



THOMPSON HINE

January 2011

CONSTRUCTION UPDATE

Court Rules on Article 8 Claims Resolution Process Requirements

In a recent case (*Stanley Miller Construction Co. v. Ohio School Facilities Commission, et al.*), an Ohio court of appeals ruled that a contractor's failure to comply with the claim requirements of Article 8 on an Ohio Schools Facility Commission (OSFC) contract may result in the contractor forfeiting its claims against the OSFC. On December 28, 2010, the Tenth District Court of Appeals sitting in Franklin County and hearing the appeal of the case ruled that the trial court (the Ohio Court of Claims) must review the underlying facts surrounding claim submissions on the project to determine if the contractor had waived its right to pursue its claims by failing to follow the Article 8 claims submission requirements.

The *Stanley Miller* case involved the construction of a middle school for the Canton City School District. The contractor pursued claims for extra costs related to inefficiencies and scheduling issues on the project. After a trial in the Court of Claims, the contractor was awarded damages for its claims. However, on appeal, the Court of Appeals determined that the trial court had not properly reviewed the evidence regarding OSFC's affirmative defense that the contractor had waived its right to pursue its claims by failing to follow the Article 8 claims resolution process. The Appeals Court has now sent the case back to the Court of Claims to make that determination.

This case follows on the heels of another case, *Cleveland Construction, Inc. v. Kent State University*, where in June 2010, the same Court of Appeals sent that case back to the Court of Claims to determine if the state had met its burden of proving that Cleveland Construction had waived its claims by failing to pursue its Article 8 remedies as required by the contract.

These two decisions illustrate the importance of a contractor expressly following the requirements of the claims resolution procedures found in Article 8 of state contracts, and that if there is evidence that they did not, then all claims may be waived. While it is uncertain whether the contractors may eventually prevail in these two cases, it is clear that the state will be asserting its waiver defenses whenever it can. Contractors must acknowledge this and be prepared to follow the letter of the contract, regardless of whether it creates an adversarial atmosphere or regardless of whether the state has actual notice and knowledge of the facts and circumstances giving rise to the claims asserted. Vigilance will be paramount in future claims situations.

FOR MORE INFORMATION

For more information, please contact:

Cleveland

Jeffrey R. Appelbaum	216.566.5548	Jeff.Appelbaum@ThompsonHine.com
Daniel M. Haymond	216.566.5896	Dan.Haymond@ThompsonHine.com
Audra J. Zarlenga	216.566.5647	Audra.Zarlenga@ThompsonHine.com

© 2011 THOMPSON HINE LLP. ALL RIGHTS RESERVED.

ATLANTA

CINCINNATI

CLEVELAND

COLUMBUS

DAYTON

NEW YORK

WASHINGTON, D.C.

ATTORNEY ADVERTISING



Cincinnati

Thomas J. Kirkwood 513.352.6728 Tom.Kirkwood@ThompsonHine.com
Kimberly E. Ramundo 513.352.6656 Kim.Ramundo@ThompsonHine.com

Columbus

Daniel F. Edwards 614.469.3223 Dan.Edwards@ThompsonHine.com
Christopher T. O'Shaughnessy 614.469.3284 Christopher.OShaughnessy@ThompsonHine.com
Peter D. Welin 614.469.3269 Peter.Welin@ThompsonHine.com

If you do not wish to receive future communications by email, please send an email with "unsubscribe" in the subject line to Unsubscribe@ThompsonHine.com.

This advisory may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.

© 2011 THOMPSON HINE LLP. ALL RIGHTS RESERVED.