



RICHARD R. VOLACK



CHARLES E. WILLIAMS, III

Please Contact

Richard R. Volack
rvolack@pecklaw.com
212.382.0909

Charles E. Williams, III
cwilliams@pecklaw.com
212.382.0909

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It's About Time: NY's Public Authorities Law §1744 (2) Is Amended to Provide That A Notice Of Claim Must Be Filed After the Claim is Denied

For years, the New York City School Construction Authority has denied numerous contractors the opportunity to recover sums due and owing for work performed because they failed to file a formal notice of claim within 90 days of when their damages were ascertainable, even if they didn't know that the SCA contested their right to payment.

That law has finally been changed. On December 17, 2014, Governor Cuomo signed into law the SCA Reform Bill, which amends Public Authorities Law §1744 to now provide that a formal notice of claim must be filed within 90 days of when a claim is denied rather than when the costs or damages are first ascertainable.

This change conforms to standard industry practice and common sense. The law will afford the parties an opportunity to negotiate a settlement of the dispute at the project level without worrying that the claim may be waived. Previously, even if a contractor and the SCA were negotiating a change order, the contractor had to file a notice of claim shortly after it started to incur additional or increased costs. Unaware of the law, many contractors lost their claim rights on a notice technicality without ever reaching the merits of the claim.

The amendment is effective on all contracts entered into with the SCA after December 17, 2014. For existing contracts prior to that date, contractors must still follow the old law and file a formal notice of claim within 90 days of when their damages are ascertainable.

A contractor still may need to sue the SCA before a project ends. The statute continues to require that an "action or proceeding shall have been commenced within one year after the happening of the event upon which the claim is based" (e.g., the notice of direction to perform extra work).

The SCA fought the changes and may seek to impose additional contractual notice provisions. Contractors should check each contract's general conditions for other provisions that limit the time to pursue a claim.