

## Sometimes Adjustments are in Fact Equitable- A Story of Differing Site Conditions



Remember the one about differing site conditions? (just kidding, that was never a joke). However, any site contractor knows that these differing conditions can be the bane of its existence. Recently, the [Danville, Virginia](#) Division of the Federal District Court for the Western District of Virginia weighed in on the differing site conditions debate.

In the case of [Haymes Brothers Inc. v. RTI Int'l Metals Inc.](#) the Court interpreted a clause in a contract allowing for an "equitable adjustment" to the contract price in the event that the soils were of a different "type" than those known to the subcontractor at the time of its bid.

The basic facts are these. Haymes Brothers bid for site work and later found boulders and other conditions in the soil that significantly increased its costs to perform the excavation and site work. Of course, Haymes asked for an equitable adjustment to its original contract price, and RTI, of course, denied the request. The excavation work cost Haymes over a million dollars more than its original bid and so, Haymes sued.

The Court first found that "type" is one of those wonderful ambiguous words that we [construction lawyers](#) make our money arguing about. It then looked to the dictionary and conduct of the parties to determine if the site conditions leading to the increased costs were of a type that was different that Haymes (or RTI for that matter) knew about at the time the contract was signed. After considering on site meeting notes where no mention was made of any of the conditions at issue and the statements of agents of RTI, the ones that drafted the contract, stating that conditions *exactly like those encountered on the site* could lead to an equitable adjustment, the Court could not help but conclude that Haymes was entitled to an equitable adjustment.

The punchline here is that the Court worked hard to find a way to avoid ambiguity and couldn't do it. Therefore (as [discussed by my pal Matt DeVries](#)), the Court had to step in

to deal with the ambiguity. I highly recommend a reading of this case to get the full opinion from the court and all of its nuances.

Remember, your [contract is king](#) here in the Commonwealth of Virginia and you need to [consider every word carefully](#). Failing to do so can lead to serious consequences.

Image via [Wikipedia](#)

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