

# Imperfect projects

## The importance of a prompt response to construction claims

INTERVIEWED BY ADAM BURROUGHS

No construction project is perfect. Regardless of how much experience the participants might have, mistakes, deficiencies and disputes happen.

“There is near certitude of flaws and conflict in the construction process,” says John M. Tedder, Shareholder and Director at Sherrard, German & Kelly, P.C., and a member of its Construction Services Group. “The most important aspects, then, are proper planning in the contracting process, and how the parties respond to claim situations when they do indeed occur.”

*Smart Business* spoke with Tedder about responding to claims in a construction project and mitigating them from the outset.

### What is typically the basis for a construction claim?

Regardless of the size or complexity of the project, construction claims tend to fall into three primary categories:

- Deficiencies in the actual design and/or construction.
- Payment disputes for base contract sums that are due or any extra/changed work that has been performed.
- Warranty items/correction of nonconforming work.

### What is the best way to respond to a claim?

It is critical to get out in front of any claim that occurs on the project. In many cases, owners and contractors are focused on the task at hand and try to delay dealing with claim issues until a later date. This is the opposite of what should happen. Instead, at the first hint of a problem, the parties to the contract should pause, evaluate their rights and obligations under the relevant contract documents, and seek the advice of counsel to guide their decision-making.

There are often statutory or contractual

deadlines and notice provisions that also must be adhered to in order to preserve certain common construction claim rights and defenses. Mechanics’ lien statutes, prompt pay act statutes, bond statutes or forms typically have some form of notice provisions and/or filing deadlines that should be evaluated and complied with so the respective parties do not prejudice their rights to a claim, or their defenses.

### What should contractors, in particular, understand about notices?

There are statutes, whether involving mechanics’ liens or surety bonds, that require that certain notices be given or a claim filed within so many days of it arising, or the viability of that claim is jeopardized.

As a general matter with regard to contractors and subcontractors on commercial projects in Pennsylvania, there is a six-month window to file and perfect a lien claim. That starts from the date work is completed and claims filed after that time are invalid.

Lien claimants other than contractors — subcontractors, sub-subcontractors and suppliers to first-tier subcontractors engaged by contractors — must precede this lien claim by a 30-day notice of intent to lien before filing that claim, the filing of which must be ahead of the six-month deadline.

Additionally, the standard form



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construction contract documents published by the American Institute of Architects contain a number of notice provisions that stipulate the number of days a contractor or owner has to give notice of a claim, condition or issue. Failure to adhere to these contractual notice provisions may result in waiver of a party’s potential claim rights.

### What can the parties do from the outset to limit the possibilities of claims?

It is important at the beginning of a project not to rush through the contract negotiation and preparation phase, whether you are an owner, design professional, contractor or subcontractor/supplier. Engaging with legal counsel from the outset as goals are set and before a project starts can help protect each side’s interests during a project and limit exposure to claims.

Still, no perfect construction project has ever been performed or will ever exist. Bank on the fact that problems will arise. To mitigate the effects of these problems, proper planning is needed and that is aided greatly by involving counsel from the start of the contracting process, and thereafter getting counsel involved early on when the prospect of a claim appears on the horizon. At the first sight of a problem, be proactive. Delaying a response almost always results in bigger issues and potential litigation that is more expensive for everyone involved. ●

DON'T LEAVE YOUR BEST TOOLS IN THE TOOL BOX WHEN YOU NEED THEM THE MOST.



At Sherrard, German & Kelly, P.C., the approach to the practice of law is simple and direct: We provide responsive, high-quality and cost-effective legal services to help our clients with proper planning in the contracting process and are only a phone call away when a claim is on the horizon.



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