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Recent Amendments to the PA Workers' Compensation Act

By Barbara L. Hollenbach, Esq.

On November 9, 2006, Governor Edward Rendell signed into law House Bill 2738 amending the Pennsylvania Workers' Compensation Act.

The amendments require that each workers' compensation judge establish a mandatory trial schedule at the first hearing in any case, which includes a specific date and time for a mediation conference. The mediation conference must take place no later than thirty days prior to the date set for the parties to file written legal arguments with the judge regarding the case unless, "upon good cause shown, the judge determines mediation would be futile". All parties, including the claimant, the employer/insurer, and their respective counsel are required to attend the mediation, either in person or by teleconference. The amendments regarding mediation took effect immediately upon signature by Governor Rendell.

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LEGAL UPDATE

Insights and Developments in the Law

Fall 2006

New Lien Law Impacts Are Far Ranging

By S. Graham Simmons, III, Esq.

Effective as of January 1, 2007, the Pennsylvania law of mechanics' liens will change dramatically and immediately impact the business and operations of real estate developers, builders, contractors and subcontractors, financial lending institutions, title insurance agents, and sureties and bonding companies. On June 29, 2006, Governor Edward G. Rendell signed General Assembly House Bill 1637, known informally as Act 52, which amends the Pennsylvania Mechanics' Lien Law of 1963. In short, Act 52 expands the class of claimants that may file mechanics' liens, extends the time for a claimant to file a claim, gives priority to certain mortgages, and significantly limits waivers by contractors and subcontractors of their mechanics' lien rights. This article will highlight Act 52's major changes to the law, and briefly illustrate its practical impacts on business.

Act 52 expands the class of potential lien claimants by extending mechanics' lien rights to so-called "second tier subcontractors." The Mechanics' Lien Law currently permits only general contractors and subcontractors to file a mechanics' lien claim in the event they are not paid for their work. As such, persons contracting with a subcontractor cannot effectively file a mechanics' lien claim in the event they are not paid for their work. Act 52 expands the definition of a "subcontractor" to include those persons that contract with a subcontractor that has

a direct contract with the project's general contractor. Thus, Act 52 will not only result in a larger class of potential lien claimants on construction projects, but it also will require greater vigilance from owners, lenders and title insurance agents in assuring that title to the real estate at a project remains free of mechanics' liens.

Under the current Mechanics' Lien Law, a potential claimant has four months after it completes its work to file a mechanics' lien claim. Act 52 extends the time limit to file a lien claim to six (6) months following completion of the work. Furthermore, subcontractors are no longer required to give "preliminary notice" of their intent to file a mechanics' lien claim. The Mechanics' Lien Law currently requires a subcontractor to serve the owner of a project for alterations or repairs to existing improvements with preliminary notice of its intent to file a mechanics' lien *on or prior to* the date of completion of the subcontractor's work. This preliminary notice is in addition to the so-called formal notice that must be served upon the owner in all cases by a subcontractor no less than thirty (30) days prior to filing a mechanics' lien claim. Act 52, however, eliminates the requirement of a preliminary notice in cases of alterations or repairs, and simply requires that formal notice be given by subcontractors in all cases. These amend-

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Firm Welcomes New Shareholders

We are pleased to announce that former Lehigh County Court of Common Pleas Judge, **Thomas A. Wallitsch**, joined the Firm as a Shareholder on October 1, 2006 and **Jessica A. Nichols**, former associate of the Firm, has been elected a new Shareholder.

JUDGE THOMAS A. WALLITSCH served on the bench for over fifteen years after a successful career as a trial attorney in the Lehigh Valley for eighteen years. While a member of the Court, he specialized in civil litigation and served for a number of years as the Administrative Judge for the Civil Division. In March of 2006, Judge Wallitsch went to Afghanistan at the request of the United States Agency for International Development and served as Senior Judicial Advisor to the Afghanistan Rule of Law Project. In this capacity, he worked closely with the Afghanistan Supreme Court in developing its judicial system. He has also been honored by being asked by the Chief Justice to work with the Court in creating a code of ethics for the country's fourteen hundred judges.

Judge Wallitsch's practice at the Firm will be in two areas. First, as an experienced trial lawyer and trial judge, he will work with the other attorneys in the office in servicing the litigation needs of the Firm's clients. Secondly, he has opened a new area of practice for the Firm — Alternative Dispute Resolution (ADR). ADR refers to any means of settling disputes outside of the courtroom and includes arbitration, mediation, and early neutral evaluation. The rising costs of litigation, time delays, and the lack of privacy in public court proceedings have increased the desire of parties to use ADR methods to resolve more and more disputes. Judge Wallitsch has successfully settled hundreds of cases in his career and has the knowledge and skill to act as the neutral mediator or arbitrator or to represent clients in an ADR proceeding.

Active in numerous charitable organizations over his career, Judge Wallitsch also serves as Chair of the Pennsylvania Supreme Court's Appellate Procedural Rules Committee. Wallitsch served as the Co-chair of the Pennsylvania Conference of Trial Judges Education Committee for eight years, during which time he instructed hundreds of judges throughout the state. He is also a frequent lecturer in litigation-related topics and is the co-author of *Handbook for Pennsylvania Trial Judges: Management of Civil Jury Trials*. Judge Wallitsch has also been an adjunct professor in the Political Science Department of Muhlenberg College for twelve years, teaching such courses as The American Judiciary and Public Administration.

JESSICA A. NICHOLS began her law practice in California's Silicon Valley and gained broad experience representing technology companies and venture capitalists from the earliest stages of seed financing through public offerings at the California law firm of Wilson, Sonsini, Goodrich & Rosati. In 1997, she moved back to the Lehigh Valley. Prior to joining Tallman Hudders & Sorrentino in December, 2001, Jessica practiced law with Blank Rome, LLP in Philadelphia, PA and was Associate Counsel for SCT Corporation in Malvern, PA, a provider of technology solutions for colleges and universities.

Her practice covers a wide range of corporate and intellectual property-related transactions, including commercial real estate, loan financing, development and licensing agreements, web-development, joint ventures, technology transfers, due diligence, and merger and acquisition transactions. She provides advice to companies concerning trademark transactional and licensing issues and handles the registration of trademarks and copyrights with the United States Patent & Trademark Office.

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New Attorneys

The Firm is pleased to announce the addition of two new attorneys.

Sandra Jarva Weiss joined the Firm as "Of Counsel" in June bringing with her over twenty years of experience in all aspects of health care law and regulation including the development of compliance programs; guidance on compliance with the fraud and abuse statutes, patient privacy laws and Medicare reimbursement statutes; structuring mergers, affiliations and strategic alliances of health care facilities; and negotiation of managed care agreements. Ms. Jarva Weiss previously was a partner at one of the largest global law firms, DLA Piper Rudnick Gray Cary US LLP in Philadelphia. She also served for five years as General Counsel of Bridgeport Hospital and its affiliates (a member of the Yale-New Haven Health Services Corporation). Ms. Jarva Weiss is a board member of Good Shepherd Rehabilitation Network in Allentown and the Counsel of Lafayette Women.

Michael R. Smith received his law degree from the Syracuse University College of Law in May of 2006, where he graduated *magna cum laude* and was recently elected to the Order of the Coif. While in law school, Michael was an Associate Editor of the Syracuse Law Review and served on the Notes and Publication Committee. Michael clerked at the State of New York Attorney General's Office while attending Syracuse Law School. Prior to attending law school, Michael received a Bachelor of Arts degree in Political Science from Dickinson College where he graduated *summa cum laude*. Michael was also the captain of the Dickinson football team, President of the Sigma Chi Fraternity and President of the Raven's Claw Senior Men's Honorary Society. He currently practices in the areas of civil, commercial and personal injury litigation, land development and real estate.

New Lien Law

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ments will clearly benefit potential mechanics' lien claimants by not only streamlining the process to file a lien claim, but also increasing time within which a lien claim may be filed. Act 52 will also require additional precautions to be taken by lenders and title insurance agents in cases where financing is being obtained to reimburse an owner for projects already under construction.

Act 52 will also afford greater priority to certain types of mortgages which will greatly benefit the lending and title insurance industries. The Mechanics' Lien Law currently gives a mechanics' lien claim in the case of new construction lien priority as of the date work was visibly commenced upon the ground. A mechanics' lien claim currently has priority in cases of alterations or repairs as of the date the lien claim is filed. Thus, under current law, if visible work commences on the ground or a lien claim is filed prior to the date of the recording of a mortgage, the mechanic's lien would have priority over the mortgage. This is no longer the case with open-end construction and purchase money mortgages under Act 52, which provides that an after-filed mechanics' lien by a contractor or subcontractor will be subordinate to a purchase money mortgage (as defined by law) or an open-end mortgage, the proceeds of which are used to pay all or part of the cost of completion, erection, construction, alteration, or repair of the mortgaged premises secured by the open-end mortgage. Thus, while beneficial to the lending and title insurance industries, lenders and their attorneys will need to carefully scrutinize future mortgages to ensure that they meet the legal requirements of either a purchase money or open-end mort-

gage. If such requirements are not met, lenders will now need to determine whether they will require their borrowers to have general contractors post bonds as discussed below.

Finally, but most importantly, Act 52 dramatically limits the ability to require contractors and subcontractors to waive their mechanics lien rights. While current law permits a variety of methods by which both contractors and subcontractors may waive their lien rights, Act 52 now conditions effective mechanics' lien waivers upon such factors as the type of project and total contract amount. Act 52 first draws a distinction between "residential" buildings and "non-residential buildings", and while their definitions are fairly intuitive, we highly recommend consultation with legal counsel to assure total compliance with Act 52. In cases of residential buildings, general contractors may only waive their mechanics' lien rights where the total contract price with the owner is less than \$1,000,000. Accordingly, high-end residential construction, and large residential development projects will be fully subject to potential mechanics' lien claims by general contractors after January 1, 2007. Under Act 52, a subcontractor may also waive its mechanics' lien rights on residential building projects where the total contract price between the contractor and owner is less than \$1,000,000. In the event the total contract price is over \$1,000,000 on a residential building project, however, a subcontractor may only waive its mechanics' lien rights if the general contractor has posted a bond guaranteeing payment for all labor and materials provided by all subcontractors on the project. This provision will have obvious implications for all project owners, as well as lenders and the surety and bond industries. Act 52's most dramatic impact, however,

will be on "non-residential" or commercial projects in which mechanics' lien waivers will be void as against public policy in all cases for general contractors unless given in consideration for payments actually received from the owner. Act 52 further makes subcontractor waivers of mechanics' lien rights on commercial projects void as against public policy unless given in consideration of payments actually received; however, a subcontractor may waive its mechanics' lien rights on a commercial project where the general contractor has posted a bond guaranteeing payment for all labor and materials provided by all subcontractors on

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Workers Compensation

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Another significant amendment to the Act is a provision that, when assigning petitions, the Bureau shall not assign to a particular workers' compensation judge more than 75% of the petitions from a particular county. In addition, House Bill 2738 establishes the existence of an uninsured employer's guaranty fund which will primarily be funded by assessments on insurers and self-insured employers. Any annual assessment may not, however, exceed 0.1% of the total compensation paid by all insurers or self-insured employers during the previous calendar year.

For additional information regarding the amendments to the Workers' Compensation Act or about workers' compensation in Pennsylvania generally, contact Barbara Hollenbach at bhollenbach@thslaw.com or (484) 765-2277.

Actual resolution of legal issues depend upon many factors, including variations of facts and state laws. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.

Announcements

Frederick J. Stellato, Esquire was recently appointed to serve on Musikfest Counsel, the governing body for Bethlehem's Musikfest. Fred also serves on the Board of Directors of the Civic Theater of Allentown and the Pediatric Cancer Foundation of the Lehigh Valley, Inc. As a state licensed soccer coach and former player, Fred is also a founding Board Member and Officer of the newly formed Pennsylvania Stoners Sports Academy. Fred is a trial lawyer specializing in civil litigation matters.

Christopher C. Carver, Esquire recently earned a Master of Laws (LL.M.) in Taxation (with an Estate Planning Certificate) from the Villanova University School of Law. He was awarded the Tax Executives Institute (Philadelphia Chapter) Scholarship based upon his academic achievements in the LL.M. program. Chris practices in the areas of Taxation and Estate Planning & Administration and is a member of the bars of the Supreme Court of Pennsylvania, the United States Tax Court, and the United States District Court for the Eastern District of Pennsylvania.

New Lien Law

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the project. Act 52 specifically provides that these provisions will apply to all contracts entered into on or after January 1, 2007.

In sum, Act 52's effects upon a wide variety of industries will be immediate and dramatic. While there has been some talk in Harrisburg of further amendments to the Mechanics' Lien Law, it is unlikely any further amendments will be passed by January 1, 2007. As part of its commitment to remain on the cutting edge of the law, Tallman, Hudders & Sorrentino, P.C. is ready to offer professional and practical counsel to our clients in the lending, construction, and insurance industries on the various impacts of Act 52 upon business in our community.

Jessica Nichols

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Jessica grew up in Allentown, PA and was a two-time national gymnastics champion, training with the Parquette National Gymnastics Team. She received a full athletic scholarship to Stanford University. She now lives in Breinigsville, PA and is married to Thurston Nichols. They have a four year old daughter, Keeler. She enjoys art and antiques, golf, exercise, reading and volunteer work. Jessica serves on the board of the Allentown Business Council of the Lehigh Valley Chamber of Commerce and CREW Lehigh Valley, a commercial real estate network for women.

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