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KT Client Success: A Win Nine Years in the Making

MAY 19, 2017

After nine years of representation and four-plus years in litigation, Kilpatrick Townsend won a series of construction dispute and government contract claims for Welch and Rushe, Inc. (W&R) and its subcontractors against the Smithsonian Institution (SI) before the Civilian Board of Contract Appeals (CBCA). Claims concerned unpaid and unapproved change orders, substantial delays, impacts due to hazardous waste abatement, loss of efficiency, and other claims involving the renovation of the National Museum of American History.

In 2005, SI's general contractor Turner Construction Company (Turner) subcontracted W&R to handle the project's large mechanical (HVAC and plumbing) scopes of work. After experiencing many setbacks and delays arising from hidden conditions, including extensive hazardous waste abatement and discovering hidden abandoned and unused building systems, W&R and its subcontractor team retained the firm initially to negotiate contract change order language preserving their rights to seek delay and impact damages and sign change orders moving forward. Next, the firm worked closely with Turner's counsel and consultants to develop various claims arising from the above setbacks, including delay costs and loss of productivity or inefficiency.

Ultimately, W&R survived several summary judgement motions, an extensive amount of discovery, and an intense three-week trial and post-hearing briefings, with the CBCA sustaining W&R's claims (albeit with some concerns it raised on damage-related proof issues). This resulted in an award in excess of $5.5 million plus interest and the board's complete rejection of the SI's counterclaim of more than $24 million.

Kilpatrick Townsend attorneys representing W&R and its subcontractors included Partner **Larry Prosen** (Washington, D.C.) and Senior Associate **Chris Henel** (Washington, D.C.).

Click here to view and download a PDF of the CBCA's full decision.

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