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Knowing when a claim accrues under a construction contract could make or break recovery, NYREJ, by Matthew Minero

By Matthew J. Minero, Esq., partner, Woodbury, New York (October 3, 2017)

The accrual date for claims on a construction project is a critical occurrence on projects which is too overlooked. An owner of a project should take care to know exactly when its claims against its contractor accrue and, just as importantly, when its contractor's claims against the owner accrue. Equally as important for an owner to know is the amount of time (i.e. the statute of limitations, statutory and contractual notice of claim deadlines) that the owner and its contractor have from the date of accrual to assert claims against the other. The failure to comply with statutory or contractual deadlines is in most cases fatal to a claim no matter how meritorious it may be.

An owner's claims against a contractor, generally, accrue on the date of the completion of the work being performed. What constitutes the "completion of work" can differ dramatically depending on whether the matter is addressed in the construction agreement between the parties. New York courts generally interpret "completion of work" to mean "actual physical completion of the work". When "actual physical completion of the work" actually occurs can be difficult to determine because owners may require contractors to perform what owners believe to be corrective and/or punch list work which contractors believe is additional work. To avoid confusion and inevitably litigation over when work is deemed completed, owners often use their agreements with contractors to define when the work has reached "substantial completion" and then use that date as the date of the accrual of its claim. For example, the standard definition used in AIA contracts is that "substantial completion" of a project is reached when "the Owner can occupy or utilize the Work for its intended use." In other agreements, "substantial completion" is reached when the project's architect issues a Certificate of Substantial Completion or simply declares the project to be substantially completed. Other agreements provide that "substantial completion" is reached when a certain percentage of the work to be performed at the project is completed (i.e. 95%).

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