firm responsibilities are described at 40 C.F.R. §§ 745.85, 86 and 89(d).

The recordkeeping provisions require that renovation firms maintain certain records for 3 years following the completion of a renovation. These records include: (1) copies of pamphlet acknowledgement forms; (2) owner-occupant opt-out forms; and (3) documentation and certification that work practice requirements were followed. More details can be found at 40 C.F.R. § 745.86.

Scott R. Dismukes can be reached at sdismukes@eckertseamans.com

Updates to the Pennsylvania Contractor and Subcontractor Payment Act

In 2018, Governor Wolf signed into law amendments to the Pennsylvania Contractor and Subcontractor Payment Act (CASPA) that clarify its enforceability and expand parties' rights and obligations in the payment process. These amendments address the contractual waiver of CASPA's terms, the right to suspend work for nonpayment, withholding of payment for deficiency items and invoice documentation errors, posting of security to facilitate release of retainage, and the applicability of penalty interest under the terms of these amendments. Owners, contractors, and subcontractors on nonpublic construction projects are directly impacted by these changes.

F. Timothy Grieco

Prohibition on waiver

CASPA's prior language did not directly specify whether its requirements could be waived by the terms of a contract. Without such guidance, parties were left to argue the enforceability of waiver provisions in construction contracts. The amendments directly prohibit the contractual waiver of any provision of CASPA unless specifically authorized elsewhere in the Act. This prohibition provides clarity and avoids attempts to circumvent the provisions meant to level the playing field in the payment process.

Suspension of performance

The amendments authorize contractors and subcontractors to suspend performance of work without penalty if payment provisions are not followed. This is a huge shift in leverage, as it removes much of the risk that has prevented contractors and subcontractors from walking off jobs in the past. Owners must be much more conservative in their approach to payment disputes or face delays borne out of work stoppages. CASPA spells out the circumstances that must be met prior to suspending work, so consult an attorney before such action is taken.

Withholding of payment for good faith claims

Before the enactment of the amendments, an owner was permitted to withhold payment for deficiency items according to the terms of the construction contract, provided the owner provided the contractor notice of the deficiency within seven days of receipt of the invoice. Contractors were granted the same right concerning payment of subcontractors.

As a practical matter, the notice provision was inconsistently and haphazardly enforced. Courts rarely held an owner or contractor accountable for failing to meet these notice requirements. The amendments will change this in multiple respects. First, the amendments include subcontractors in this section. Second, the amendments now explicitly require that amounts withheld be reasonable. Third, notice of the deficiency must be in writing and owners have 14 calendar days after receipt of the invoice to provide such notice. Fourth, failure to meet the notice requirement constitutes a waiver of the basis to withhold payment and necessitates payment in the full invoice amount. Finally, in the event of payment being withheld due to a deficiency, payment for satisfactorily completed work is required to be made pursuant to the terms of the contract. These changes will make it necessary for owners and their respective representatives to stay vigilant and apprised of the status of work so that they can quickly react to invoices for deficient work.

Errors in documentation

To withhold payment for errors in documentation, the payer must provide written notice of the errors within 10 working days of receipt of the invoice and must timely pay the correct amount per the terms of the contract.

Posting of security in lieu of retainage

The amendments provide that "[u]pon reaching substantial completion of its own scope of work, a contractor or subcontractor may facilitate the release of retainage on its contract before final completion of the project by posting a maintenance bond with approved surety for 120% of the amount of retainage being held." Withholding retainage for more than 30 days after final acceptance of the work shall be subject to the same notice requirements for withholding due to deficiency items, discussed above.

Penalty for failure to comply

An owner, contractor, or subcontractor is insulated from claims that an amount was wrongfully withheld if the amount bears a reasonable relation to the value of any claim held in good faith and all notice requirements for deficiency items are met. Otherwise, the amount withheld is subject to penalty interest of 1 percent per month.

These amendments took effect on October 10, 2018. If you are engaged in a private construction project in Pennsylvania, don't be caught off guard. These changes will impact your project!

Tim Grieco can be reached at tgrieco@eckertseamans.com

Bid protests on public projects where price is not the deciding factor are an uphill battle

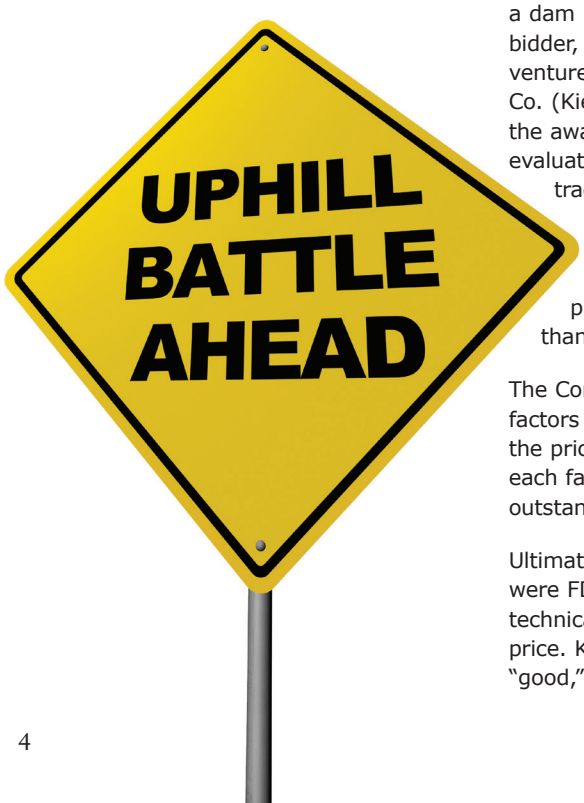

Edgar Alden Dunham, IV

Traditionally, public construction projects typically followed a set path. The public owner hired an architect or engineer who prepared plans and specifications, and then released those plans and specifications out for bidding. The project was then awarded to the qualified bidder who provided the lowest responsive bid.

A contractor protesting a bid in those cases had to show that the lowest bid was either from a non-qualified bidder or was not responsive in some fashion. While that can be difficult in a specific case, conceptually, it is relatively simple.

Over the past 20 years or so, public entities have increasingly strayed from the traditional model. Fast-track projects, which are not based on complete plans and specifications, public-private partnerships, and projects in which the price is simply one of the factors to be considered have become increasingly popular.

Public projects where price is simply one of the factors tend to be projects where time is an issue. The public entity will typically set broad parameters for the design, a tight schedule for completion, and other particulars it wants in the project.



Because the award of public projects is not supposed to be done on the basis of favoritism, and because the bidding of such projects is supposed to be open to all, the public entity will establish ostensibly objective criteria for determining the winning proposal. This typically takes the form of a number of categories of different criteria in which each bidder is ranked. To determine the winning bid, the public entity compiles the total scores of each bidder based on the rankings in each category. The proposal with the best score receives the award. While the mathematics of determining the winning bidder by compiling the various proposals' rankings in each category is objective and presumably fair, the assigning of rank to each bidder is frequently much more subjective.

Accordingly, attacks on awards in such cases usually center on attacking the individual rankings in each category, arguing that the various rankings by the public entity were incorrect or arbitrary. Unfortunately, for those protesting bidders, however, courts rarely substitute their knowledge and expertise for that of the publicly entity and generally defer to the entity's ranking choices.

A recent example is the 2018 Court of Claims case of *Kiewit Infrastructure Ins. Co. v. United States*. There the Army Corps of Engineers awarded a contract for a dam repair project to the second-lowest bidder, Flatiron/Dragados/Sukut joint venture (FDS). Kiewit Infrastructure West Co. (Kiewit), the lowest bidder, challenged the award. The bid proposals were to be evaluated on the basis of the "best-value tradeoff process" set forth in section 15.101-1 of the Federal Acquisition Regulations. That process permits a tradeoff between price and non-price factors and allows awards other than the lowest-priced one.

The Corps had a number of non-price factors that were more important than the price for the project. Ratings for each factor ranged from unacceptable to outstanding.

Ultimately, the two highest-ranked bidders were FDS and Kiewit. FDS had a higher technical ranking, and Kiewit had a lower price. Kiewit's technical ranking was "good," the second-highest ranking.

The justification for FDS's higher ranking was subjective. The Corps said that FDS "demonstrated a better understanding of the existing site conditions and project requirements," and that "FDS's exceptional approach . . . resulted in a lower risk of unsuccessful performance." The Corps also noted that FDS had "a superior understanding of the geologic and hydrogeological site conditions."

The court, in ruling on Kiewit's protest, found that the award was not arbitrary, largely because the Corps followed the process set forth in the solicitation for making the award. Regarding Kiewit's detailed arguments on the rankings, the Court said that while there must be more than conclusory statements in the record to support a selection under the Federal Acquisition Regulations, "technical rating decisions are the minutiae of the procurement process . . . which involve discretionary determinations of procurement officials that a Court will not second-guess."

Not surprisingly, Kiewit did not prevail.

Cases like the *Kiewit* case are not anomalies. As *Kiewit* illustrates, it is difficult for a disappointed bidder on these projects to protest the award. Generally, the only argument disappointed bidders will have is that the public entity made a mistake in its technical review. But the courts will generally not engage in the type of detailed technical analysis necessary for those arguments, under the theory that to do so would be to second-guess the determination of procurement officials.

Besides making it difficult for disappointed bidders, it is easy for public officials to make subjective determinations in these cases that can result in conscious or unconscious favoritism—something our bidding laws are designed to prevent.

None of this means that contractors should avoid these types of projects. It simply means that when bidding on a project like this, a bidder should fully explain what it is proposing and what it intends to do, and realize that if it is not awarded the project, any attempt to protest the bid will be an uphill battle.

Edgar Alden Dunham, IV, can be reached at edunham@eckertseamans.com

A primer on trademarks for the construction industry


Candace Lynn Bell

Construction companies, engineering firms, and contractors of all types often work with different types of intellectual property assets in their day to day business—the copyright in a set of blueprints or plans or a patented piece of equipment, tool or process. But what about trademarks and service marks? What about a construction company's, engineering firm's, or contractor's own marks or brands?

What is and is not a trademark?

A trademark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of a good, while a service mark is a word, phrase, symbol, and/or design that identifies and distinguishes the source of a service. For the rest of this article, trademark or mark will mean both. The name on your company's certificate of incorporation or certificate of formation, for example, ABC, Inc. or ABC LLC, may not necessarily be your company's mark. A company's assumed name, d/b/a, or tradename also may not necessarily be the company's mark. Nor is a company's domain name its trademark; it is just the web address for the company's website. But all of these can include your company's mark. It is important to understand this difference, because if your company's legal name or domain name infringes on another company's mark, despite a state's approval of the company's formation or the registration of a particular domain name, you may have to change your name or give up your domain name.

So what makes a mark? Use of the mark on or in association with the company's goods and services—for example, ABC hammers when ABC appears stamped on the hammer's handle or ABC commercial construction services when ABC appears in a brochure advertising the commercial construction services.

> *"Taking the proper steps to choose and use your mark, combined with seeking trademark registrations for your mark, will enable your company to "build" on one of its most valuable assets."*

Why is a trademark valuable?

At its core, a mark is a symbol of the goodwill associated with a company's goods and/or services. As a construction firm or a contractor, each and every day and on each and every project, you work on building your company's reputation. You know how hard it is to build a good solid reputation, and you know how easy it is to lose it. Your mark is the symbol of your company's reputation and goodwill. As a result, your mark may be one of the most valuable assets of your company. If you are just starting out on a new venture, you want to choose a mark that does not infringe on someone else's mark, so the goodwill that accrues as a result of your hard work stays with your company. If your mark is already established, you also want to be able to stop someone else who tries to use your mark or another mark that is so close to yours that your customers are likely to be confused about whether it represents your company or a competitor.

How do you protect your valuable trademark?

One of the best ways to protect your mark is to apply for and obtain a trademark registration. In the United States, rights in your mark are based on and created by using your mark in commerce, "common law" rights, but such rights exist only in the specific areas of the country where you used your mark. A state trademark registration only provides rights in that particular state. By obtaining a U.S. federal trademark registration on the Principal Register, you can obtain nationwide rights for your mark. A U.S. federal trademark registration has a number of other advantages and benefits over common law rights and state trademark registration. Your federal registration will be listed in the United States Patent and Trademark Office (USPTO) database, and your registration can be cited by the USPTO as a basis for refusing registration of someone else's pending application if the USPTO determines the mark of the pending application is likely to cause confusion with your registered mark.

The test for whether or not there is a likelihood of confusion looks at a number of factors, but the two factors often given the most weight are how similar the marks are and how closely related are the goods and services. Sometimes a refusal to register is enough to cause the other party to abandon the applied-for mark. Recent studies have also shown a positive link between various company economic performance indicators, such as revenue growth, and the registration of a company's trademarks. A U.S. registration can also provide a basis for obtaining trademark registrations in foreign countries. If you perform work or sell product in countries outside the United States, you may or may not have created rights in your mark. Many foreign countries only recognize trademark rights if you have a trademark registration in that particular country.

Taking the proper steps to choose and use your mark, combined with seeking trademark registrations for your mark, will enable your company to "build" on one of its most valuable assets. And after all, isn't that what construction is all about?

Candace Lynn Bell can be reached at cbell@eckertseamans.com

Project delay, now and later: New decision affirms contractors may not need to wait to assert delay claims
(continued)

Many projects contemporaneously track construction progress, of course, usually through monthly schedule updates that compare various activities against the baseline schedule. Despite this tracking, it could be argued that a delay claim cannot be proven until the work is complete because behind-schedule activities could always catch up before the end of the project. Manpower could be added or work could be re-sequenced. Waiting until the close of the project, however, may require a contractor to endure months, or even years, of behind-schedule work, likely hemorrhaging cash while doing so.

A recent decision from the Civilian Board of Contract Appeals, *CTA I, LLC v. Department of Veterans Affairs*, suggests that contractors need not wait until the end of the project to assert a delay claim. In this case, the contractor, CTA, asserted a $2 million delay and inefficiency claim in August of 2017, despite the fact that the project was not set for completion until November of 2018. The agency moved for a stay on the grounds that until the contract was complete, the true delay impact could not be known.

The CBCA denied the stay request, affirming that "CTA is entitled to try to prove at this juncture that the VA caused compensable delay to activities on the critical path up to and including September 30, 2016, thereby delaying the future completion date. CTA need not wait until contract completion to litigate its delay claim for that completed, discrete period. Indeed, the very thing that defines work on the critical path is that work has no leeway and must be performed on schedule; otherwise, the entire project will be delayed."

Nothing in the applicable Federal Acquisition Regulations prohibited the contractor from submitting a claim before the end of the project, and, as the CBCA noted, the "Suspension of Work" clause in the parties' contract required the submission of a delay claim "as soon as practicable." Thus, if the contractor waited to assert its claim, it did so at its peril.

In arguing for the stay, the VA asserted that it was not possible to prove that the government "delayed project completion as a whole" until after the close of the project. The CBCA rejected this, holding that proving the delay was up the contractor, which it could either do or not do, but "we need not wait until CTA's performance has ended to find out." As a practical matter, however, how might a delay claim be demonstrated prior to the completion of construction? Many delay claims are quantified by comparing the as-built project schedule to the as-planned project schedule, either in a pure "as-built vs. as-planned" analysis or some variation. There are alternatives for capturing delay claims, however.

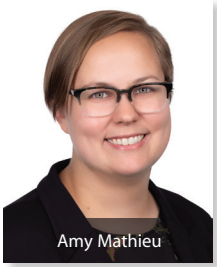
One such method is a "window" analysis, which involves an interim assessment of delay on updated schedules at specific periods of the project. Typically the project is divided into a number of periods, usually based around major changes or milestones, and then each "window" is assessed to determine if there is a delay. A variant is a "time impact analysis," which focuses on a specific delaying event. The project is analyzed each time there is a delay situation, and then the new schedule is projected out to establish a new completion date.

The "window" and "time impact analysis" approaches may be used to analyze delays in real time, while the project is ongoing. There are limitations to each approach, not the least of which is that they are contingent on accurate, complete project records. In the right circumstances, however, alternatives may be available to the traditional as-built v. as-planned framework.

It goes without saying that identifying and applying the appropriate methodology to a potential delay claim requires significant expertise, likely both from an outside scheduling expert and an experienced construction law practitioner. If you are currently dealing with a delayed project, however, it may be to your benefit to receive their input sooner rather than later. A delay claim might be available now, and waiting for the project to end may not be required.

Matthew J. Whipple can be reached at mwhipple@eckertseamans.com

The tension between state payment statutes and contractual forum selection clauses


Amy Mathieu

State payment statutes often bar contract terms requiring disputes on in-state projects to be litigated in other states.

In *Popple Construction v. Kiewit Power Construction*, the Federal Court for the Middle District of Pennsylvania addressed the issue of whether the Pennsylvania Contractor and Subcontractor Act (CASPA) provision barring the enforcement of contractual, forum selection clauses was enforceable.

In *Popple Constr.*, the plaintiff brought three causes of action—breach of contract, quantum meruit, and violation of CASPA in the Pennsylvania Court.

The contract between the parties, however, contained a forum selection clause that provided that the courts of the state of Illinois were the sole and exclusive jurisdiction for any disputes between the parties. Despite this provision, the plaintiff filed in Pennsylvania, in reliance on the statutory forum selection clause found in CASPA. CASPA provides that forming a contract subject to the laws of another state or requiring that litigation on the contract occur in another state is unenforceable.

This presented the following legal question to the Court: when a contractual forum selection clause is directly at odds with a statutory forum selection clause, which should prevail? The Court examined prior decisions by the Third Circuit, other district courts, and its own prior decision in *KNL Construction, Inc. v. Killian Construction, Co.* and decided that the parties' contractual agreement to a specific forum outweighed the forum selection provision in CASPA.

The Court reasoned that, if it denied the motion to transfer the case to an Illinois court filed by the defendant, it would ultimately allow parties to use CASPA to circumvent their own contractual choice of forum. The existence of a state law forum selection clause, like the one found in CASPA, does not constitute an extraordinary circumstance that would justify the negation of parties' agreed-upon contractual forum selection clauses.

Under *Popple Constr.*, thus, a statutory forum selection clause does not permit a plaintiff to file an action in a court in contravention of the parties' contractual forum selection clause. If a party has entered a valid forum selection clause, it is bound by that forum choice regardless of CASPA's statutory forum selection provisions.

Amy Mathieu can be reached at amathieu@eckertseamans.com

Pay if paid clauses and the prevention doctrine
(continued)

conditions precedent to the payment of monies by the owner to the contractor.

What does this mean? Under the prevention doctrine, if the general contractor is responsible for the refusal of the owner to not pay the contractor, then the contractor cannot take advantage of its failure to perform in order to avoid payment to the subcontractor.

This makes sense, for example in the extreme, if the owner does not pay the contractor based on the contractor's deliberate failure to submit proper paperwork for payment. Certainly, the contractor cannot use its own deliberate failure to perform in such a manner to avoid paying the subcontractor.

A recent case from the Federal District Court of the Eastern District of Pennsylvania, *Connelly Constr. Corp. v. Travelers and Walsh Healy Joint Venture*, however, signals that a subcontractor might also prevail in overcoming a pay if paid clause where the contractor's failure to perform was inadvertent, as opposed to deliberate as outlined in the above example of failing to supply appropriate paperwork.

In Connelly, the subcontractor sought to overcome the pay if paid clause of its subcontract with the contractor, based on the prevention doctrine, in order to secure release of retention from the contractor. The subcontractor pointed to correspondence from the owner in which the owner noted "several potentially problematic issues with the [contractor's] work on the project" and that the contractor continues to appear oblivious to the fact that the project encompasses design and construction of a sophisticated maximum security prison."

Reviewing this evidence, the Court found that the contractor "appears to be at least partly responsible for the project delay." The Court labeled this conduct as "inadvertent" conduct precluding the release of payment from the owner, as opposed to "deliberate" conduct.

The Court then considered whether inadvertent conduct, as opposed to deliberate conduct, justified the dismissal of the subcontractor's claim for recovery of the retention in view of the application of the pay if paid clause in the parties' subcontract.

Following a review of case law from a number of jurisdictions and treatises on contract law, the Court held that "the invocation of the prevention doctrine does not distinguish between deliberate conduct and inadvertent conduct." The Court based its holding, in part, on the concept that "the duty of good faith and fair dealing … may require some cooperation" on the part of the general contractor to satisfy a condition precedent "and to refrain 'from conduct that will prevent or hinder the occurrence of that condition' or must 'take affirmative steps to cause its occurrence.'"

This holding is significant in that it portends that, if a subcontractor is not culpable in causing the owner to not pay the contractor, but the contractor is at fault due to inadvertence, then the contractor may not be able to rely on the pay if paid clause to avoid paying the subcontractor. Stated another way, if payment is being held by the owner due to performance disputes with the contractor, not related to the subcontractor, then the contractor may not refuse to pay the subcontractor based on a pay if paid clause.

The potential ramifications of the holding of *Connelly* was confirmed by the contractor in *Connelly* who argued to the Court that, if the Court accepted the subcontractor's arguments as to inadvertent conduct, this would "eviscerate" pay if paid clauses. The Court rejected this argument.

Scott D. Cessar can be reached at scessar@eckertseamans.com

Construction Law Group NEWS

Victory

Chris Opalinski recently prevailed in a five-day jury trial in Cameron County, Pennsylvania in which the firm's client, a contractor on a wastewater treatment plant, was awarded over $750,000, plus a finding that the local sanitary authority had acted in bad faith. This finding also entitles our client to an award of its attorney fees and costs.

In the news

Congratulations to **Matthew Whipple**, who was elevated by unanimous vote to be the 2018–2019 Chair of the 120-attorney Construction Law Section of the Allegheny County Bar Association. Matthew previously served as vice chair, treasurer, and secretary of the Section.

Scott Cessar's article "Dispute Resolution of Performance Bond Claims" appeared in the August issue of *Construction Executive Magazine*.

Welcome

Amy Mathieu recently joined the firm's Pittsburgh office. She concentrates her practice on commercial litigation matters and has experience in a wide variety of complex civil litigation, including breach of contract actions, construction delay, defective work, and nonpayment claims, insurance matters, restrictive covenants, and derivative actions.

Accolades

Eckert Seamans' Construction Group again received Tier 1 rankings from *U.S. News – Best Lawyers*® "Best Law Firms" 2019 in the Pittsburgh metropolitan market.

The Construction Law practice was also once again selected for inclusion in *Chambers USA: America's Leading Lawyers for Business* in Pennsylvania. According to *Chambers USA*, the "well-respected construction practice" is "esteemed for its strength in construction disputes and also regularly advises on bidding and procurement, government contracts and regulatory compliance issues. Active in both national and international projects in the infrastructure, energy and leisure sectors." Clients say: "The attorneys and the firm are straightforward, knowledgeable and engaged." Sources add: "They have very good breadth and depth."

In addition, **Chris Opalinski, Scott Cessar**, and **Neil O'Brien** were selected individually for inclusion in *Chambers USA* as notable practitioners. Excerpts from sources follow below:

"**Christopher Opalinski** offers well-honed advocacy skills in a range of construction litigation and arbitration claims, alongside wider strengths in commercial disputes. Interviewees describe him as 'a high-quality lawyer,' offering notable praise for his 'impressive understanding of the law and clients' businesses.'"

"**Scott Cessar** garners accolades for his 'pragmatic, thorough and hard-working' demeanor, with sources further highlighting his 'great respect for the client's interests.' His practice features notable strength in litigation, arbitration and mediation claims, where he acts for a range of suppliers, owners and construction companies."

"**Cornelius O'Brien** has notable strength in construction disputes work, offering considerable experience in litigation matters and a range of arbitral proceedings. His clients include owners, sureties and contractors."

The publication's rankings are based upon the recommendations of 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 2019 edition of *The Best Lawyers in America*® for their legal work in construction. *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* 2019 is determined by more than 5.5 million detailed evaluations of lawyers by other lawyers.

David McGlone, of the firm's Boston office, was selected for inclusion in the 2018 Massachusetts Super Lawyers® list for his work in construction litigation.

ECKERT SEAMANS
ATTORNEYS AT LAW
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