

## Insights

### Indiana Supreme Court Rejects Longstanding Rule Prohibiting Supplier-to-Supplier Lien Rights

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June 7, 2022

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Many material suppliers are keenly aware of Indiana's longstanding supplier-to-supplier mechanic's lien prohibition. Essentially, the prohibition went as follows: supplier 1 provides materials to supplier 2. Supplier 2 sells the materials to a subcontractor, the general contractor, or perhaps the project owner. Supplier 1 was not entitled to a mechanic's lien because supplier 1 was too remote to come within the protections of the Mechanic's Lien Act ("Act").<sup>1</sup>

That changed this year when the Indiana Supreme Court decided *Serv. Steel Warehouse Co., L.P. v. United States Steel Corp.*, 182 N.E.3d 840 (Ind. 2022). In *Service Steel*, *Service Steel* supplied steel to *Troll Supply*. *Troll Supply*, in turn, supplied this steel to a construction project, but did not install it. *Troll Supply* failed to pay *Service Steel* for the steel, prompting *Service Steel* to file a nearly half-million dollar mechanic's lien against the project. Concluding that *Service Steel* was only a supplier-to-a-supplier, the trial court ruled that its mechanic's lien was prohibited under the Act.

The Indiana Supreme Court reversed the trial court, essentially overturning more than a century of supplier-to-supplier prohibition cases. The Supreme Court based its decision on the language of the Act itself. In particular, the Supreme Court focused on the provision in the Act that permits "a contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, ... a journeyman, a laborer, or *any other person . . . furnishing materials or machinery . . . for the erection . . . of a house, mill, manufactory, or other building to have a lien on that building and the accompanying land.*" *Service Steel*, 182 N.E.3d at 842-43 (quoting Ind. Code § 32-28-3-1) (emphasis added, internal quotations removed).

The Supreme Court reasoned that the longstanding supplier-to-supplier prohibition conflicts with the plain language of the Act, which unambiguously allows any person who furnishes materials for the erection of a building to have a lien, "without any limitation in respect to the person to whom the materials are furnished." *Service Steel*, 182 N.E.3d at 843 (analyzing Ind. Code § 32-28-3-1). Therefore, the Supreme Court upheld *Service Steel's* mechanic's lien against the project in this case, even though it was only a supplier-to-a-supplier.

#### Takeaways:

For Owners: Ensure your contractual documents include the necessary protections, including, among others, flowdown provisions which require prompt payments to any suppliers-to-suppliers, partial and final lien waivers from all suppliers, indemnity on behalf of downstream parties in favor of the owner in the event a lien is filed, financial assurances in the event a lien is filed, and other financial reassurances from the general contractor and other primary parties ensuring that each can satisfy payments to suppliers-to-suppliers, if required. If the project concerns certain residential construction, consider a no-lien agreement that satisfies the Act's requirements. Industry-standard AIA and EJCDC documents typically contain these draft provisions, but should be revised and negotiated with caution and with the care of legal counsel.

For General Contractors, Subcontractors, and Suppliers: Ensure your contractual documents include the necessary protections, including, among others, flowdown provisions which require prompt payments to any suppliers-to-suppliers, partial and final lien waivers from all suppliers, indemnity on behalf of downstream parties in favor of the general contractor, subcontractor, or supplier in the event a lien is filed, financial assurances in the event a lien is filed, and other financial reassurances from downstream subcontractors, suppliers, and other primary parties that each can satisfy payments to suppliers-to-suppliers, if required. Industry-standard AIA and EJCDC documents typically contain these draft provisions, but should be revised and negotiated with caution and with the care of legal counsel.

For Suppliers supplying to another Supplier: Recognize the 100+ year old supplier-to-supplier mechanic's lien prohibition no longer applies. If payment is not timely made to your business, ensure lien rights are exercised within the time limits required by the Act (typically, 60 or 90 days). Also, note the Service Steel Court's reference to the invoices submitted by Service Steel – because the invoices established the steel was used in the erection of the owner's facilities, that evidence further demonstrated Service Steel's entitlement to a mechanic's lien.

If you have any questions concerning supplier lien rights, or Indiana mechanic's liens in general, please contact **Blake P. Holler** or **Christopher W. Bloomer**.

*Disclaimer. The contents of this article should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult with counsel concerning your situation and specific legal questions you may have.*

[1] For more on the former prohibition, see: *Mechanic's Liens Remain Unavailable to Certain Construction Suppliers*, June 23, 2019, found at: <https://www.kriegdevault.com/insights/mechanics-liens-remain-unavailable-certain-construction-suppliers>