

## Payment Under Protest: Payments With No Pride and No Prejudice

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**KEY TAKEAWAY:** A payor that has made one or more payments “under protest” during a construction project may recover those monies later, including after completion of the work. To recover such monies, a payor should obtain a formal reservation of rights agreement.

### Application to Your Organization

#### What Could Happen?

- Paying increased material costs due to an immediate need for the materials;
- Stepping in to fund additional services, notwithstanding that the additional services are alleged to arise due to the negligence or breach of contract of the payee; and/or
- Paying extra work while disputing whether the work is truly “extra” to the base scope of work.

#### Question(s) Considered by the Court?

- What is the context of the payment being made?
- Do the facts demonstrate that the payor wants to retain its rights to recover?

#### What Has the Court Said?

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*Knutson v. The Bourkes Syndicate*

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*Brent v. Slegg Construction Materials Ltd*

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*Glidurray Holdings Limited v. Qualicum Beach (Village)*

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*Domtar Inc. v Univar Canada Ltd.*

*The Queen v. Premier Mouton Products Inc.*

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