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**Happy 50th  
Anniversary  
ASA!**





# CONSTRUCTION IN THE COURTS

Edited by [R. Russell O'Rourke, Esq.](#), partner and chair of the Construction Law Group, [Meyers, Roman, Friedberg & Lewis](#), Cleveland, Ohio.

## A brief review of recent cases that affect your business

**Arizona.** Design professionals now join the ranks of construction contractors protected under Arizona's prompt pay statutes, which create a standard payment billing cycle for Arizona contracts.

The recently enacted Arizona Design Professional Prompt Pay Act (see [House Bill 2336](#)) now applies to "design professionals" performing work on construction projects. See A.R.S. §§ [28-411](#), [34-221](#), [34-227](#), [41-2571](#), [41-2577](#) and [41-2583](#). "Design professional services" include "architect services, engineer services, land surveying services, geologist services or landscape architect services..." Although several statutory schemes cover public construction projects, the Prompt Pay Act applies to all private projects.

### [How the Prompt Pay Act Works](#)

**Step One:** For applicable construction contracts, the general contractor submits payment applications to the owner every 30 days.

**Step Two:** Once the general contractor submits an invoice to the owner, the owner has 14 days to issue a written statement detailing those specific items that are not approved and certified. If the owner fails to

issue a written objection within 14 days, the invoice is automatically certified and approved.

**Step Three:** Once the invoice is certified and approved, the owner must pay the general contractor within seven days.

**Step Four:** The general contractor must pay the subcontractors (which include design professionals and material suppliers) within seven days after payment is received from the owner.

**Step Five:** The owner must provide final payment within seven days after the general contractor completes the work and the owner certifies and approves the work.

Though seemingly contained in five easy steps, the Prompt Pay Act is riddled with nuances, exceptions, and technicalities. Whether an owner, general contractor, design professional, subcontractor, materialman or supplier, a party contracting in Arizona must be familiar with these provisions.

[Rick Erickson](#) and [Nicole Sornsin](#) are attorneys in [Snell & Wilmer L.L.P.'s Construction Law practice group in Arizona](#). They can be reached at [Rick's email](#) and [Nicole's email](#) or (602) 382-6000.

**Ohio.** Friedrich Nietzsche once said, "It is impossible to suffer without making someone pay for it; every complaint already contains revenge." Litigation, however, is no place for revenge, especially for employers. A question often asked by clients after they are sued, besides "How much is this going to cost me?" and "After I win can I collect my attorney fees?" is "How do I countersue?"

For various reasons, counterclaims against former employees against whom you are pitted in discrimination litigation are bad ideas. For one, unless you've suffered real harm, there exists a real risk that a jury will punish you for a perceived pettiness. Secondly, under well-established law, employees and ex-employee is protected from retaliation-by-counterclaim from suits that are objectively baseless.

In [Lucarell v. Nationwide Mutual Ins. Co.](#), an Ohio appellate court took an employer's protection from these retaliation claims one step further, by concluding that Ohio's anti-retaliation statute does not extend its protections to ex-employees, and that the filing of a counterclaim against an ex-employee cannot constitute an adverse employment action.