

OHIO SUPREME COURT RULING
SIGNIFICANTLY HARMS CONSTRUCTION CONTRACTORS
by Robert T. Dunlevey, Jr.

The Ohio Supreme Court released its highly anticipated decision in the Dugan & Meyers public construction case. Contrary to the famous 1918 U.S. Supreme Court case, *United States v. Spearin*, contractors in Ohio may now be responsible for the consequences of defects in owner-provided plans and specifications. The *Spearin* doctrine relieves the contractor from the consequences of defects in owner-provided plans and specifications. The Ohio Supreme Court has just ruled that the so-called *Spearin* doctrine is not applicable in cases involving delay due to plan changes.

This decision is significant because it may leave contractors to suffer, without compensation, the cost overruns they experience and which are attributable to errors, omissions and conflicts in the plans. The lone dissenting Judge, Justice Pfeifer, said it well: "The majority seems to suggest that an owner need not be concerned with preparing accurate plans, since any deficiencies must be corrected by the contractor. As it turns out, the state could have saved a lot of money on blueprints and just submitted some sketches on the backs of a few cocktail napkins."

In addition to this damaging ruling, the Court required the contractor to strictly comply with the notice and claim procedures in the contract. The Court noted that the contract established a detailed procedure to be followed for all changes. Undoubtedly, public owners will use this new decision to deny claims and assess liquidated damages against contractors who do not strictly comply with contract provisions for notices, changes, claims and time extensions. In the past, the technicalities of these procedures have been overlooked from time to time. Those days may be gone.

In light of this decision, contractors currently engaged in public construction should pay special attention to, and meticulously follow, contract procedures for notices, changes, claims and time extensions. Contractors ought to exercise extreme caution when preparing future bids for public work.

Here is a link to the Ohio Supreme Court's summary of the decision which includes a link to the decision itself:

http://www.sconet.state.oh.us/Communications_Office/summaries/2007/0425/051698.asp

Because Dunlevey, Mahan & Furry represents construction trade associations and contractors throughout the United States, its attorneys stand ready to assist your company in dealing with this significant development.