

THE BETHAY PERSPECTIVE



Bethay Consultants, Inc. P.O. Box 387 Ridgewood, NJ 07450
 1.201.398.9870 1.888.4.BETHAY www.bethay.net info@bethay.net

Introduction

With this issue we are pleased to introduce our first Newsletter. This publication is intended to be a useful tool for our friends, clients and associates in the ever complex world of construction. We hope this information is helpful to you. If you have any other matters of concern, please don't hesitate to contact us.

Robert Munster, President

News at Bethay

Bethay has moved!

We have moved to a new and improved office. Please make a note of our new address and contact information. These changes are effective as of:

October 1, 2003.

Regular mail service should continue to be sent to the existing address:

Bethay Consultants, Inc.
 P.O. Box 387
 Ridgewood, NJ 07450

Express mail or overnight mail should be sent to:

Bethay Consultants, Inc.
 21-00 Route 208 South
 Fair Lawn, NJ 07410

New phone numbers

Phone 201-398-9870
 Fax 201-398-1811

Inside This Issue

Introduction	1
News at Bethay	1
More News at Bethay	1
Viewpoint: <i>New York City's</i> <i>Article 30 - Eliminating Risk</i>	2
Industry Developments: <i>Resolution of Claims</i>	3
The Back Page: Just for Fun <i>"Study Finds You Really Don't</i> <i>Make a Difference"</i>	4



More News at Bethay

Kevin Max promoted to Vice-President

We are pleased to announce that **Kevin Max, P.E.**, was promoted to Vice President. Kevin has been with Bethay since 2001 and has proved to be a tremendous asset to the firm and its clients.



ViewPoint

New York City's Article 30: Eliminating Risk?

By Kevin Max, P.E.

The General Conditions of the New York City contract have long favored the City in matters of dispute. Project Owners, such as the City, have been systematically attempting to eliminate the risk of Contractor's claims for delay damages, extra work, etc. Each revision of the City's General Conditions has enhanced the City's position and reduced the likelihood of compensation for Contractor's claims.

The latest of the City's machinations is the new language of Article 30, "Notice and Documentation of Costs and Damages...". The provisions of Article 30, makes compliance with the notice requirement even more difficult, if not impossible. The evolution of the City contract mimics *The Good, the Bad, and the Ugly*, except this time the 'The Good' comes to those who wait.

... anything short of a formal written notice shall, "constitute a waiver by the Contractor of its claim."

The Bad

The one-sided language of the General Conditions effectively ties the hands of a Contractor who prefers to 'resolve field issues in the field'. According to the contract, anything short of a formal written notice shall, "constitute a waiver by the Contractor of its claim." This

language eliciting forfeiture of claims appears throughout the Contract.

- Article 11 Notice of Conditions Causing Delay ...
- Article 27 Resolution of Disputes
- Article 28 Record Keeping for Extra or Disputed Work
- Article 30 Notice and Documentation of Costs, Damages; ...
- Article 51 Claims and Actions Thereon

When the formal notice requirements are not satisfied, the Articles present formidable opposition to recovery of claims. The City's position was further fortified with the ruling in the case of A.H.A. General Construction, Inc. v. New York City Housing Authority. The New York Court of Appeals upheld a lower court's decision to disregard extra work claims, due to A.H.A.'s failure to comply with the notice requirements of the City's contract. Through a summary judgment, the court concluded,

"... because there is no showing that the [City's] alleged misconduct in any way prevented or hindered [A.H.A.'s] compliance with those contract requirements, the [City's] summary judgment motion dismissing the complaint should be granted.

The court thereby could not even consider the validity of the extra work claims.

The Ugly

See Eliminating Risk? On page 3

Article 30.1 *"The Contractor ... shall submit to the Commissioner within forty-five (45) Days from the time such damages are first incurred, and every thirty (30) Days thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages."*



Eliminating Risk? from page 2

The City was not content with a victory in favor of stringent enforcement of the contract language. The Contract was amended and Article 30.4 now includes an even more onerous limitation.

“... no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the City to recover any sum in excess of the sums certified by the Commissioner”.

Simply put, under no circumstances can an agent of the City waive the notice requirements and authorize legitimate claims for additional compensation. Each contractor, at the signing a contract willingly (begrudgingly) accepts these *irrevocable* notice requirements. By means of strict enforcement of the notice requirements and the new irrevocability clause, the City has attempted to eliminate any possibility of paying claims.

The Good

In practice, however, fair-minded individuals have softened the interpretation of these articles to allow for equitable settlements of disputes. Although this in no wise should be construed as the “rule”, it is comforting to know that there is hope when circumstances on a project have a detrimental impact on a contractor’s operation and profitability.

It is becoming more and more essential to maintain proper documentation on construction projects. Rather than hoping for the “exception” in a dispute situation, it is more advantageous to have a solid contractual position when negotiating or litigating a claim.

For a discussion of favorable settlements please see ***INDUSTRY DEVELOPMENTS***.

Industry Developments

Resolution of Claims

By Robert Munster

Although New York City contracts become more onerous on the contractors, there are still favorable outcomes on claims submitted, even when delays damages are involved. Bethay has recently had favorable settlements of claims against New York City agencies. A general contractor performed renovation work on two City Hospitals.

The first project was to be completed in two phases of equal duration. The anticipated schedule allowed two months between the phases for the hospital to vacate the area of the second phase. The first phase was completed within the scheduled duration, however, the hospital took over six months to vacate phase two and allow access to the work. A claim was submitted for \$ 78,000 for cost incurred during the extended shut-down and escalated costs for phase two. The contractor negotiated a settlement of \$ 50,000.

The second project was scheduled to be performed in four phases. Due to indecisions by the hospital regarding materials to be used, the project extended from its original duration of two years to three years. The resulting additional costs were submitted in a claim for \$ 152,000. The claim was negotiated for \$ 115,000.

On another project involving work on an airport, claims were submitted for \$ 2,100,000 for delays and disruptions to the schedule. The contractor settled these claims for a total of \$ 1,400,000.

As noted, there is hope of obtaining favorable settlements of delay claims, even when contract language prohibits the same.



Bethay Consultants Inc.

P.O. Box 387
Ridgewood, NJ 07450

Voice:

1.201.398.9870

Toll Free:

1.888.4.BETHAY

Fax:

201.398.1811

E-Mail:

info@bethay.net

Cellular Phones:

Bob: 201.803.8899
Kevin: 201.803.3711

We're on the Web!

Visit us at:

www.bethay.net

The Back Page: Just for Fun

STUDY FINDS YOU REALLY DON'T MAKE A DIFFERENCE

In the Grand Scheme of Things, Your Hard Work, Diligence Mean Squat

(REPRINTED FROM Satirewire.com)

London, England (SatireWire.com) — In an unprecedented study, British and American researchers have concluded that despite what you've been told at work, you really don't make a difference, and are not remotely integral to your company's success.

"In our research, we found that employees have been encouraged to believe that their hard work and contributions are substantial, and that they are a significant member of the team. But what we discovered is that in most cases, that's bullshit," said Neil Romsby of the London School of Economics.

In the study, jointly conducted by the LSE and Stanford University's Business School, researchers interviewed thousands, and uncovered a variety of slogans meant to boost employees' sense of worth, such as "Our employees are our greatest asset," and, "Our value is in our employees."

"We're not necessarily saying these platitudes are all lies," said Stanford economics professor Harold Bloom. "We're just saying they are not true."

Romsby added that it's also ironic. "When employees tell their boss he is doing a good job, they know that they are lying. But when the boss tells their employees the same thing, they actually believe it. That's priceless." Romsby cautions, however, do not assume you are simply a meaningless number to your company. "No, that's not a fair comparison," he said, "because, unlike you, numbers are actually quite meaningful to the company."

Researchers concede the study may be difficult to accept - but suggest you begin by substituting the word *meaningless* for *important* whenever your boss or colleagues speak to you. For example: "Diane, this is a really *meaningless* project and I think you can make some *meaningless* contributions as a *meaningless* member of the team." Once you feel comfortable with that, Bloom added, substitute the word "*shitty*" for "*meaningless*," and you'll have a pretty good sense of where you stand.



Did you know?

Bethay Consultants Inc, has been serving the construction industry in the metropolitan area for more than 28 years.