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C A S E A L E R T

APPELLATE DIVISION ENFORCES SUBROGATION WAIVER IN AIA CONTRACT-BASED CONSTRUCTION LITIGATION

In [Ace American Insurance Company v. American Medical Plumbing](#), a case successfully handled by [Ric Gallin](#), the Appellate Division issued a definitive opinion enforcing the waiver of subrogation clause in AIA (American Institute of Architects) construction contracts. This was an issue of first impression in New Jersey.

AIA contracts are widely used throughout the U.S. and courts across the country have split on whether the subrogation waiver contained in the contract continues to apply after construction has been completed and whether the waiver applies to damage to property outside the scope of the particular project. Through nearly 30 years of litigation the AIA has responded with consistent attempts to broaden the subrogation waiver language. The Appellate Division ultimately determined that the language was sufficiently broad to continue beyond project completion and to encompass work beyond the scope of the project.

Ric's client was a plumbing subcontractor on the site of a new Equinox gym in Summit, New Jersey. The insured incorrectly installed high pressure connections to the sprinkler system. Shortly after the gym opened, and after it

had been furnished with gym equipment, the connection failed and the building and equipment sustained damages in excess of \$1 million.

The property insurer of the building and contents filed suit, and the trial court and Appellate Division both agreed with Ric's argument that the subrogation waiver expressly barred the litigation in its entirety. The appellate panel relied on case law from other jurisdictions which Ric presented to establish the logic of applying the waiver to claims involving damages to any property that was covered by insurance, whether or not such property constituted part of the construction project and whether or not such property sustained damage after completion of the project.

In issuing this published decision, the Appellate Division adhered to the majority rule. The ruling will effectively bar subrogation in New Jersey litigation involving an AIA contract. Notably, a handful of minority states, such as Missouri and Colorado, limit the scope of the waiver. Accordingly, a choice of law analysis may be necessary when the place of the contract and/or the location of the construction is a "minority" state.

Should you have any questions concerning American Medical Plumbing, the issues involved or any other question concerning

subrogation, please do not hesitate to contact Ric.

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