

## STATEMENT BY STUART S. ZISHOLTZ

Once again, the reduced statute of limitations incorporated in many construction contracts has reared its ugly head.

Recently, a decision in the Appellate Division, First Department, addressed a clause in a construction contract where the statute of limitations was reduced to six months after either (a) the cause of action accrued (b) the termination or conclusion of the contract or (c) the last day the subcontractor performed any physical work at the Project, whichever of the events occurred first.

In most cases, the reduced statute of limitations is enforceable by the court. Thus, if the subcontractor failed to institute an action within six months after the claim accrued or it completed its work, the courts will dismiss the action based upon the agreed upon statute of limitations. The subcontractor in the recent case argued that the statute of limitations period set forth in the contract expired before any suit can be brought. Thus, the subcontractor was in a catch 22 of having to file a lawsuit to avoid the expiration of the statute of limitations even though its claim was not yet ripe for adjudication. The Appellate Division agreed with the subcontractor and found that the statute of limitations defense did not apply in this limited instance.

It is imperative, however, that you review the various terms of the contract to determine whether there is a reduced statute of limitations clause in your contract. The reduced statute of limitations clause will be enforced by the court and prevent you from proceeding in litigation to collect any outstanding balance due. If there is no balance due, any mechanic's lien filed will be vacated by the court.

Never let your lien time run out!!

For a free copy of a pamphlet pertaining to mechanic's liens and payment bond claims,  
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