

# CONSTRUCTION LAW NEWSLETTER

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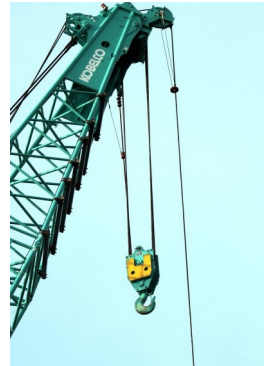
## TRENDS IN CONSTRUCTION LAW

Dispute resolution procedures in contracts are nothing new. However, they continue to evolve in contracts and project manuals and can be quite onerous.

Typically, the claims procedure in a prime or sub-contract would require submission of an initial claim to the project architect as a first step. If not resolved, the next step would be mediation and then possibly arbitration or litigation.

An example of some of the more onerous dispute resolution procedures being used in contracts now are as follows:

- 1) Submit a “notice of claim” to the project architect within 7 days of the occurrence.
- 2) If the claiming party does not accept the initial decision, a “notice of disputed claim” must be submitted within 7 days of the initial decision, with back up documentation.
- 3) If the claim is still not resolved, direct discussions are to be conducted between the parties. If such discussions do not resolve the matter within 7 days, senior executives must meet to resolve the matter within 15 days.
- 4) If direct discussions are not successful, the parties must go to mediation.
- 5) If mediation is not successful, the parties may go to arbitration or litigation.



Compliance with each step within the specified timeframe is a condition precedent to seeking payment later. Failure to strictly comply with each step could forfeit payment rights.

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## CASE LAW UPDATE

On January 11, 2017, New York County Supreme Court Justice Joan M. Kenney decided the case of *Sawczynsyn v. New York Univ.*

The case centered on an asbestos abatement subcontractor's employee who was injured while moving a cart full of 100-200 pounds of material from a truck to a loading dock. The injured worker sued NYU, the owner, alleging a violation of Labor Law 240(1), which is known as the scaffold law.

The undisputed facts were that

the injury occurred when the sub's employee was under direct supervision of his employer and no one from NYU. While unloading the truck, one of the subcontractor's employees placed a piece of plywood from the truck to the loading dock, which was approximately 1-2 feet higher than the bed of the truck. The injury occurred when the sub's employee was pulling a cart up the plywood ramp and the ramp collapsed, causing the cart to fall and the employee to injure his back.

NYU argued it had no knowledge or role in unloading the truck and that it was not a gravity related injury for which the scaffold law applied.

The Court disagreed, granting partial summary judgment to the sub's injured employee based on the scaffold law. The Court held that because the injury was related to an elevation related risk, the scaffold law made the owner (NYU) strictly liable for the injury.

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