



912 Silas Deane Highway
Wethersfield, CT 06109

Tel: 860.529.6855

Fax: 860.563.0616

ccia-info@ctconstruction.org

www.ctconstruction.org

House Bill 6598, An Act Concerning Offers of Compromise in Construction Contract Arbitration Proceedings and Mediation and Arbitration of Construction Contracts

Judiciary Committee

April 1, 2011

CCIA Position: Support

Connecticut Construction Industries Association, Inc. (CCIA) represents the commercial construction industry in the state and seeks to advance and promote a better quality of life for all citizens in the state. 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 is comprised of about 350 members, including contractors, subcontractors, suppliers and affiliated organizations representing many sectors of the construction industry. CCIA members have a long history of providing quality work for the public benefit.

CCIA **supports** House Bill 6598, An Act Concerning Offers of Compromise in Construction Contract Arbitration Proceedings and Mediation and Arbitration of Construction Contracts, and respectfully requests that the Judiciary Committee approve the bill. CCIA also thanks the committee for raising the bill.

House Bill 6598 allows an offer of compromise to be made during an arbitration of a construction contract; adds 8% interest to the amount of a construction arbitration award if a plaintiff recovers an amount equal to or greater than his offer of compromise; and prohibits construction contract provisions that require mediation or arbitration to be held outside of Connecticut.

In recent years, more and more construction contract disputes are going to arbitration rather than litigation. Arbitration was designed to be a less formal, more efficient and a 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. The third party 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 6598. 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 party may, after making a demand for arbitration pursuant to the contract and before a final award is rendered by the arbitration panel, send to the opposing party a written offer of compromise, offering to settle all of the claims set forth in the arbitration for a sum certain. Within thirty days after being notified of the offer of compromise and before a final award is rendered, the opposing party may reply with a written acceptance of the offer of compromise agreeing to settle the claims. If the opposing party does not accept the offer of compromise within thirty days and before a final award is rendered, the offer of compromise is considered rejected. After a final arbitration award is issued and upon application of any party to a construction contract to confirm, vacate, modify or correct the award, any party who made an offer of compromise which the opposing party failed to accept may file with the court proof of the offer. If the court confirms the arbitration award and determines that the party has recovered an award equal to or greater than the party's offer of compromise, the court is required to add 8% annual interest on the total amount of the award, in addition to any interest awarded by the arbitrator plus reasonable attorney's fees and costs.

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 6598 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 certain 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 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 adopt a policy that does not put contractors in Connecticut 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.

House Bill 6598 is substantially similar to 2010 House Bill 5379, An Act Concerning Offers of Compromise in Arbitration of Construction Contracts, which was approved by the Judiciary Committee, and a bipartisan amendment filed in the House at the end of the session.

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.