



Don't Just Document-Document Right!



I have stated to clients on many occasions that paper is a lawyer's best friend. Because of a recent case from the Virginia Supreme Court, I should modify that to the *correct* paper is a lawyer's best friend. In [Commonwealth v. AMEC Civil, LLC](#), AMEC sued the Virginia Department of Transportation ("VDOT") seeking more than \$21 million in damages. The Mecklenburg County Circuit Court granted AMEC

almost all of its damages and found that AMEC's notice of intent to make a claim was proper under the Virginia Code even if it was not in the proper form.

VDOT appealed, claiming that the notice was not in fact proper. The Virginia Court of Appeals agreed with VDOT and overturned the trial court's findings that the notice was both timely and sufficient. In so holding, the court stated that, of the more than 500 letters relating to the project and stating various concerns, AMEC only mentioned a potential claim in a few of them, and as such, AMEC did not properly notify VDOT of its intent to file a claim. The Virginia Supreme Court affirmed, giving a [serious smackdown](#) to AMEC to the tune of millions of dollars.

Essentially, the Virginia Supreme Court applied the same strict construction to the notice statute that it applies to [mechanic's liens](#) and [contracts](#). Aside from the takeaways listed in the great post by @timrhughes at the [Virginia Real Estate, Land Use & Construction Law](#) blog (linked above), the point to me emphasized here is that *it does not matter* if the failure to follow the notice procedure caused any harm, like with a contract or a lien, the Virginia Court's will stick to the letter of the law, particularly when it comes to suing the Commonwealth.

For this reason, contractors and subcontractors need to consult [their attorneys](#) and make sure they understand not only the construction documents that control their project, but the statutes as well.

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Please check out my [Construction Law Musings Blog](#) for more on Virginia construction law and other topics.