

LEGAL UPDATES

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Colorado Supreme Court Clarifies Public Works Act Claim Rights

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In *Ralph L. Wadsworth Construction Company v. Regional Rail Partners*, the Colorado Supreme Court recently determined that contractors working on public projects can include contested amounts for delay and disruption damages in a statement of claim (a public project's version of a mechanic's lien) without fear of the claim being challenged as overstated. In addition, the Supreme Court determined that even if a statement of claim is overstated, the claimant only loses statutory rights—not all rights the claimant had to monetary relief. Taken together, contractors (on both public and private projects) should breathe a sigh of relief that their rights to file a lien or statement of claim for delay or disruption damages remain intact.

Background

In 2013, the Regional Transportation District contracted with Regional Rail Partners to design and build the North Metro Rail Line. Regional Rail subcontracted a portion of the rail line work to Ralph L. Wadsworth Construction Company, LLC. The project was delayed and disrupted, and Wadsworth argued that Regional Rail owed Wadsworth approximately \$12.4 million due to “ongoing delays, disruptions, and changes incurred by it at the project.”

Pursuant to the Colorado Public Works Act, Wadsworth filed a verified statement of claim (the public project version of a mechanic's lien), initially alleging that Regional Rail owed nearly \$15.8 million. It later reduced its claim to \$12.8 million. Defendants counterclaimed that Wadsworth's verified statement of claim was overstated, and Wadsworth had forfeited all rights to the amounts claimed.

The trial court sided with Wadsworth and awarded it over \$3.7 million in damages. The Colorado Court of Appeals reversed, issuing an opinion that had potentially profound consequences. It found that Wadsworth had overstated

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its claim because it improperly included contested and unliquidated amounts that were not yet “due” because they were disputed. The Court of Appeals concluded that because Wadsworth’s claim was overstated, it had forfeited its right to claim **any** amount under **any** theory.

The Colorado Supreme Court reversed, issuing an opinion that is a major victory for contractors on public works projects. The decision also supports the rights of lien claimants on private projects, whose rights could have been negatively impacted (by implication) had the Court of Appeals’ decision stood.

Major Holdings

1. Disputed or Unliquidated Amounts—Including Delay and Disruption Damages—May Be Included in a Verified Statement of Claim

The Colorado Supreme Court held that contractors and subcontractors may file a verified statement of claim for any unpaid costs for labor, materials, sustenance, rental machinery, tools, equipment, or other supplies used in the work, as long as there was either (1) a reasonable possibility at the time of filing that the amount claimed was due or (2) the claimant did not know the amount claimed was greater than the amount due. Critically, the Supreme Court found that amounts could be included even if they are contested (for example, if they derive from a disputed and unsigned change order).

The Court further held that delay and disruption damages may be included in a verified statement of claim, as the statute neither expressly nor implicitly precludes such claims—provided the damages represent costs associated with labor, materials, sustenance, rental machinery, tools, equipment, or other supplies used in the work. Importantly, however, purely consequential damages—such as lost profits or idle time—do not fall within the statutory categories and therefore may not be included.

The upshot is that contractors may continue to include disputed amounts from delays and other disruptions in a statement of claim. Likewise, lien claimants on private projects should be more comfortable in doing so as well (given the statutory similarities). However, only costs for labor, materials, equipment, and supplies may be included. Lost profit and other amounts may not.

2. Wadsworth’s Claim Was Not Excessive

The Supreme Court deferred to the trial court's ruling that Wadsworth’s claim was due when it filed its statement of claim. It made this finding even though Regional Rail had not agreed it was owed.

3. An Excessive Claim Results in Forfeiture of Statutory Rights Only—Not All Legal Remedies

The Court held that the penalty for filing an excessive claim is the forfeiture of the claimant's statutory rights and remedies under the Public Works Act—not all rights and remedies otherwise available at law (like a breach of contract action). This ensures that claimants are not disproportionately penalized for filing an excessive claim and discouraged from filing a claim at all.

Practical Guidance for Parties Filing Public Works Act Claims in Colorado

- 1. Include disputed and unliquidated amounts, but document them carefully.** Claimants should continue to include delays, disruption, or other contested amounts in their claims. However, the claim must be supported by evidence, reflecting that there was a reasonable possibility the amounts were due at the time of filing.
- 2. Limit claims to statutorily covered categories.** Delay and disruption damages are permissible if they reflect costs for labor, materials, sustenance, rental machinery, tools, equipment, or other supplies used in the work. Purely consequential damages such as lost profits and idle time fall outside the statute and must be excluded from the statement of claim.
- 3. Know what you stand to lose—and what you preserve.** Even if a statement of claim is found excessive, a claimant forfeits only its Public Works Act statutory remedies—not its common law claims for breach of contract or other avenues of recovery. Interpreting the forfeiture provision more broadly would deter good-faith claimants from exercising their statutory rights at all, an outcome inconsistent with the statute's purpose.

The bottom line is that, following the *Wadsworth* decision, public and private lien claimants should take care when exercising their statutory right to file a claim or lien—including consulting counsel before doing so—but they should not unnecessarily fear exercising those rights when delay and disruption damages are involved.

Contact Us

If you have any questions regarding public and private lien claims, please contact Ryan Sugden or your Husch Blackwell Attorney.