

**A&C CONSTRUCTION & INSTALLATION, CO. V. ZURICH AMERICAN
INSURANCE CO.**

Recently, the United States Court of Appeals for the Seventh Circuit ruled on a matter involving the Miller Act. The Miller Act has a notice requirement for subcontractors to notify the general contractor within 90 days of nonpayment and suit must be within one year of completing the work. Both these requirements must be met for a suit to proceed.

Facts:

There was a federal construction project for two billets on the Al Udeid Air Base in Qatar with the United States Army Corps of Engineers.¹ The prime contractor was Amec Foster Wheeler Environment & Infrastructure, Inc. (“Amec”).² Black Cat Engineering & Construction WLL (“Black Cat”) was a subcontractor for mechanical and fire suppression work.³ On January 31, 2013 Black Cat then subcontracted with A&C Construction & Installation, Co. (“A&C”) for mechanical, electrical, and plumbing projects.⁴ On July 1, 2013, Black Cat and A&C entered into an additional contract for fire suppression.⁵

On December 16, 2015, the fire suppression contract was terminated by Black Cat.⁶ It is asserted that A&C stopped working on the first contract around November of 2015 and completely finished work on the project on May 16, 2016, however, A&C disputes this.⁷ Because A&C subcontracted some of their work to Raymond Nahra for Electrical & Mechanical Works Co., WLL (“RNC”), A&C asserts that it supervised this work until its completion on February 28,

¹ *A&C Constr. & Installation, Co. v. Zurich Am. Ins. Co.*, No. 19-3325, 2020 WL 3527303, at *1 (7th Cir. June 30, 2020).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at *2.

⁷ *Id.*

2017.⁸ However, A&C did provide notice on August 16, 2016 for payments Black Cat owed A&C (91 days after May 16, 2016).⁹ A&C then filed a complaint on June 7, 2017 (more than a year after May 16, 2016).¹⁰ While the appellate court found district court make a few misstatements in its ruling, it was ultimately irrelevant to the claim.¹¹

Procedural History and Court Rulings:

A&C brought a lawsuit in the District Court for the Northern District of Illinois against Zurich American Insurance Co. (“Zurich Insurance”) and the Insurance Company of the State of Pennsylvania (“Pennsylvania Insurance”). The district court granted the motion for summary judgment because there was no timely notice or filing of the lawsuit. A&C appealed.

Court’s Analysis:

The issue being address is “whether A&C’s notice and civil action were timely under the Miller Act.”¹² The Seventh Circuit affirmed the summary judgment ruling of the district court.¹³ The Miller Act has two specific timing requirements, notice within 90 days and filing a lawsuit within one year of ending labor, both which are strict conditions.¹⁴

The first question the appellate court analyzed was the waiver.¹⁵ As A&C did not present its “theory of partial recovery for pre-notice work” to the district court properly, A&C waived its argument.¹⁶ Under the Federal Rules of Civil Procedure 59(e), a party cannot introduce new

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at *2–3.

¹² *Id.* at *3.

¹³ *Id.* at *5.

¹⁴ 40 U.S.C. § 3133(b)(2), (b)(4).

¹⁵ *A&C Constr. & Installation, Co.*, 2020 WL 3527303, at *3.

¹⁶ *Id.*

evidence or an argument that they should have presented previously.¹⁷ Consequently, the merits of this argument were not addressed by the Seventh Circuit in this case.¹⁸

The appellate court acknowledged the factual dispute of A&C's actual last day of work, however, it determined that the answer was irrelevant for the appeal.¹⁹ Even if the court assumes the February 28, 2017 date was the last date of work, the undisputed notice date of August 16, 2016 negates it because the notice was not within the requisite 90 day window (from May 16, 2016 or February 28, 2017).²⁰ The court found the Miller Act to be unambiguous as to the notice requirement, so it must be enforced.²¹ As A&C did not serve notice in a timely fashion, it cannot maintain its action.²²

Lessons Learned:

This case demonstrates how the Miller Act both protects subcontractors and requires strict compliance of requirements involving notice and timely filing of a suit in order to recover from nonpayment on federal construction projects. Since A&C did not provide the requisite notice, it cannot bring a lawsuit.

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¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*