

Construction Worker Class Certified In NYC Wage Suit

By **Ron Zapata**, ron.zapata@portfoliomedia.com

Wednesday, Mar 05, 2008 --- A state court has granted class certification to New York City construction workers of bankrupt Cema Construction Corp., who have accused the company of failing to pay prevailing wages to employees who worked on public construction projects.

Judge Walter B. Tolub of the New York Supreme Court ruled in late February that a class action against Cema, Centennial Insurance Co. and Bovis Lend Lease LMB Inc. could proceed under two subclasses.

An automatic stay is in effect for Cema because it is in bankruptcy, but the suit is set to proceed against the construction company's surety Centennial and Bovis, which subcontracted work to Cema.

The suit claimed that workers were cheated out of more than \$500,000 in total wages for construction projects done on behalf of the city.

"In this case, the class action device is superior to any other method for the fair and efficient adjudication of the issues," Judge Tolub said in his ruling filed on Feb. 26.

One subclass would include any Cema employees who participated in construction work bonded by Centennial. Those six projects included public school, firehouse and city armory construction projects.

The second subclass would include Cema construction workers who worked on other projects, which included nine public schools in Queens and Staten Island, a Manhattan firehouse and Manhattan subway stations.

Lloyd Ambinder, an attorney for the plaintiffs, said he was pleased by the certification, which was only opposed by Centennial. An attorney for Centennial did not immediately return a request for comment.

Michael Galina, an attorney for Cema executives, said he did not oppose certification because it is a "fairly standard" way to handle cases with multiple plaintiffs.

The suit, filed in September 2006, claimed that Cema failed to pay its workers prevailing wages and supplemental benefits set forth by the New York State Department of Labor and incorporated into the construction company's public works contracts with the city between 2000 and 2005.

The suit claims breach of contract, violations of New York labor law regarding overtime compensation and other wage-related claims.

The purported class, which includes at least 70-100 members according to the plaintiffs, claimed it was entitled to between \$40 and \$55 per hour depending on a worker's job classification. Ambinder said the workers were only paid between \$15 and \$35 an hour.

The class would include roofers, sheet metal workers, bricklayers, carpenters and mason tenders.

The suit was brought against Centennial as the surety that issued labor and material payment bonds guaranteeing the obligations of Cema under the public works contracts. Centennial is allegedly responsible as the bond underwriter to pay workers underpaid by Cema.

Bovis, which was included in the suit because it subcontracted some of Cema's work, denied the suit's claims and also filed a cross-claim against Centennial claiming the insurer was responsible for any default payments under the subcontracts.

In November 2006, Centennial filed a third-party complaint alleging that G&E Holding Corp., Cema executives and their wives had agreed to indemnify the surety for any payments due as a result of costs from the bond, including the lawsuit.

New York State Labor Law holds that laborers, workmen and mechanics doing public work shall not be paid less than the prevailing rate of wages, which is defined as the rate paid in the locality to similar workers in the private sector pursuant to collective bargaining agreements.

The law also holds that workers are entitled to prevailing rate supplemental benefits, which may include health insurance, retirement benefits and holiday pay.

Long Island City, N.Y.-based Cema filed for Chapter 11 in October 2003 in the U.S. Bankruptcy Court for the Eastern District of New York, citing several lawsuits and tax claims.

The lawsuits included various claims from employees, finance and other construction companies.

Cema also cited its secured lender, State Bank of Long Island, declaring the company in default of a loan as another reason for the Chapter 11 filing.

The company listed estimated debts of between \$1 million and \$10 million.

The plaintiffs are represented in the matter by Barnes Iaccarino Virginia Ambinder & Shepherd PLLC.

G&E and the executives are represented in the matter by Rabinowitz & Galina. Bovis is represented in the matter by Kauff McClain & McGuire LLP. Centennial is represented in the matter by Gottesman Wolgel Secunda Malamy & Flynn PC.

The case is Mariusz Pajaczek, et al, v. Cema Construction Corp., et al., case number 112430/06 in the Supreme Court of the State of New York, County of New York.