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NEWSLETTER
From Girard R. Visconti, Esq.

RE: Rhode Island Supreme Court Defines Components in Awarding a "Prevailing Party" Attorney's Fees

The question often asked in any litigation or arbitration proceeding is whether or not a party is entitled to attorney's fees on a successful matter that has been litigated or arbitrated.

The general rule in Rhode Island and other states has been expressed by the Rhode Island Supreme Court:

> "This court has long adhered to the "American Rule" that requires each litigant to pay its own attorney's fees, absent statutory authority or contractual liability."

The Rhode Island Mechanics' Lien Law gives the trial judge the discretion in awarding attorney's fees. There are other statutes in Rhode Island that do have provisions for a successful party updating a attorney's fees.

Absent a statutory or contractual requirement, each party bears its own attorney's fees.

Many contracts include the following sample provision:

> "If any party to this contract brings a cause of action against the other party arising from or relating to the contract, the prevailing party in such proceeding shall be entitled to recover its reasonable attorney's fees and court costs."

This paragraph, however, does not define who the prevailing party is and under what circumstances is a party "prevailing." In a first impression opinion, the Rhode Island Supreme Court in

the matter of *Clean Harbors Environmental Services, Inc. v. 96-108 Pond Street, LLC v. J.R. Vinagro Corporation*, has defined the definition of a prevailing party:

> "We . . . remand the matter to the Superior Court for a determination of the prevailing party by considering: (1) [the] contractual language[;] (2) the number of claims, counterclaims, cross-claims, etc., brought by the parties[;] (3) the importance of the claims relative to each other and their significance in the context of the lawsuit considered as a whole[;] and (4) the dollar amounts attached to and awarded in connection with the various claims[,]" as well as whether compelling circumstances exist to justify a finding that both parties, or neither party may be considered to have prevailed."

The utilization of a "prevailing party paragraph" as noted above has a "two-edge sword." The question is, should a party insist on "prevailing party" language in a contract since either party "rolls the dice" that it will prevail at the outcome of an arbitration or litigation and therefore, the use of that paragraph is a "two-edge sword."

Before entering into a contract with such a provision, much thought should be given as to whether or not a party wants to pursue litigation or arbitration or be a defendant in a litigation or arbitration case with a "prevailing party clause" in the contract.

Therefore, consideration of the contract between the parties should be determined along with any risks, etc. that are involved in the scope of work before determining to use such a clause.

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