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Limitation Period in Environmental Consultant's Contract Knocked Out

JULY 30, 2013

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Standard terms and conditions appended to environmental consultant's proposals for environmental services and in other consultant's proposals often include a few simple words designed to limit the time period by which claims must be brought and that is a shorter time period than would otherwise be allowed by statute. In Shahin v. I.E.S. Incorporated, 83 Mass. App. Ct. 908 (May 31, 2013), the Massachusetts Appeals Court reviewed one such provision that should be of interest to those who contract with environmental and other professionals for services.

In response to claims for negligence, breach of contract, and violation of M.G.L. ch.93A, IES pointed to the terms and conditions of its standard contract: "[Client] shall bring no claim against IES, Inc. and/or its owners, directors, officers, and employees **later than one (1) year after the date of this contract**." (emphasis added). Plaintiff's claims were brought more than a year after the date of the contract. As result, the trial court concluded that this provision barred plaintiff's clams and granted summary judgment for IES.

On appeal, the decision was reversed. The court relied upon Creative Play Things Franchising, Corp. v. Reiser, 463 Mass. 758 (2012), holding that a limitations period can be shortened by contract so long as the shortened period is reasonable. The Creative Play Thingscase also provides that "a contractual limitations provision that did not permit the operation of the discovery rule would be unreasonable, and therefore invalid and unenforceable." The discovery rule tolls the statute of limitations where a prospective plaintiff did not have, and could not have had with due diligence, the information essential to bringing suit.

The Appeals Court here noted that the contractual provision used by IES did not permit the operation of the discovery rule, as it was based solely upon the date of contract. It vacated the summary judgment and remanded the case to the trial court for further proceedings.

While standard terms and conditions used by environmental consultants are often presented as non-negotiable "boilerplate," the terms can be modified. Here plaintiff dodged a bullet. If plaintiff has legitimate claims against IES, they survived only after litigating limitation wording that could have been and is commonly negotiated. While hindsight is 20 – 20, if plaintiff and IES had negotiated a legally permissible and fair limitation period consistent with the law, they might have eliminated this issue from their dispute. The lesson here is to always carefully review standard terms and conditions, be on the lookout for a limitation period on bringing claims, and where it shortens the statutory period for bringing claims, if the provision cannot be removed entirely by negotiation, then negotiate a modification that allows for the application of the discovery rule.

Have a question concerning a proposal or contract for environmental services? Call or e-mail Bob Cox at (508) 926-3409