

Waste Disposal/Demolition Debris: Wisconsin Appellate Court Addresses Pricing Dispute



Walter Wright, Jr.
wwright@mwlaw.com
(501) 688.8839

12/19/2022

Co-Author: Daivd Lee

The Wisconsin Court of Appeals addressed in a July 13th opinion a pricing dispute involving the disposal of debris from a demolition project. See *Advanced Trucking & Services, LLC v. Hanover Insurance Company*, 2022 WL 2719712 (Wis. Ap., 2022).

A focus of the opinion was the doctrine of promissory estoppel.

Advanced Trucking & Services, LLC (“Advanced Trucking”) filed a judicial action against the Hanover Insurance Company (“Hanover”). It asserted that per a surety bond agreement with other defendant Dakota Intertek Corporation (“Dakota”), that Hanover was to be held joint and severally liable for the costs of carrying out a demolition project.

Dakota was the contractor. It subsequently intervened.

Dakota filed a third-party complaint against Waste Management of Wisconsin Inc. (“Waste Management”). It alleged that in the initial bid for the project Waste Management gave Dakota a quote for the cost of debris disposal that was incorporated into the bid. Further, Dakota alleged that Waste Management did not fulfill their services for the quoted price. This allegedly forced Dakota to use alternate options at a much higher price.

Waste Management argued that Dakota could not prove promissory estoppel. The quote provided was argued to be contingent upon the satisfaction of several special conditions unambiguously set forth in the quote. These special conditions included:

- Waste must meet site acceptability criteria
- Waste must comply with local, state, and federal regulations
- Waste must comply with site permit
- Sample evaluation/approval must be satisfied

Dakota responded by detailing two emails that they believed constituted unconditional promises. It argued the emails contained no language suggesting the promises are conditioned on some other precedent act. Further, Waste Management was argued to have already actively been involved in the project by visiting the site and speaking with other associated subcontractors on its role in the bid.

The lower court dismissed Dakota’s third-party complaint without prejudice. This was due to its determination that only communications in Dakota’s third-party complaint would be considered. The facts addressed in Dakota’s later responsive briefs were not to be considered. It therefore held that the

only relevant document important to the dispute was the schedule Waste Management provided in the response and motion to dismiss which indicated the services were expressly contingent upon the special conditions.

The Wisconsin Court of Appeals found that the communications between Waste Management and Dakota were not indicative of any promise of pricing. It held that the obvious contingent conditions imposed by Waste Management were valid. Dakota was determined to have not presented evidence indicating that the pricing was not contingent on the special conditions. Therefore, there was no clear and unconditional promise. A conditional promise cannot give rise to a claim for promissory estoppel.

The Court of Appeals affirmed the dismissal of Dakota's third-party complaint.

A copy of the Opinion can be downloaded [here](#).