

Proper Notice Can “Accelerate” Your Recovery



I have discussed [the importance of every word in a construction contract](#) on multiple occasions at Construction Law Musings. The United States District Court for the Western District of Virginia recently gave another reminder that one area that can act as a sword or shield in a contract is the language regarding provision of notice.

In [SNC-Lavalin America Inc. v. Alliant Techsystems Inc.](#), the Western District Court considered the notice provisions

of a federal DOD contract in refusing to overturn an acceleration claim by the subcontractor on the project SNC-Lavalin America, Inc. (SNC). In this case, the Court considered, among other claims (I recommend reading this case regarding these other issues and their resolution by the Court), a jury's verdict granting SNC damages in the amount of \$332,800.00 based upon its proper notice to the general contractor, Alliant Techsystems, Inc. of weather related delays.

In determining that the jury was properly instructed regarding how to analyze these claims, the court started with the definition of "constructive acceleration." In short, where there is excusable delay, but the General Contractor unreasonably denies an extension of time, the subcontractor should be entitled to costs incurred due to its having to complete the project per the original schedule.

The Court then stated a 5 part test that I will not reiterate here, though it is well laid out in the opinion. Given the facts in the case, the Court determined that the jury could have decided that the test was met and upheld the damages.

To bring this full circle, the Court cited the fact that SNC followed the notice provisions of the contract as a key component of its analysis. I wonder what would have happened if these provisions had not been properly followed, though I have the suspicion that [the contract would have been followed](#) and the acceleration claim denied. In short, had SNC failed to follow the notice provisions, it likely would have been out over \$300,000.00.

This case highlights the necessity of carefully reading your construction contracts and understanding their terms. The assistance of an [experienced construction attorney](#) can help with that.

Image via [Wikipedia](#)

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