

Court Strikes Down "No Damages for Delay Clause" In Public Contract

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The Supreme Court of Virginia ruled on Friday that the Virginia Public Procurement Act prohibits public owners from limiting a contractor's right to recover costs resulting from unreasonable project delays. Interpreting Section 2.2-4335 of the Act for the first time, the Supreme Court concluded that the "no damages for delay" clauses that commonly appear in the Commonwealth's public contracts are unenforceable.

The delays in question – a total of 270 days – arose during the renovation of Crozet Hall at Virginia Military Institute. There was no dispute that the delays resulted solely from VMI's changes to the Project. VMI denied more than \$350,000 of the contractor's delay claim on the grounds the contract limited recoverable costs to specific field expenses only. The Supreme Court rejected VMI's attempt to limit the contractor's recovery, finding that "the contract provisions operate as an absolute bar to most of the delay expenses incurred by [the contractor] and, therefore, are void and unenforceable as against public policy by virtue of Code Section 2.2-4335."

The Supreme Court's decision is the Court's first under Code Section 2.2-4335 and clarifies that public owners in Virginia will be held responsible for additional project costs resulting from unreasonable project delays. Contractors on public projects for the Commonwealth, public agencies, localities, schools and other public owners should take steps to carefully document the causes and costs of any unreasonable delays to protect their rights of recovery.



The case is *Martin Bros. Contractors, Inc., v. Virginia Military Institute*, Supreme Court of Virginia, Record No. 081403 (April 17, 2009).

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