Saiber Prevails on Behalf of Surety Company in Telecom Construction Dispute

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Saiber attorney Michael J. Grohs recently obtained a successful defense verdict on behalf of Saiber's client, a surety company, in an adversary proceeding trial in the United States Bankruptcy Court for the District of New Jersey. The trial involved a supplier of telecommunications equipment that was hired by a contractor to develop and build unique and highly specialized telecommunications equipment to be used in a massive Wi-Fi network installation project in New York City. The supplier was contractually required to provide the contractor with a surety performance bond, which contained a two-year contractual period of limitations that began to run when final payment under the contract "fell due."

Ultimately, the contractor instituted suit against the supplier, alleging that it failed to deliver conforming equipment, and against the surety company for payment under the surety bond. The supplier filed for Chapter 7 bankruptcy, and the litigation was transferred to the federal bankruptcy court for trial. Saiber moved for summary judgment prior to trial, arguing that the contractor's suit on the surety bond was time-barred due to the 2-year contractual limitations period. The contractor argued in opposition that because the supplier's equipment was non-compliant, the final payment under the contract never became due and, as a result, the contractual limitations period under the surety bond had not been triggered. The Bankruptcy Court found that there were questions of fact regarding when final payment "fell due" under the contract that had to be resolved at trial.

At trial, Mr. Grohs elicited critical evidence showing that the contractor made timely payments to the supplier upon achieving certain contractual milestones, but unilaterally withheld the final payment. Mr. Grohs persuaded the Bankruptcy Court that the contractor could not legally withhold payment indefinitely as a means to prevent the contractual limitations period from beginning to run. Invoking principles from the Uniform Commercial Code, the Bankruptcy Court ruled that the final payment was due when the contractor accepted the goods. Because the contractor's lawsuit against the surety company was filed more than two years after final payment under the contract "fell due", the Bankruptcy Court ruled that the surety company has no liability under the performance bond and dismissed the contractor's claim against the surety in its entirety. This result is particularly significant because it precluded the surety company from being held liable on the $1.2 million judgment that the Bankruptcy Court entered in favor of the contractor and against the bankrupt supplier.

Mr. Grohs was joined in the successful trial defense by Alexander C. Banzhaf.