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Construction + Appellate



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## Connecticut Supreme Court Upholds Jurisdiction of Arbitration Panel for Claims Arising on Public Works Construction

The Connecticut Supreme Court recently issued an important decision confirming the rights of design professionals, construction managers, and contractors to assert claims under contracts with the state. The decision also reinforces the binding nature of arbitration awards concerning such claims.

The Supreme Court's decision was issued in the case of *DOT v. White Oak Corp.*, 319 Conn. 582 (2015). The decision arose from a long-running contract dispute between the Connecticut Department of Transportation (CDOT) and White Oak Corporation concerning bridge repair projects in New Haven and Bridgeport. Both projects were marred by conflict and significant delays, and in early 2000, the parties reached an agreement for completion contractors to finish the jobs. White Oak reserved all of its rights and soon after filed a notice and demand for arbitration against CDOT under both contracts.

Following the filing of White Oak's demands for arbitration, CDOT sought to preclude the arbitration of both disputes by filing an injunction action in the Superior Court. After lengthy proceedings, the Court ultimately declined CDOT's request to join the arbitrations.

With respect to the Bridgeport dispute, the Arbitration Panel (Panel) ultimately disagreed with White Oak's claim that it had been wrongfully terminated from the project but held that CDOT had unlawfully withheld contract funds from White Oak as liquidated damages. The Panel held that the contract's liquidated damages clause was unenforceable, as it constituted a penalty. Thus, the Panel awarded the return of those wrongly withheld amounts (roughly \$5.4 million) plus interest at 10 percent per annum.

CDOT sought to vacate the arbitration award before the Superior Court, but the Court affirmed the Panel's decision, holding that (1) the Panel had acted within its authority to order the return of the withheld amounts, and (2) White Oak's notice and demand for arbitration satisfied the requirements of state law, specifically General Statutes § 4-61, which provides for a limited waiver of the state's sovereign immunity. Robinson+Cole was retained to represent White Oak in connection with the appeals that followed.

On appeal, the Appellate Court determined that White Oak had voluntarily relinquished its challenge of the state's assessment of liquidated damages and reversed the judgment in favor of White Oak.

White Oak then appealed and argued to the Connecticut Supreme Court that the Appellate Court had misinterpreted the record when concluding that White Oak had voluntarily given up its claim for the return of the withheld amounts and, further, that the Arbitration Panel's award was valid. The Supreme Court agreed.

After conducting an extensive review, the Supreme Court held that the record did not support CDOT's assertion that White Oak waived the right to seek the return of the amounts withheld as liquidated damages. This was especially true because White Oak's statutory notice of claim and demand for arbitration specifically included the return of these funds as an item of damages. Although CDOT claimed that White Oak had represented to the Court that it was only making a claim for wrongful termination of the contract, the Supreme Court held that the transcripts did not bear this out. The Supreme Court found further support for its conclusion in the fact that White Oak continued to press the liquidated damages claim during the arbitration without CDOT ever attempting to return to the Superior Court for further injunctive relief.

### **IMPORTANCE FOR PUBLIC WORKS CONSTRUCTION CONTRACT CLAIMS**

This ruling is particularly important because of the Court's guidance regarding claims arising under public works construction contracts and the process for satisfying the jurisdictional requirements of the applicable statute.

Under the doctrine of sovereign immunity, the state is generally immune from claims unless permitted by statute. Connecticut General Statutes § 4-61 allows a party that has entered into a design, construction, construction management, repair, or alternation contract with the state to bring a lawsuit or, in the alternative, file for arbitration to resolve any disputed claims arising under the contract. As a condition precedent to legal action, a claimant is required to provide written notice of each claim under contract with the state and the factual basis for each such claim. The notice must be submitted no later than two years after the state agency head issues a certificate of acceptance showing the acceptance of the design or construction contract work or two years after termination of the contract.

In this decision, the Supreme Court confirmed that the objective of the statutory notice requirement is to alert the state of the right of payment claimed and the general nature of the claim. Thus, a notice of claim will satisfy § 4-61 if "it communicates to the [s]tate, the nature of the claim based upon what is known at the time so that the [s]tate may attempt to resolve the problem short of arbitration." Finally, the Court determined that the requirements of notice should not be applied so restrictively so as to defeat otherwise valid claims.

### **IMPLICATIONS FOR ARBITRATION**

The decision also has significant legal implication in the area of arbitration law.

First, although the state's attempt to prevent the arbitration of the construction claims was ultimately unsuccessful, it did raise important issues as to the roles of the court and arbitration panel in deciding the questions of arbitrability and waiver. An important lesson to be learned from this case is to tightly manage court proceedings, whether occurring before the arbitration, afterward, or both. Connecticut law is particularly clear on the division of responsibilities in arbitration matters between courts and arbitrators; be wary of your opponent trying to push those boundaries because there can be serious ramifications.

Finally, parties to an arbitration should keep in mind that the court's powers are legally constrained when it is reviewing an arbitration award. In this case, the Supreme Court acknowledged the limited power of the Superior Court to override the statutory right to arbitrate. This case is another in a string of decisions rendered by the Connecticut Supreme Court adopting a marked "hands-off" policy when it comes to court review of arbitration awards (even very large arbitration awards).

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If you have any questions, please contact one of the following Robinson+Cole lawyers:

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