

CONNECTICUT CONSTRUCTION INDUSTRIES ASSOCIATION, INC.



912 Silas Deane Highway
Wethersfield, CT 06109

Tel: 860.529.6855

Fax: 860.563.0616

ccia-info@ctconstruction.org

www.ctconstruction.org

House Bill 5379, An Act Concerning Offers of Compromise in Arbitration of Construction Contracts Judiciary Committee March 26, 2010

CCIA Position: Support

The Connecticut Construction Industries Association, Inc. is the most diverse commercial construction industry trade association in Connecticut. Formed over 40 years ago, CCIA is an organization of associations, where all sectors of the commercial construction industry work together to advance and promote their shared interests. CCIA members have a long history of providing quality work for the public benefit.

CCIA is comprised of nine divisions, including the Associated General Contractors of Connecticut, Inc.; The Connecticut Road Builders Association, Inc.; Utility Contractors Association of Connecticut, Inc.; The Connecticut Ready Mixed Concrete Association, Inc.; and Connecticut Asphalt and Aggregate Producers Association. CCIA has more than 350 members statewide, including contractors, subcontractors, suppliers, and professional organizations that service the construction industry.

House Bill 5379, An Act Concerning Offers of Compromise in Arbitration of Construction Contracts, would allow an offer of compromise to be made during an arbitration of a construction contract; adds 12% interest to the amount of a construction arbitration award if a claimant recovers an amount equal to or greater than his offer of compromise; and prohibit construction contract provisions that require mediation or arbitration to be held outside of Connecticut.

CCIA **supports** House Bill 5379 and respectfully requests that the Judiciary Committee act favorably on the bill. CCIA would not object to an amendment to the bill, in sec. 1(c), reducing from 12% to 8% the annual interest added to the amount of a construction arbitration award if a claimant recovers an amount equal to or greater than his offer of compromise, which would be consistent with the interest in the offer of compromise statute for civil actions, Conn. Gen. Stat. §52-192a(c).

In recent years, more and more construction contract disputes are being resolved through arbitration rather than litigation. Arbitration was designed to provide a more efficient and less costly dispute resolution mechanism as an alternative to litigation. In arbitration, a third party serves in the role of arbitrator, chosen by mutual agreement of the parties involved and is typically someone who has experience in construction or specialized knowledge of the subject under dispute. Arbitrators may make a decision that is binding on the participants.

As arbitration has become more common in resolving construction contract disputes, the mechanism has become more structured, formal and costly for some parties. Evidence is offered, witnesses are involved and the proceedings are more protracted and a resolution can



take longer or be delayed. Thus, the need for House Bill 5379. Much like in civil actions, where an offer of compromise helps to facilitate timely settlement of litigation, an offer of compromise should be possible in arbitration of construction contract disputes. It would help expedite the resolution of increasingly complex construction matters and save resources for parties to the dispute. The process would work much like in litigation.

A claimant may, at any time before an award is rendered, apply to the court to file a written offer of compromise, offering to settle the claim underlying the arbitration for a sum certain. The court must grant permission to file the offer. The claimant must provide notice to the opposing party. Within thirty days after being notified of the filing of the offer of compromise and prior to the rendering of an order confirming, vacating, modifying or correcting an award or the entering of a judgment or decree upon an award, the respondent or the respondent's attorney may file with the clerk of the court a written acceptance of the offer of compromise agreeing to settle the claim underlying the arbitration for the sum certain specified in the claimant's offer of compromise. If the offer of compromise is not accepted within thirty days and prior to an order or judgment by the court, the offer of compromise is considered rejected and not subject to acceptance unless refiled. Any offer of compromise or acceptance of the offer is included in the record.

Allowing an offer of compromise to be made during an arbitration of a construction contract, coupled with the additional interest award, would help level the playing field for many contractors and subcontractors in these disputes. Additionally, it would help facilitate a fair and equitable settlement of construction cases. The added interest would give some leverage to smaller contractors and provide an incentive to settle arbitrations.

Section 2 of House Bill 5379 would add to a provision in the general statutes governing adjudication of construction contracts in this state, which was adopted in 1999 as part of An Act Concerning Fairness in Financing in the Construction Industry. Conn. Gen. Stat. §42-158m specifies that, in covered commercial contracts for work performed on a construction site in Connecticut, a provision that purports to require that any dispute arising under the contract be adjudicated in or under the laws of a state other than Connecticut is void and of no effect, regardless of whether the construction contract was executed in this state.

However, more construction contract disputes are being resolved through alternatives to adjudication, or litigation, by utilizing mediation or arbitration. Thus, it only makes sense to add mediation and arbitration to the terms of the statute. Some smaller contractors or subcontractors are put at a disadvantage by contractors that are able to leverage resources and resolve disputes under mediation or arbitration rules in jurisdictions that may be more favorable to them. The state should change its policy so contractors in Connecticut are not put at a disadvantage. It would also ensure that these cases be mediated or arbitrated in Connecticut, which would also prevent resources from moving outside the state.

Please contact Matthew Hallisey, Director of Government Relations and Legislative Counsel for CCIA, at 860-529-6855, if you have any questions or if you need additional information.