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ACCNJ LEGAL & INSURANCE UPDATE

Appellate Court Stops Union County Project for Violating State Bidding Requirements

Union County suffered another loss in ongoing litigation over a planned \$123.8 million government complex. The project was procured by the Union County Improvement Authority (“UCIA”) under the Local Housing and Redevelopment Law (“Redevelopment Law”). Under the Redevelopment Law, county improvement authorities could select general contractors without publicly bidding the project as is typically required by Local Public Contracts Law (“LPCL”).

Or at least they thought they could ... In July 2021, an Appellate Court held that the Bergen County Improvement Authority (“BCIA”) violated the LPCL when it bid an \$80 million renovation to the historic Bergen County Justice Center by using a “shortlist” procurement method not permitted by the LPCL. The Bergen ruling effectively meant that county improvement authorities, including UCIA, must follow LPCL. The Bergen ruling is currently being appealed to the New Jersey Supreme Court and a decision is expected later this year.

After the Bergen ruling, the question became what should happen with the project in Union. Despite the UCIA using essentially the same procurement process as was used in Bergen, a trial court judge permitted the Union project to continue because of the financial harm it would cause Union taxpayers. In short, the equities weighed in favor of allowing the project to continue despite the UCIA’s violation of law.

On February 22, 2022, an Appellate Court reversed the trial court’s decision and reinstated an injunction that will halt the project from moving forward. Central to the Appellate Court’s

decision was the fact that the Union Project was divided into two phases. Phase 1 consisted of pre-construction work, including demolition and clearance, and remediation of the project site – while Phase 2 included the construction of the project improvements. To date, no work on Phase 2 had commenced. As a result, the Appellate Court believed the equities favored stopping Phase 2 and requiring the work under Phase 2 be bid in accordance with LPCL requirements.

The final domino to fall will be the New Jersey Supreme Court’s ruling involving the Bergen project. If the Supreme Court confirms that county improvement authorities must issue contracts in accordance with the LPCL, then that will likely be the final nail in the coffin for Phase 2 of the Union Project.

The Appellate Court’s ruling in the Union case can be accessed: [HERE](#)

Murphy’s Vaccine Mandate for Healthcare and High-Risk Settings Survives Legal Challenge

On February 11, 2022, a New Jersey Appellate Court determined Governor Murphy was acting within the scope of his executive power when issuing [Executive Order 283](#), which imposed a vaccine requirement on any “covered worker” working at covered healthcare facilities and high-risk congregate settings. The definition of “covered worker” is not limited to employees and covers anyone working in the facility, which could include contractors performing construction work at covered facilities. Notably, Executive Order 283 did not contain a test-out option for covered workers. Despite this, the Appellate Division noted the significance of the ongoing public health emergency and determined the Governor did not exceed his authority by not including a test-out option for healthcare and high-risk congregate settings.

The ruling represents one of the first victories for Murphy regarding the vaccination requirements imposed by various executive orders. The ruling did not address [Executive Order 271](#), which imposes a broad vaccine and/or testing requirement for contractors working on state agency contracts (the “New Jersey Contractor Mandate”). If challenged, defending the legitimacy of the New Jersey Contractor Mandate will be more difficult for the State because the mandate is not limited to healthcare and/or high-risk settings. Nonetheless, EO 271 does offer a test-out option, which could serve as the basis for upholding the requirement. In any event, the ruling on EO 283 demonstrates that New Jersey courts are willing to enforce state-mandated COVID-19 vaccination requirements in certain situations. We will continue to bring you the latest on COVID-19 litigation, including any developments with the New Jersey Contractor Mandate.

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