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Construction Law and the Supreme Court

By Peter M. Kutil, Esq.

Most Americans are familiar with prominent decisions of the U.S. Supreme Court involving issues such as freedom of speech, search and seizure, interstate commerce and states' rights. However, most are not familiar with the impact the high court has had on construction law.

Prior to 1925, cases from the U.S. Court of Claims were appealed directly to the U.S. Supreme Court. In 1925, Congress established alternate appellate review within the Court of Claims and an appeal to the Supreme Court was limited. Since that time, the Supreme Court's cases regarding construction disputes are few.

"Construction law" is derived from decisions rendered by the federal and state courts. The U.S. Supreme Court's lasting impact is best reflected in two seminal cases: *Hollerbach v. United States*, 233 U.S. 165 (1914) and *United States v. Spearin*, 248 U.S. 132 (1918).

Archibald Hollerbach probably never dreamed that his \$6,549 payment dispute with the federal government would be cited as case law authority 100 years later. Hollerbach and his partners contracted to rebuild a dam on the Green River in Kentucky. As they advanced the work, they encountered an old dam backed with timber and stone, where the contract documents indicated the dam was to be backed by broken stone, sediment and sawdust. In ruling upon these facts, the Court noted that the contract obligated the contractor to investigate the site and "to make [its] own estimates of the facilities and difficulties attending the execution of the proposed contract..." However, these broad requirements did not override the owner's specific representation regarding the material backing the old dam—which the Court concluded was "a matter concerning which the government might be presumed to speak with knowledge and authority."

In the *Spearin* case, the contractor was hired to build a new dry dock at the Brooklyn Navy Yard. The plans and specifications required the diversion of an existing sewer away from the dry dock. The government provided the dimensions and plans for the new section of the sewer. During a heavy rain, the new section of the sewer broke, because it was undersized, and the entire dry dock site flooded. The Court ruled in the favor of the contractor. The "Spearin Doctrine" stands for the proposition that an owner warrants the plans and specifications which an owner provides to a contractor, notwithstanding broad language requiring the contractor to satisfy itself of the sufficiency of the plans and specifications provided.

Every general rule has its set of exceptions, and particular facts govern the outcome. In general, however, these two cases continue to be cited as law in federal and state trial and appellate courts and they are the legacy of the U.S. Supreme Court on construction law.

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