

IN THE SUPREME COURT OF OHIO

Transtar Electric, Inc.,	:	
	:	Case No. 2013-0148
Appellee,	:	
	:	On Appeal from the
v.	:	Lucas County Court of Appeals,
	:	Sixth Appellate District
A.E.M. Electric Services Corp.,	:	
	:	Case No. G-4801-CL-02012-01100
Appellant.	:	

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MERIT BRIEF OF APPELLEE TRANSTAR ELECTRIC

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## MERIT BRIEF OF APPELLEE TRANSTAR ELECTRIC

### I. Introduction

Appellee Transtar Electric, Inc., plaintiff below, appreciates this first impression opportunity for the Ohio Supreme Court to affirm national precedent, that a contingent payment clause is enforceable only if a subcontractor expressly accepts the risk of an owner's non-payment for a specific reason, based on review of the entire contract.

The issue generally is characterized as distinguishing a prime contractor's exculpatory clause as "Pay-If-Paid" versus "Pay-When-Paid," although regardless of labels, judicial review fits into typical contract doctrine.

Appellant A.E.M. seeks the automatic defense of boilerplate language in A.E.M.'s form contract, to avoid the duty of payment, the duty of seeking payment from the owner, of offering Transtar any remedy, of acting good faith, and of contract consideration for the work Transtar performed at A.E.M.'s direction.

Transtar seeks affirmation of the Court of Appeals' holding that such language cannot operate automatically without review of the parties' intent and the operative facts leading to non-payment.

The leading case nationally originated five decades ago in Cincinnati, *Thos. J. Dyer Co. v. Bishop Internatl. Eng. Co.*, 303 F.2d 655 (6<sup>th</sup> Cir. 1962), interpreting such a clause as merely allowing a reasonable time for payment to the subcontractor.

As the parties' intent on risk-shifting, and the facts underlying non-payment are

dispositive, no set of “magic words” can eliminate the need for a full contract review and factual inquiry.

This is a discretionary appeal. While contract interpretation is a matter of law and therefore de novo, nevertheless Appellant had an appeal already on this basis. Procedurally, this Court accepted review on a specific proposition of law, which Appellant has changed in part:

Appellant’s Original Proposition of Law: The language in the contract between A.E.M. and Transtar is a “pay-if-paid” provision, which without payment by the owner, does not require A.E.M. to pay Transtar.

Appellant’s New Proposition of Law: The unambiguous language in the subcontract between the parties is a “pay-if-paid” provision, which without payment by the owner, does not require the contractor to pay the subcontractor. [emphasis added.]

The “unambiguous” insertion implies the absence of any need to inquire as to the parties’ intent on risk allocation. This goes to the heart of the legal precedent nationwide.

## II. Statement of the Case and Facts

The Sixth District Court of Appeals came to the dispositive conclusion that, “In the present matter, we find no language sufficient to clearly and unambiguously indicate that the parties intended to transfer the ultimate risk of nonpayment to the subcontractor.” Appellant’s Appendix, Decision and Judgment at ¶ 31.

The Court found that neither Appellant’s proof nor the Subcontract language evidenced a clear intent to shift the risk of payment to Transtar. “Consequently, absent

language making manifest the intent to shift risk of payment, the provision must be construed as a pay-when-paid clause.” Appellant’s Appendix, Decision and Judgment at ¶ 30.

The Sixth District advances the law by holding insufficient the mere use of “magic words” without actual proof of the parties’ intent. The Court reconciles the rationale and result of a recent Tenth District decision:

The *Evans, Mechwart* case, quoting a federal case, suggests that the provision may state that it is a condition precedent or a shift of risk. In our view, this is insufficient. It must be made plain, in plain language, that a subcontractor must ultimately look to the owner of the project for payment. While the words “condition precedent” may be helpful, the term is not sufficiently defined to impart that both parties understand that the provision alters a fundamental custom between a general contractor and a subcontractor.

Appellant’s Appendix, Decision and Judgment at ¶ 30.

In *Evans, Mechwart, Hamilton & Tilton, Inc. v. Triad Architects, Inc.* 196 Ohio App.3d 784, 2011-Ohio-4979, 965 N.E.2d 1007 (10<sup>th</sup> Dist.), the Court focused on the need to understand the parties’ exact intent, so as to reduce any risk of forfeiture. “In the face of this ambiguity, courts avoid forfeiture by construing the pay-when-paid provision as a promise to pay and making payment due within a reasonable time.” *Evans* at ¶ 17. Similar to the case at bar, the *Evans* Court then held, “We find that the language of section 12.5 is not explicit enough to indicate that the parties intended to create a condition precedent.” *Evans* at ¶ 20.

Both Courts of Appeals begin by relying upon *Thos. Dyer, supra*. *Evans* at ¶ 9;

Appellant's Appendix, Decision and Judgment at ¶ 16. So the law enunciated in the appellate cases is neither new nor in conflict.

A.E.M. did nothing to collect from the owner. Absent from Appellant A.E.M.'s statement of facts or from the evidentiary record below is any evidence of the parties' intent to shift the risk of owner's non-payment to Transtar, or why the owner did not pay. Such language if effective would require an alternative remedy, an alternative collection mechanism, or alternative consideration for the work performed.

In contrast, evidencing the parties' intent to pay Transtar, similar to the provision above, the Subcontract Agreement includes numerous other provisions contrary to a mere contingent payment concept.

Contemplating payment of charges not reimbursed by the owner, A.E.M. agreed to pay Transtar merely without markup:

(hh) Extra work not reimbursable by the Owner will be charged at Cost plus tax only. No overhead or profit will be added.

Appellant's Supplement, Subcontract Agreement, page 7, Section 10.

This provision alone conclusively evidences A.E.M.'s intent to pay Transtar on a cost basis, at a minimum.

Consistently, if the owner terminated early, the Subcontract insured payment to Transtar:

(jjjj) In the event that the Prime Contract is terminated by Owner prior to completion, Contractor shall have the right to terminate this Subcontract and Subcontractor shall be entitled only to payment for that

portion of the Work which is actually completed....

Appellant's Supplement, Subcontract Agreement, page 17, Section 32.

Concerned about avoiding mechanics' liens, Ohio's statutory payment protection for subcontractors, A.E.M. reserved the right to make direct payments:

(g) Contractor reserves the right to make payment by joint check or by direct check to Subcontractor's materialmen, or sub-subcontractors or any person who has right of action against Contractor or Contractor's surety under law.

Appellant's Supplement, Subcontract Agreement, page 3, Section 4.

As A.E.M. drafted this boilerplate form Subcontract, any ambiguity or conflict must go against A.E.M.'s interests. Clearly the Subcontract is a form, not modified for the Ohio project or to reflect any negotiation with Transtar:

(l) Subcontractor is responsible for all Federal, State, and Local Taxes in accordance with Minnesota State Laws.

Appellant's Supplement, Subcontract Agreement, page 4, Section 4.

Absent from Appellant's brief or evidence is any reason why the owner did not pay A.E.M., including A.E.M.'s own culpability. We know that the owner is solvent, because Transtar performed additional work directly for the same owner, and when not paid, took judgment accordingly. See *Transtar Electric, Inc. vs. Image Hospitality Group, LLC, et al.*, Lucas C.P. No. G-4801-CI-201006145 (Nov. 3, 2010), Docket, Judgment, and subsequent collection orders of record. Therefore, the owner's insolvency is not the "risk" of non-payment at issue in this case. A.E.M. never has offered a single reason

explaining the owner's non-payment to A.E.M.

Absent from Appellant's statement or record is any effort to collect. In its most glaring omission, A.E.M. never sued the owner even in this case. Nor did A.E.M. authorize Transtar to sue the owner, while contemplated in the Subcontract:

(iii) At Contractor's option, Contractor may submit any such claim to Owner and prosecute the same on behalf of Subcontractor, with full cooperation of Subcontractor at Subcontractor's expense, or at Contractor's option, may authorize Subcontractor to pursue such claim in Contractor's name.

Appellant's Supplement, Subcontract Agreement, page 12, Section 16.

A.E.M. controls the parties' interaction with the owner, barring Transtar from collection:

Subcontractor shall... conduct any discussions with the Owner's representative through Contractor.

Appellant's Supplement, Subcontract Agreement, page 1.

By doing nothing, A.E.M. effectively and affirmatively prevented Transtar from collecting from the owner.

For A.E.M. to prove its thesis, numerous fact issues remain:

- 1) the parties' intent as to types of risk to be shifted to Transtar;
- 2) the reason that owner has not paid A.E.M., and whether it is the same as the parties' intent (such as on A.E.M.'s own culpable failure;)
- 3) whether A.E.M. actually invoiced the owner for Transtar's work;
- 4) whether the owner has not paid for Transtar's particular work, or just generally has not paid A.E.M. including for other work;

- 5) the efforts A.E.M. is taking to obtain payment; and
- 6) the parties' intent as to Transtar's remedy in the event of non-payment.

Without such evidence, the Subcontract does not support A.E.M.'s claim merely on the face of its boilerplate language.

Transtar objects to two unsupported, conclusory statements in Appellant's Merit Brief, "Statement of Facts":

[O]wner of the project failed to pay A.E.M. for the work performed by Transtar.

\* \* \*

A.E.M. has sought payment for the work performed by Transtar and will continue to do so.

Merit Brief of Appellant, p. 1.

A.E.M. thus recognizes the relevance of such factual inquiry, but offers only the bare, identical conclusions in an affidavit. Nothing in discovery or in the evidentiary record details any support for either statement.

A.E.M. benefitted by accepting Transtar's work, reserving the right to occupy without payment. The owner has done so. Yet A.E.M. offered no fact proof that the parties intended that Transtar provide its work for free, without consideration:

Whenever it may be useful or necessary for the Contractor or Owner to do so, the Contractor or Owner shall be permitted to occupy or use any portion of the Work which has been either partially or fully completed by the [sic] before final inspection and acceptance thereof by the Owner,...

Appellant's Supplement, Subcontract Agreement, page 15, Section 24.

### III. Law and Argument

Appellee's Proposition of Law: A contingent payment clause may be enforceable only if a subcontractor expressly accepts the risk of an owner's non-payment for a specific reason, based on review of the entire contract, if operative facts meet that reason, and if other consideration exists.

The sole factual basis from which Appellant argues is a bare, self-serving affidavit filed in summary judgment below. Appellant offered no supportive evidence in discovery or in the pleadings.

It is well-established that a party's unsupported and self-serving assertions, offered by way of affidavit, standing alone and without corroborating materials under Civ.R. 56 will not be sufficient to demonstrate material issues of fact. \* \* \* To hold otherwise would undermine the function of the summary judgment exercise and allow the nonmoving party to avoid summary judgment by simply submitting such a self-serving affidavit containing nothing more than bare contradictions of the evidence offered by the moving party. [citation omitted.]

*Fifth Third Mortg. Co. v. Orebaugh*, 12<sup>th</sup> Dist. No. CA2012-08-153, 2013-Ohio-1730, 2013 Ohio App. LEXIS 1616 at ¶ 23-24.

The law on the issue is consistent across the country and for fifty years. The case *Thos. Dyer*, *supra.*, is followed nationwide:

These courts refuse to shift the risk of the owner's nonperformance from the general contractor to the subcontractor unless the language clearly indicates that the parties intended to do so. n1

n1 See

*Byler v. Great American Ins. Co.*, 395 F.2d 273 (10th Cir. 1968);  
*Dancy v. William J. Howard, Inc.*, 297 F.2d 686 (7th Cir. 1961);  
*Trinity Universal Ins. Co. v. Smithwick*, 222 F.2d 16 (8th Cir. 1955);  
*F. W. Sims, Inc., v. Federal Ins. Co.*, 788 F. Supp. 149 (E.D.N.Y. 1992);  
*Architectural Systems, Inc. v. Gilbane Bldg. Co.*, 760 F. Supp. 79 (D. Md.

1991);

*Statesville Roofing & Heating Co. v. Duncan*, 702 F. Supp. 118 (W.D.N.C. 1988);

*Aesco Steel v. J.A. Jones Constr. Co.*, 621 F. Supp. 1576 (D. La. 1985);

*Havens Steel Co. v. Randolph Engineering Co.*, 613 F. Supp. 514 (W.D. Mo. 1985);

*Seal Tite Corp. v. Ehret, Inc.*, 589 F. Supp. 701 (D.N.J. 1984);

*Moore v. Continental Cas. Co.*, 366 F. Supp. 954 (W.D. Okla. 1973);

*Howdeshell, Inc. v. Kline Corp.*, 56 Bankr. 122 (M.D. Fla. 1985);

*Pioneer Roofing Co. v. Mardian Constr. Co.*, 152 Ariz. 455, 733 P.2d 652 (Ariz. 1986);

*Yamanishi v. Bleily and Collishaw, Inc.*, 29 Cal. App. 3d 457, 105 Cal. Rptr. 580 (Cal. 1972);

*DEC Electric, Inc. v. Raphael Constr. Corp.*, 558 So. 2d 427 (Fla. 1990);

*Grady v. S.E. Gustafson Constr. Co.*, 251 Iowa 1242, 103 N.W.2d 737 (Iowa 1960);

*New Amsterdam Cas. Co. v. Allen Co.*, 446 S.W.2d 278 (Ky. App. 1969);

*Atlantic States Constr. Co. v. Drummond & Co.*, 251 Md. 77, 246 A.2d 251 (Md. 1968);

*Bayer & Mingolla Indus. v. A.J. Orlando Contracting Co.*, 6 Mass. App. Ct. 1, 370 N.E.2d 1381 (Mass. App. 1978);

*Mrozik Constr., Inc. v. Lovering Assoc.*, 461 N.W.2d 49 (Minn. App. 1990);

*American Drilling Service Co. v. City of Springfield*, 614 S.W.2d 266 (Mo. App. 1981);

*D.K. Meyer Corp. v. Bevco, Inc.*, 206 Neb. 318, 292 N.W.2d 773 (Neb. 1980);

*Action Interiors, Inc. v. Component Assembly Systems, Inc.*, 144 A.D.2d 606, 535 N.Y.S.2d 55 (N.Y. App. Div. 1988);

*Howard-Green Electric Co. v. Chaney & James Constr. Co.*, 12 N.C. App. 63, 182 S.E.2d 601 (N.C.App. 1971);

*Power & Pollution Serv. v. Surburan Power Piping Corp.*, 74 Ohio App. 3d 89, 598 N.E.2d 69 (Ohio App. 1991);

*Mignot v. Parkhill*, 237 Ore. 450, 391 P.2d 755 (Or. 1964);

*United Plate Glass Co. v. Metal Trims Indus.*, 106 Pa. Commw. 22, 525 A.2d 468 (Pa. Commw. Ct. 1987);

*Elk & Jacobs Drywall v. Town Contractors, Inc.*, 267 S.C. 412, 229 S.E.2d 260 (S.C. 1976);

*Sheldon L. Pollack Corp. v. Falcon Indus.*, 794 S.W.2d 380 (Tex. App. 1990);

*Amelco Electric v. Donald M. Drake Co.*, 20 Wash. App. 899, 583 P.2d 648 (Wash. App. 1978);

*Riley Constr. Co. v. Schillmoeller & Krofl Co.*, 70 Wis. 2d 900, 236 N.W.2d 195

(1975).

*Koch v. Construction Tech.*, 924 S.W.2d 68, 71 (Tenn. 1996) at p. 71.

At a minimum, it is contrary to law for a contractor to shift its own liability, such as non-payment for A.E.M.'s own breach of contract or failure to perform. Any such Subcontract interpretation is void, R.C. 2305.31 (Appendix hereto.) Therefore, prior to any finding in favor of A.E.M., the trial court must try the facts to determine A.E.M.'s own culpability. Implicitly A.E.M. must demonstrate its good faith efforts to collect, and its own lack of culpability.

A.E.M.'s boilerplate clause cannot be viewed in isolation from the overall relationship, the intent of the parties, and other subcontractor protections such as lien law, all construed against the drafter:

Clauses such as Paragraph 15 are not intended to provide the contractor with an eternal excuse for nonpayment.

*Midland Engineering Co. v. John A. Hall Constr. Co.*, 398 F. Supp. 981, 993 (N.D. Ind. 1975) at p. 993.

The court further acknowledged that the public policy of New Jersey provides great protection to subcontractors through the Mechanics Lien Act, \* \* \* This result is also justified under general contract principles, which require that a court consider the general purpose of an agreement in construing the sense of particular clauses. \* \* \* It is also fundamental that contract provisions are to be strictly construed against the drafter. [citations omitted.]

*Seal Tite Corp. v. Ehret, Inc.*, 589 F. Supp. 701, 705 (D.N.J. 1984) at para. 13.

“Magic words” cannot substitute for an understanding of the parties’ true intent,

and the contractor's good faith efforts to provide a payment remedy. A.E.M.'s use of boilerplate in a form contract is telling:

The gist of this line of cases is that the literal language need not be enforced; up to a point it should not matter what specific words are used.

\* \* \*

One would expect such language to be conjoined with words committing the general contractor to do its utmost to collect from the owner, such as to assert lien rights in timely fashion and the like, thereby protecting the collection rights of the subcontractor. Nothing in the present case indicates the parties went that far. To the contrary, the pay-when-paid clause here was a boilerplate provision in a standard printed form supplied by defendant. Defendant has not pleaded any extrinsic evidence to show that the parties specifically contemplated and agreed that the subcontractor would bear the risk of nonpayment by the owner. In short, the facts in support of defendant's position are about as weak as they ever are in a dispute of this kind.

*Statesville Roofing & Heating Co. v. Duncan*, 702 F. Supp. 118, 120 (W.D.N.C. 1988) at pp. 120-121.

If the true intent is to shift collection to Transtar, then A.E.M. must act in good faith to facilitate Transtar's ability to seek a remedy against the owner:

If a subcontractor is to undertake the collection risk, contrary to the usual allocation of risks among the parties to a construction contract, the undertaking must appear in clear and unequivocal language in the subcontract. \* \* \* It cannot be assumed or inferred. It is not the use of "when" or "if" that is dispositive of the enforceability of the clause, but whether there is clear evidence of an intent by both parties to shift the risk of collection. Nothing in the contract itself, or anywhere in the record before us, evidences the parties' intention to shift the collection risk to [subcontractor]. [citations omitted.]

*Avon Bros. v. Tom Martin Constr. Co.*, N.J. App. Nos. NO. A-740-99T1, A-812-99T1, A-1681-99T1, 2000 N.J. Super. Unpub. LEXIS 1 (Aug. 30, 2000) at pp. 21-22.

In the absence of the owner's insolvency, as in this case, A.E.M. must demonstrate its own efforts to pay Transtar:

It is then offered by the contractor, in the event of the owners insolvency, that it will "use reasonable means" to get the owner to pay the subcontractor. This Court's opinion and holding is that such offering, in light of the preceding language, is nothing more than an offer by the contractor to act responsibly in obtaining funds due the subcontractor; something which it is presumed to be doing all along. It does not constitute a condition precedent; imposing upon the subcontractor the duty of dealing with the contractor or of waiting, for an unreasonable time, for the contractor to receive payment from the owner.

*Lafayette Steel Erectors, Inc. v. Roy Anderson Corp.*, 71 F. Supp. 2d 582, 588-589 (S.D. Miss. 1997) at pp. 588-589.

The result of A.E.M.'s refusal to aid in collection is that Transtar is left without a remedy. The Ohio Constitution guarantees that Transtar has a right to a remedy:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay.

Ohio Constitution, Article I, Section 16.

Appellant creates a conundrum, that Transtar performed work, and for payment must rely on a remote owner who Transtar cannot sue. This violates Transtar's right to a remedy. Similarly, enforcement of contract provisions in a construction contract, in which parties specifically waive the right to sue for any legal or equitable relief, constitutes a violation of that individual's due process rights. *Will v. View Place Civic Ass'n.*, 61 Ohio Misc. 2d 476, 580 N.E.2d 87 (C.P. Hamilton 1989).

A.E.M.'s case citations all are consistent with this national trend merely to allow a reasonable time for payment, and not to forgive payment. A.E.M. misstates cases for the proposition that, "Ohio Courts have recognized conditional payment clauses, such as the one in this case, as binding and enforceable." Merit Brief of Appellant, p. 2.

- In *Chapman Excavating Co. v. Fortney & Weygandt, Inc.*, 8<sup>th</sup> Dist. No. 84005, 2004-Ohio-3867, 2004 Ohio App. LEXIS 3500, the court determined that a reasonable time had lapsed, and that the contractor therefore owed the payment.

- In *Kalkreuth Roofing & Sheet Metal v. Bogner Constr. Co.*, 5<sup>th</sup> Dist. No. 97 CA 59, 1998 Ohio App. LEXIS 4694, the court found the contract provision unenforceable as too ambiguous.

- In *Power & Pollution Services, Inc. v. Suburban Power Piping Corp.*, 74 Ohio App.3d 89, 598 N.E.2d 69 (8<sup>th</sup> Dist. 1991) at 91, 71, the court expressly held,

Applying the reasoning of the court in *Dyer* to the present case, we find the provision in dispute here does not set a condition precedent to the general contractor's duty to pay the subcontractor, but rather constitutes an absolute promise to pay, fixing payment by the owner as a reasonable time for when payment to the subcontractor is to be made. If the parties intended to shift the risk of solvency of the owner to the subcontractor, such intention should have been unambiguously expressed in the contract.

None of A.E.M.'s citations support A.E.M.'s theory. A.E.M. further cites three cases for the proposition that, "Virtually all jurisdictions that have addressed these types of clauses have interpreted condition-precedent language as sufficient to create a pay-if-paid clause." Merit Brief of Appellant, p. 4. But the holdings cited each require

an additional factual inquiry:

[T]he pay when paid provision at issue here does not permanently deprive Envirocorp [subcontractor] of its right to payment from CDM [contractor] if IDEM [owner] refuses to pay CDM. Support for this conclusion is considerable.

*Envirocorp. Well Serv. Inc. v. McKee, Inc.*, S.D. Indiana No. IP 99-1575-C-T/G, 2000

U.S. Dist. LEXIS 16088 (Oct. 25, 2000) at 16.

However, we question whether the transfer of risk to Harvey [subcontractor] is, as Agate [contractor] asserts, absolute. Harvey agreed to accept the normal credit risk associated with an owner's non-payment (i.e., insolvency), but Harvey did not necessarily accept the risk of non-payment under all circumstances. \*\*\* If Harvey can establish these circumstances, the condition precedent will be excused and this particular impediment to Agate's liability will be removed.

*L. Harvey Concrete, Inc. v. Agro Construction & Supply Co.*, 189 Ariz 178, 939 P.2d

811, 1997 Ariz App. LEXIS 105 (1997) at 183, 816.

A provision that makes receipt of payment by the general contractor a condition precedent ... for *any* reason (at least for any reason other than the general contractor's own fault), including insolvency of the owner.

*Gilbane Bldg. Co. v. Brisk Waterproofing Co., Inc.*, 86 Md. App. 21, 585 A.2d 248,

1991 Md. App. LEXIS 36 (1991) at 28, 252.

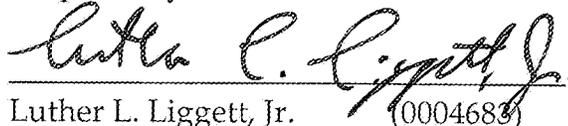
Thus, A.E.M. cites no case in which the contract provision is self-executing, in which the contractor simply can walk away from its obligation to pay its subcontractor.

#### IV. Conclusion

The reasonable interpretation of the Subcontract provision at issue is one in

which both parties secure payment, constituting consideration to both. Alternatively, to constitute a penal forfeiture to Transtar, the Subcontract failed to evidence the express intent of the parties. Such is the holding of the Sixth District Court of Appeals, which should be affirmed.

Respectfully submitted,

  
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CERTIFICATE OF SERVICE

The original of the foregoing Transtar Electric's Memorandum in Response has been served upon the following persons by placing a true copy in the U.S. Mail, postage pre-paid, this 19th day of June, 2013:

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IN THE SUPREME COURT OF OHIO

Transtar Electric, Inc.,	:	
	:	Case No. 2013-0148
Appellee,	:	
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	:	Sixth Appellate District
A.E.M. Electric Services Corp.,	:	
	:	Case No. G-4801-CL-02012-01100
Appellant.	:	

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APPENDIX TO  
MERIT BRIEF OF APPELLEE TRANSTAR ELECTRIC

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R.C. 2305.31 .....1

R.C. 2305.31. Indemnity agreements in construction contracts

A covenant, promise, agreement, or understanding in, or in connection with or collateral to, a contract or agreement relative to the design, planning, construction, alteration, repair, or maintenance of a building, structure, highway, road, appurtenance, and appliance, including moving, demolition, and excavating connected therewith, pursuant to which contract or agreement the promisee, or its independent contractors, agents or employees has hired the promisor to perform work, purporting to indemnify the promisee, its independent contractors, agents, employees, or indemnities against liability for damages arising out of bodily injury to persons or damage to property initiated or proximately caused by or resulting from the negligence of the promisee, its independent contractors, agents, employees, or indemnities is against public policy and is void. Nothing in this section shall prohibit any person from purchasing insurance from an insurance company authorized to do business in the state of Ohio for his own protection or from purchasing a construction bond.

History: 136 v H 489. Eff 11-19-75.