



Think That Liquidated Damages Provision You Just Agreed to Is Unenforceable? Think Again.

MARCH 2016

In the construction industry, owners and developers often rely upon per diem (“per day”) liquidated damages provisions to ensure that projects are completed on time. These provisions typically require the contractor to pay “x” dollars per day for each day that the contractor fails to complete the project. Contractors and their lawyers have often argued, and believed, that at some point the per day assessments can become so high that the damages ultimately assessed are a penalty. The amount is “unreasonable or disproportionate.” As such, the liquidated damages provision no longer expresses the parties’ true intention. On February 24, 2016, in *Boone Coleman Constr., Inc. v. Piketon*, the Supreme Court of Ohio rejected this argument. The Supreme Court of Ohio held that the proper analysis is not on the aggregate amount ultimately assessed but rather whether the agreed upon per day amount was reasonable at the time the contract was entered into. Read the client alert [here](#).

This Client Alert has been prepared by Tucker Ellis LLP for the use of our clients. Although prepared by professionals, it should not be used as a substitute for legal counseling in specific situations. Readers should not act upon the information contained herein without professional guidance.

© 2024 Tucker Ellis LLP, All rights reserved.