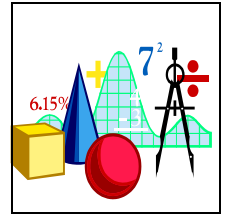


# CONSTRUCTION LAWLETTER

For Industry Professionals, Officers, Managers, Trades and Suppliers



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### CONSTRUCTION CONTROVERSIES - BACKCHARGES AND EXTRAS

With greater frequency, current problems arising between General Contractors (“GC’s”) and Subcontractors (“Subs”), are based on work actually required of subcontractors, but performed by the GC, and for which the Sub is held liable. For example, the cleanup and removal of packaging materials, crates and pallets, etc., in or upon which certain materials and finished fixtures are delivered to the site, are generally the responsibility of the generating trade, subtrade, or supplier, depending upon the construction contract and agreement of the parties. Where the cleanup is not done, the prime contractor will perform such work or services, and then backcharge the sub by deducting the amount of the backcharge from the sub’s progress payments. Serious disagreements may result, especially where there is inadequate documentation to support the contentions of each party as to such responsibility.

Still other disagreements may arise regarding other areas of subcontractor responsibility or benefit, including: acceleration, delay, use of “float time”, completion of work, “timely performance”, final touch-up of punch listed items, and beneficial occupancy of the tenant or owner.

Project disputes can be avoided by carefully particularly where serious questions of money are involved!

“Extras” may often be (humorously) defined as: “any work, materials, or methods, whether necessary, desired, required, requested, performed or supplied, and not included, defined, or even implied anywhere in the contract documents.” These items are

generally invoiced as “Additional Work” or “Verbal Order”, or “Field Necessity”. The only truly important question is, who pays for it? Clearly, the person or entity authorizing or requiring extra work must also pay for it!

Successful construction business practice in the tripartite owner-contractor-subcontractor relationship require three important operating principles: (1) All contracts, subcontracts and supply agreements must be negotiated carefully and drafted skillfully to confirm all of the terms of agreement between the parties. (2) The GC’s role as a project coordinator must be that of a skilled, experienced, diplomatic, master-builder-facilitator, not an iron-fisted, militaristic dictator. (3) All of the parties to the construction contract and process must be willing to meet and to resolve all disputes immediately, fairly, and without defamation of any party. To do otherwise may result in delaying or jeopardizing timely completion of the project, additional costs of construction, and incurring costly litigation, with uncertainty of outcome.

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### **Inconsistencies of opinion, arising from changes of circumstances, are often justifiable.**

Daniel Webster, Writer  
(1782-1852)

Author: **J. NORMAN STARK** is an Attorney-at-Law, a Registered Architect, (AIA, NCARB) Registered Landscape Architect, Interior Architectural Designer, Planner and Senior Appraiser (ASA). He is admitted to practice law before the Bar of Ohio, the US District Courts of Ohio and Illinois (Central Dist.), the US Court of Appeals, and the U.S. Supreme Court. A former Member of the Ohio Board of Building Standards, he has professional experience in Business, Construction, Real Property, Mechanics’ Liens, Litigation, Collections, and

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