

THE CONSTRUCTION WITNESS

A monthly newsletter brought to you by Leonard A. Windish, P.C.

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Stories in this newsletter



Subcontractors Get Balances Due Plus Attorneys' Fees



Insurance Companies Fight Coverage for Defective Construction



Helpful Links



Have a Great Memorial Day Weekend

NJ Appellate Court Upholds Judgments with Attorneys' Fee for Subcontractors

On May 18, the New Jersey Appellate Division upheld judgments for two subcontractors on the construction of a Burlington Coat Factory in Mount Laurel. The Superior Court judge gave the subcontractors the full balance due of their subcontracts as well as attorneys' fees under NJ's Prompt Pay Act without a trial. The GC appealed.

On appeal, the GC argued that pay-if-paid language precluded the subs' claims where the owner had not paid the GC's retainage and that general waiver language precluded the award of attorneys' fees under the Prompt Pay Act. The Appellate Division disagreed and upheld the trial court's decision. Retainage held by the owner was not part of the payment for the subs' work. Also, the language did not specifically waive the Prompt Pay Act by name. [More details.](#)



Two PA Federal Cases This Month on Insurance Coverage for Defective Construction

A pool company installed a pool in Northampton County that failed. The homeowner sued and the pool company demanded that its insurance company provide coverage. The insurance company moved for a judgment that it had no duty to defend because the homeowner's allegations related to workmanship. The Court agreed. Most insurance policies limit coverage to "occurrences" or "accidents", which do not include claims of faulty workmanship.

However, in another case decided May 20, the court denied an insurance company's request for dismissal of coverage for damages to new houses. The homeowners alleged that the houses suffered cracking and other damage that was caused by improper excavation and site preparation. The Court held that the insurance company had at least a duty to defend the homebuilder. This is because the homeowners had alleged only when they "discovered" the damage. An "occurrence" is when the damage manifests itself which the homeowner did not allege. So the insurance policy may have coverage based on the homeowners' evidence. [Click here to contact me.](#)



Helpful Information with These Links

Explanations for the Lumber Shortage— [CLICK HERE](#)

Status of Federal "Infrastructure" Bills and Effect on Construction— [CLICK HERE](#)

Construction Site Safety Tips— [CLICK HERE](#)

Virtual Conferences on Digital Transformation in Construction— [CLICK HERE](#) AND [HERE](#)



Enjoy Your Memorial Day Weekend! Here are Some of the Services We Offer to our Clients

Drafting and Negotiating Contracts

Filing Bid Protests

Negotiating Change Orders

Advice on Employee and Union Issues

Negotiating Contract Closeout

Filing and Defending Mechanics' Liens

Professional Expert Delay Claims

Collections

Vigorously Defending Claims

Commercial & Construction Litigation

Environmental Litigation

Corporate Legal Advice



Leonard A. Windish, P.C.
1835 Market Street, Suite 1215, Philadelphia, PA 19103
(215) 979-7605
Questions or comments? Email us at len@windishlaw.com or call 215-979-7605

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www.windishlaw.com

