



November 2013

## Be Careful What You Release

A recent Connecticut Superior Court decision held that a broad general release has the effect of releasing claims based on a breach of contract occurring prior to the signing of the release but unknown or unobservable at that time (otherwise known as "inchoate" claims). The dispute in *Great American Assurance Co. v. Varco Pruden Buildings* arose out of the erection and collapse of a pre-engineered metal building. The owner of the project entered into an agreement with a contractor to acquire the pre-engineered metal building components. The contractor, in turn, entered into a purchase order agreement with a supplier to acquire various building components. During the erection of the building, disputes arose between the parties over nonpayment and a series of lawsuits was filed. The parties eventually resolved the lawsuits and executed a general release.

Several years later, the building collapsed under the weight of accumulated snowfall, and the owner brought a new lawsuit against the contractor and the supplier. The contractor and supplier each filed motions for summary judgment, contending that the owner's claims arose out of events that occurred before the signing of the general release and that the claims were therefore barred. The owner argued that the release did not preclude a cause of action for the collapse of the building because these claims were based on events that had not occurred at the time the release was executed. In addition, the owner claimed that the building's collapse was not foreseeable when the parties signed the general release.

The Court found that the language used in the general release was quite broad and noted in its decision that a settlement and release of a claim does not normally cover a claim based on events that have not yet occurred or that has its beginning after the release is executed; however, the release language concerning "future claims" or "unknown claims" is generally construed to cover inchoate claims that are "in being" at the time of the release but have not yet manifested themselves. The Court determined that, because all of the contractor's and supplier's conduct relating to the fabrication and erection of the building occurred before the general release was signed, the owner's claims were barred.

The *Varco Pruden* decision is relevant to anyone executing a release for any reason in relation to a claim or dispute. Parties should carefully consider whether to tailor such a release narrowly or to expressly carve out warranties, latent defects, or other sources of potential future claims. Otherwise, a party who executes such a release may be barred from holding another party responsible for inchoate claims not anticipated at the time of the release.

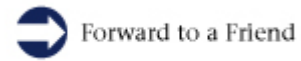
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