



CONSTRUCTION LAW E-UPDATE

PRESERVING YOUR CONTRACTUAL RIGHTS REGARDING STORM-RELATED IMPACTS & DELAYS

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Over the last week, we have been called upon to help numerous clients regarding storm-related impacts to their project schedules. Although the causal relationship between storm-related impacts and project time frames is now all too obvious, that will provide little excuse when you are again “up and running,” but had failed to contemporaneously comply with strict contractual requirements to notify upstream parties (owners, contractors, CMs, etc.). Such detailed notices must: (1) be timely, and, (2) identify and describe any and all delay-causing events. They need to also establish that you are reserving all rights to both schedule extensions and delay/impact damages. (e.g., New York City Standard Construction Contract, Articles 11, 30, and 13.)

This is so even if you are already in a delayed or extended period, since recent storm-related impacts are a new and discrete delay-causing event.

Because we are still living in the event, with the remains of a nor'easter on the ground, we do not know the full duration of current project shut downs^[1], interferences or other impacts, so it is imperative to reserve your rights now. You can always reconsider later when the full impact (or even the lack thereof where applicable) is fully understood. However, only by preserving your rights currently will you have the ability, later, to exercise such discretion.

Contractors may also be entitled to change orders for the repair of damage to work completed and in place, or changes to the work based upon damage to existing buildings, or the

work of other contractors to which your work attaches. Your contracts should also be reviewed for the appropriate notice requirements regarding a potential claim for extra work (e.g., New York City Standard Construction Contract Articles 25, 27, 28, and 30) necessitated by the storm conditions.

It is regrettable that these concerns must be addressed during crises such as those currently being confronted at untold projects throughout the region. However, that is the state of the law in this jurisdiction and it is unquestionably necessitated by how the management and attorneys representing both government agencies or private owner/developers are addressing these often “make or break” project issues. Under no circumstances should you ever fail to take appropriate current action to preserve your rights, despite how obvious and sympathetic-appearing are your storm-caused circumstances.

Finally, our Policyholder Insurance Coverage Practice Group will be addressing the numerous insurance coverage questions we have understandably been receiving during and since the recent storm. If you are experiencing such difficulties or have insurance coverage-related concerns, be on the lookout for this information or feel free to call us for assistance. After years of faithfully paying significant premiums, there is often a regrettable disconnect between the coverage you thought you had obtained and that which your carrier readily recognizes. We can help.

[1] As of last night, NYC had issued a City-wide stop work order on all exterior work.