

CONSTRUCTION LAW NEWSLETTER

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TRENDS IN CONSTRUCTION LAW

The price in most bids is meticulously calculated based upon the bid documents available. After all of that time and effort, many contractors make the mistake of failing to incorporate their bid/quote into the contract as an exhibit.

This will not be of concern until a dispute arises on a project, particularly with regard to scope of work. There have been many instances in which a contractor believed their scope of work was what was in their bid, but the contract that the parties ultimately signed broadened the contractor's scope of responsibility. Incorporating your bid/quote into the contract can

avoid this situation. It should be explicitly incorporated into the contract and attached as an exhibit.

Unless the bid/quote is incorporated into the contract and attached as an exhibit, it goes out the window when the contract is signed, which could create issues with scope of work as the project progresses.



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CASE LAW UPDATE

On June 10, 2015, the U.S. Court of Appeals for the 11th Circuit issued an important case which could have positive effects on contractors.

In the case of *Pennsylvania National Mut. Cas. Ins. Co. v. St. Catherine of Siena Parish, et al.*, the court held that unexpected and unintended property damage on a construction project is an "occurrence" which is covered by CGL policies that most contractors carry for commercial construction projects.

The case involved a contractor who installed two roofs. The contractor had a CGL policy which provided coverage to claims for property damage caused by an "occurrence" and defined an occurrence as an "accident".

After the work was complete, the roofs began to leak, damaging the gypsum substrate and interior of the building. The insurer sought to disclaim coverage, but the appellate court found that the damage to

property from the leaking roofs was an "occurrence" and was a covered loss under the policy.

This is an important decision for contractors because it could indicate a trend toward broader coverage for construction defect losses.

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Consult your attorney regarding specific legal needs. This may be construed as attorney advertising. Prior results do not guarantee a similar outcome.