

[News Article]

Developer Wins in Row Over Atlantic City Retail Project

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A federal jury in New Jersey awarded the developer of The Walk in Atlantic City \$7.6 million after it found the architect on the project breached a contract by providing allegedly faulty designs that delayed the project's completion.

The jury in *Atlantic City Associates v. Carter & Burgess Consultants* found that architecture firm Carter & Burgess Consultants failed to provide an accepted standard of care in developing the plans, which developer Atlantic City Associates argued caused more than a year of delay in the completion of the multi-unit retail project near the casinos of Atlantic City. Carter & Burgess was hired to design plans for the retail project and the relocation of a bus terminal that was displaced because of the project.

ACA was seeking \$10.4 million in damages and the jury came back Tuesday with a \$7.61 million verdict. It denied Carter & Burgess' counterclaim for \$327,513 in unpaid invoices.

ACA entered into a confidential settlement with contractor Keating Building Corp. prior to trial. Keating was not listed on the verdict sheet in terms of apportioning liability or damages. [Joseph A. Battipaglia](#) of Duane Morris' [Philadelphia office](#) represented ACA and said the settlement was a "mutual issue" with Keating and that ACA realized Carter & Burgess was the one at fault.

Under the contract with Carter & Burgess, Battipaglia said, his client can collect attorney fees and costs. He said he is unsure what that total will be.

The trial was held in the U.S. District Court for the District of New Jersey in Camden before Judge Noel L. Hillman. The four-week long trial concluded July 7 after two-hours of deliberation by the 10-member jury. The only question the jurors asked, Battipaglia said, was if they could have a calculator. He said the verdict had to be unanimous.

The lengthy verdict sheet was split into three issues. Aside from Carter & Burgess' counterclaim, the other two issues dealt with ACA's claim for breach of contract and for a standard of care claim. Battipaglia said his client could only collect under one of those claims, though the jury filled out equal dollar amounts for each claim.

Under the breach of contract claim, the damages portion was broken out into various potential losses and the amount ACA was seeking in each instance was listed next to the question.

For additional construction costs to fix errors, ACA was seeking \$1.73 million and was awarded \$1.31 million. For additional payments it had to pay contractors because of the delay, the company sought \$2.4 million and was awarded \$1.69 million. For damages for lost rental income, ACA sought \$4.9 million and was awarded \$3.62 million. For damages related to additional administrative costs, the company sought \$1.4 million and was awarded slightly under \$1 million. The total jury award under ACA's first claim was equal to the single number the jury put down under the company's second claim for a breach of the standard of care.

ACA argued in court documents that Carter & Burgess published designs that contained "significant errors and omissions," failed to submit required documents to obtain permits, failed to complete the design in a timely manner, consistently omitted prior revisions it made to design documents and did not maintain an accurate log of drawings.

Carter & Burgess, represented by Timothy J. Bloh of Fox Rothschild's Atlantic City office, argued in court documents that ACA misrepresented the number of leases it had signed for the space and requested changes to fit new tenants, which ultimately delayed the project.

In talking to the jury after the verdict, Battipaglia said he didn't ask why they voted the way they did but whether they were able to follow four-weeks of technical evidence as it was provided. He said they appreciated the detail in the presentation and understood why the trial needed to be as lengthy and complex as it was.

"What I got out of it is if you're patient with the juries in providing technical information to them, they will ultimately understand it if it's provided in a format that they can get," he said.

Bloh said he would have to check with his client before commenting and neither he nor his client responded to the request for comment by press time.

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