



Contractors Score a Supreme Court Victory in Scoccolo Construction, Inc. v. City of Renton

Submitted by John Ahlers, Short Cressman & Burgess, PLLC

Ruling: On Thursday (October 26, 2006) the Supreme Court of Washington unanimously ruled that a clause in a municipal contract which provided that the city was not liable for utility company delays was against public policy and allowed the contractor to fully recover for delay caused by the utility.

Background: The City of Renton awarded Scoccolo Construction a street widening contract. To complete the work, utilities (Puget Power, TCI, US West) in the right of way had to be relocated. The contract between the City and Scoccolo provided that the contractor was "entirely" responsible for coordination of the utility companies and arranging for their movement. The contract provision also provided that no compensation will be made to the contractor for "reasons of delay caused by the actions of any utility company." Renton had a franchise agreement with the utilities that provided that the companies were obliged to relocate their lines when directed to do so by the City. As it turned out, Scoccolo's work was substantially delayed by the utility companies' failure to relocate their lines in a timely manner.

After completing the project, Scoccolo sued the City for breach of contract and the delays caused by the utility companies. The City raised the defense that the contract clause precluded Scoccolo from any recovery. Scoccolo countered that the exculpatory contract clause was rendered unenforceable by the Washington No Pay for Delay statute (RCW 4.24.360). RCW 4.24.360 invalidates as against public policy "no-damages-for-delay" clauses in construction contracts where the delay is caused by the contractee [municipality] or "persons acting for" the contractee [municipality].

After a protracted legal battle, a jury award Scoccolo over \$1 million for the utility delay. The City appealed the award on the basis that the no-damages-for-delay statute was not applicable because the utilities were not "acting for"

Renton. The City prevailed in their appeal and the Court of Appeals took away Scoccolo's jury verdict. Scoccolo appealed to the Washington Supreme Court and the Supreme Court ruled in favor of Scoccolo, holding when the utilities acted pursuant to the City's commands, they were "acting for" the City for purposes of RCW 4.24.360, and reinstated the \$1 million jury verdict in favor of Scoccolo.

Why This Case Is Important To Contractors: Scoccolo's contract was with the City of Renton. If Scoccolo was foreclosed from recovering its delay claim from the City by the exculpatory contract clause, Scoccolo had no recourse against the utility companies. In Washington, money damages cannot be recovered where there is no contractual relationship between entities. If the City was able to escape liability, Scoccolo was left with no remedy at all because Scoccolo had no contract with the utility companies. It is impossible for a contractor to properly price a project if it is at the mercy of a utility company over which it has no control and if that utility company delays the project, the contractor has no recourse. The Court's ruling makes clear that Washington's no-damage-for-delay statute assigns the risk of the utility delay to the City, the party best able to control the risk. (The City has recourse against the utilities through the franchise agreements.) By ruling that the utility companies are acting for the City, the risk balance is restored and taxpayers will benefit in the long run by better and more accurate construction bids.

John P. Ahlers, with the law firm of Short Cressman & Burgess PLLC, an associate member of the Utility Contractors of Washington, wrote a friend of the court brief supporting Scoccolo Construction's appeal.

UCAW extends special acknowledgement to the efforts of two associate members for their invaluable support and involvement with the Scoccolo case. John Ahlers of Short Cressman & Burgess, PLLC wrote a Friend of the Court Brief supporting Scoccolo Construction, Inc.'s appeal. Stanislaw Ashbaugh, LLP also played an instrumental role in the appeals court's final decision. This is a strong example of the support and backbone our members have together when they stand together to support an issue whether it be a legal court case, a key legislative issue, or simply brainstorming together to resolve every day business issues. UCAW and its board members thank Short Cressman & Burgess, PLLC and Stanislaw Ashbaugh, LLP for their support, commitment, and efforts in the Scoccolo case.