



PRESS RELEASE

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Appellate Court Affirms Unanimous Jury Verdict for Hahn Loeser Client TRAX Construction Co.

(Columbus, OH – September 30, 2021) -- On Thursday, September 30, 2021, the Eleventh District Court of Appeals for the State of Ohio upheld a judgment for \$1.1 million in compensatory damages in favor of Hahn Loeser's client -- TRAX Construction Co. -- against OHM Advisors, Inc., and Eugene Esser, the former Engineer for the Village of Reminderville, as well as an award of \$375,000 in punitive damages and attorney fees and expert fees in the amount of \$483,870.53. [The decision can be found here.](#)

TRAX is a family-owned and operated construction business specializing in site preparation, including installation and relocation of utilities, asphalt milling and paving, concrete work and landscaping. It brought the case against Reminderville alleging failure to pay for directed change order work arising from utility conflicts and differing site condition, as well as unpaid retainage and contract balance. TRAX also sued OHM Advisors and Mr. Esser for fraud alleging that, as Reminderville's project manager and engineers, they directed TRAX to perform the work before denying responsibility. TRAX further alleged that this behavior reflected the intent to mislead TRAX into performing the work.

Hahn Loeser was involved in the case from early on and proactively assisted TRAX with real-time project documentation. With Hahn Loeser's guidance, TRAX fully developed its project file which served as a key tool in aiding Hahn Loeser trial attorneys to powerfully present TRAX's case, ultimately leading to a verdict in TRAX's favor.

The Court of Appeals found that the jury's verdict was supported by credible evidence that TRAX reasonably and justifiably relied upon OHM's designs and representations, including assurances made regarding the payment applications and change orders.

The Court rejected the argument of OHM and Esser that under the Economic Loss Doctrine, design professionals should not be held liable for fraud under Ohio law with respect to statements and omissions throughout the course of a construction project. In doing so, the Court found that:

“no societal interest is served by promoting either the concealment of material facts with the intent to mislead or the affirmative flow of information not genuinely believed by its source to be true. Hence, we hold public policy is best served by acknowledging an independent duty not to commit fraud and leaving open the potential of an intentional tort suit to loom over a party considering actual fraud.”



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This case is very important to the construction industry, as it reinforces the applicability of the Spearin Doctrine, rejects the notion that design professionals cannot be held liable for fraudulent representations and omissions, and sends a cautionary message to engineer project managers who direct that extra work be performed without the expectation of paying the contractor compensation. Hahn Loeser is proud of the victory our trial and appellate teams achieved for TRAX. Our team included attorneys [O. Judson Scheaf, III](#), [Andrew J. Natale](#), [Aaron S. Evenchik](#), [Jeffrey A. Yeager](#), and [Elisé K. Yarnell](#), with support from paralegal [Beth A. Dannaher](#).

About Hahn Loeser

Founded in 1920, [Hahn Loeser](#) celebrates more than a century of client service. Today, Hahn Loeser has six offices and more than 130 attorneys representing Fortune 500 corporations, privately held businesses, non-profit institutions, governmental entities and individuals and families across the country and around the world. Our attorneys have been recognized for their commitment to outstanding client service and their dedication to partnering with our clients to provide creative and strategic solutions that help them achieve their goals.

Hahn Loeser's Construction Team is the only Ohio firm listed two years in a row in *Construction Executive's* Top 50 Construction Law Firms List for 2020 and 2021.

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