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COURT OF APPEALS

STATE OF NEW YORK

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WALTON,

Appellant,

-against-

NO. 53

COMFORT SYSTEMS USA,

Respondent.

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20 Eagle Street  
Albany, New York  
May 20, 2026

Before:

CHIEF JUDGE ROWAN D. WILSON  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE MICHAEL J. GARCIA  
ASSOCIATE JUDGE MADELINE SINGAS  
ASSOCIATE JUDGE ANTHONY CANNATARO  
ASSOCIATE JUDGE SHIRLEY TROUTMAN  
ASSOCIATE JUDGE CAITLIN J. HALLIGAN

Appearances:

JASON ROZGER, ESQ.  
MENKEN SIMPSON & ROZER LLP  
Attorney for Appellant  
225 Broadway, Suite 920  
New York, NY 10007

ALEXANDRIA TWINEM, ESQ.  
NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL  
Attorney for Department of Labor  
The Capitol  
Albany, NY 12224-0341

JESSICA PIZZUTELLI, ESQ.  
LITTLER MENDELSON P.C.  
Attorney for Respondent  
900 Third Avenue  
New York, NY 10022

Bobby Hodges  
Official Court Transcriber



1 CHIEF JUDGE WILSON: Welcome back. The next case  
2 on the calendar is Walton v. Comfort Systems. Counsel?

3 MR. ROZGER: I'd ask to reserve three minutes for  
4 rebuttal, please.

5 CHIEF JUDGE WILSON: Yes.

6 MR. ROZGER: Thank you, Your Honor. May it  
7 please the court. My name is Jason Rozger. I represent  
8 the plaintiffs - - - I'm sorry - - - the appellants and the  
9 plaintiffs below in this case.

10 At the outset, I'd like to emphasize that the  
11 Second Circuit already held that the workers in this case  
12 performed prevailing wage work and didn't get paid  
13 prevailing wages. The Second Circuit certified the  
14 questions to this court to determine whether those workers  
15 have a remedy. And the two certified questions have a  
16 common theme. Can employer shape their public work  
17 contract - - -

18 JUDGE RIVERA: Why isn't the administrative  
19 process the remedy?

20 MR. ROZGER: Two reasons I say to that. One, it  
21 is a remedy. But there are two parallel remedies. There's  
22 the administrative process and there's the private right-  
23 of- action. And that's been the case for 80 years, longer  
24 than that.

25 The second half of that is that for the

1 plaintiffs in this case, there actually was no  
2 administrative remedy, at least as the time they found  
3 counsel. The Department of Labor goes back two years on  
4 these claims. That's in the amicus filing regarding the  
5 CAP program. And that's also in Labor Law 220-B. So there  
6 are very good reasons to protect the third-party  
7 beneficiary right.

8 JUDGE SINGAS: Can I go to the second question  
9 for a minute and then we can go back? Is your position  
10 that you can never shorten the statute of limitation  
11 period, or that the one-year limitation here was  
12 unreasonable?

13 MR. ROZGER: Our position, Your Honor, is that  
14 any shortening of the statute of limitations on a  
15 prevailing wage, third-party beneficiary claim, is against  
16 public policy, and therefore unreasonable and therefore  
17 unenforceable.

18 JUDGE HALLIGAN: So only as to the third-party  
19 beneficiary, could the two parties to the contract shorten  
20 it in your view?

21 MR. ROZGER: Yes. That's - - - I think that's  
22 correct. The public policy that protects the right of  
23 prevailing wage workers to sue and get their benefits does  
24 not apply to the sophisticated parties who are making a  
25 public works contract.

1 JUDGE CANNATARO: So on a wage in a third-party  
2 beneficiary claim, the - - - regardless of what's in the  
3 agreement, they're going to get the benefit of what period,  
4 the regular period that you would get to bring a - - -

5 MR. ROZGER: The six year - - -

6 JUDGE CANNATARO: - - - administrative  
7 proceeding?

8 MR. ROZGER: No.

9 JUDGE CANNATARO: The contract?

10 MR. ROZGER: The contract It is still - - - it's  
11 heavily modified by the public policy and by Labor Law 220,  
12 but at the bottom, it is still a third-party beneficiary of  
13 contractual - - -

14 JUDGE CANNATARO: Contractual claim?

15 MR. ROZGER: Yes.

16 JUDGE SINGAS: But why not make it the three-year  
17 then, which is consistent with the administrative  
18 proceeding?

19 MR. ROZGER: Because it's not an administrative  
20 proceeding, technically. It's always been six years. It's  
21 always been a contract claim going back to - - -

22 JUDGE HALLIGAN: But what gives rise to your  
23 argument that there is a prevailing wage requirement as a  
24 statute, right?

25 MR. ROZGER: Yes.



1 JUDGE HALLIGAN: So why not apply the statutory  
2 three-year statute of limitations? Why wouldn't that come  
3 along with it?

4 MR. ROZGER: What we have is a - - - a three - -  
5 - it's a statutorily derived contractual - - -

6 JUDGE HALLIGAN: Yes.

7 MR. ROZGER: - - - remedy. It's a contractual -  
8 - -

9 JUDGE HALLIGAN: So why not derive the statute of  
10 limitations along with the right?

11 MR. ROZGER: I would say because the situation,  
12 the calculations by every person in this - - - in the  
13 public contracting industry is, hey, there's a six-year  
14 statute of limitations as of now. And what is - - - why is  
15 that important? Because if you're a contractor and a  
16 little bit unscrupulous, you're thinking, what's my  
17 liability if I try to chisel my clients - - - my workers  
18 getting paid prevailing wages? Wow. I get told this could  
19 go back six years. That's a pretty heavy duty, you know,  
20 hammer to be hit with if they break the law.

21 Cutting it in half at this stage is going to free  
22 up a lot of people. It's also going to have the effect of  
23 extinguishing claims that already exist.

24 JUDGE CANNATARO: Well, what about this notion  
25 that the rights of a third-party beneficiary have to more

1 or less have an equivalence with the rights of the parties  
2 to the contract from which they're claiming to be a  
3 beneficiary?

4 MR. ROZGER: That is absolutely true outside the  
5 prevailing wage context.

6 JUDGE CANNATARO: And that's because it's a  
7 statutory public policy question?

8 MR. ROZGER: It's a statutory - - - it's the - -  
9 - in the New York Constitution. Let me read, Your Honor, a  
10 little bit what that says. Article 1, Section 17. This is  
11 powerful stuff. "Labor of human beings is not a commodity,  
12 nor an article of commerce". I submit what that means is  
13 that the labor has a moral value under the state  
14 constitution. And what that means is the right - - - the  
15 moral right to someone's wages, their prevailing wages has  
16 to outweigh a contractual right between parties to adjust  
17 the contract between them.

18 JUDGE CANNATARO: That all sounds great, and in  
19 some parts even poetic. But none of it speaks to  
20 limitations of time.

21 MR. ROZGER: Not directly, Your Honor. No. But  
22 contracts are change, contracts are adjusted based on the  
23 law all the time. Courts blue pencil agreements all the  
24 time based on provisions that are unlawful or against  
25 public policy. This is just one more example of it.

1           And you know - - - and another thing I would say  
2 is that we've had prevailing wage laws since the 19th  
3 century. It seems like nobody's really tried this until  
4 recently.

5           And another important point is that I think it's  
6 very clear, as we've argued, that a contractor could not  
7 get - - - could not have a contract language that disclaims  
8 liability for a third-party beneficiary claim on prevailing  
9 wages. To allow the same thing to happen maybe for a  
10 slightly shorter period of time with the statute of  
11 limitations is effectively the same thing. Prevailing wage  
12 plaintiff isn't going to care whether their claim is  
13 foreclosed because the contract disclaimed third-party  
14 beneficiary remedies, or whether the contract had a one  
15 year or even a six-month statute of limitations or a three-  
16 year statute of limitations. That certainly happens if  
17 someone has a - - -

18           CHIEF JUDGE WILSON: So governmental employees  
19 are limited to the administrative procedure, is that right?  
20 Governmental employees are limited to the administrative  
21 procedure?

22           MR. ROZGER: Governmental employees generally  
23 don't have 220 rights.

24           CHIEF JUDGE WILSON: Right. Not - - - right. If  
25 the government retains somebody, let's say, as a laborer

1 who would fall under the classification, they're not in the  
2 classified service, though.

3 MR. ROZGER: There's - - - there are cases from  
4 this court holding - - - and it's in the papers and I don't  
5 have it in my fingertips - - - holding that a - - -  
6 employees of a school district - - - school district  
7 decided to save some money and have their own employees,  
8 you know, do some construction.

9 CHIEF JUDGE WILSON: Yeah.

10 MR. ROZGER: The court said that's fine. That's  
11 not a - - - it doesn't - - - they don't get a remedy  
12 because they're not a third-party beneficiary. They're not  
13 - - -

14 CHIEF JUDGE WILSON: They have the statutory  
15 remedy only. No?

16 MR. ROZGER: I can't - - - I can't tell you if  
17 they have a statutory remedy or not. They may have no  
18 remedy. But that's kind of far away from what - - -

19 CHIEF JUDGE WILSON: Even if they're not paid a  
20 prevailing wage?

21 MR. ROZGER: It's my understanding that  
22 government employees do not have the right to prevailing  
23 wage. But that's - - - nobody here is a government  
24 employee. I think that's a little far from - - -

25 JUDGE RIVERA: Because they're getting paid

1           whatever they're already getting paid because they're  
2           already an employee for some other service. Is that what  
3           you mean?

4                       MR. ROZGER: That's what - - - that was the  
5           situation in the cases I was referring to. Yes.

6                       JUDGE RIVERA: Uh-huh. Thank you.

7                       MR. ROZGER: They're already full-time, and they  
8           have civil service protections, they have union  
9           protections, presumably, but - - - exactly.

10                      I just want to also emphasize the point that the  
11           amicus makes, and this is, I think, equally applicable to  
12           both certified questions. The tinkering and reducing the  
13           rights of employees or workers to bring a third-party  
14           beneficiary theory claim also will diminish their rights to  
15           be in a union. The rights as the constitution, New York  
16           State Constitution points out, for the right to organize  
17           and bargain collectively.

18                      Every time you make it easier for a nonunion  
19           contractor to avoid paying prevailing wage, you undermine  
20           the union contractors. The union contractors have to pay  
21           the equivalent of prevailing wages because they - - - the  
22           prevailing wages are based on the union rates. So they're  
23           paying those rates already. The more nonunion contractors  
24           get away with not paying prevailing wages, the more the  
25           union contractors are undermined. They wither away, and

1 then people are left accepting whatever wages they can get  
2 from nonunion contractors and having reduced rights to  
3 enforce their prevailing wage rights.

4 JUDGE RIVERA: Let me ask you a question.  
5 Staying with that second certified question, let's say we  
6 don't reformulate the question. Do we need to actually  
7 say, what is the time frame that applies? Could we not  
8 just say that one year is not reasonable or not  
9 enforceable?

10 MR. ROZGER: Then we may be back here in a few  
11 months when the Second Circuit - - -

12 JUDGE RIVERA: I thought you said this doesn't  
13 really happen. Or is this - - - is this something that's  
14 constantly happening, this attempt to cut short the statute  
15 of limitations?

16 MR. ROZGER: The attempt to cut short the statute  
17 of limitations is happening now, that's - - - these are - -  
18 -

19 JUDGE RIVERA: Well, other than in this case, I'm  
20 saying, is this like a regular course - - - we're seeing  
21 these in contracts regularly, is that your point?

22 MR. ROZGER: There's not a lot of reported  
23 decisions with these contracts. But when you see them in  
24 the boilerplate contract provisions, like it was in this  
25 case that tells you that contractors or at least some of

1           them are thinking - - -

2                   JUDGE RIVERA:   Okay.

3                   MR. ROZGER:   - - - okay, this is a way of  
4           managing our liability for not paying prevailing wages.

5                   JUDGE CANNATARO:   But to get back to Judge  
6           Rivera's question, as framed, the second question doesn't  
7           really ask us to say what the correct limitations period  
8           would be.  It just asks us whether or not this one is too  
9           short.

10                  MR. ROZGER:   Our - - - I think the public policy  
11           behind prevailing wages requires that the statute of  
12           limitations be the six years that it's been for the length  
13           of the statute.

14                  JUDGE HALLIGAN:   That goes to - - - I think, to  
15           the merits of your view on what the correct statute of  
16           limitations is.  But the certified question as drafted  
17           doesn't require us to answer that at this juncture, does  
18           it?

19                  MR. ROZGER:   I think it does, because otherwise  
20           the Second Circuit is not going to have the guidance they  
21           need to decide the case.

22                  JUDGE HALLIGAN:   Well, the Second Circuit, I  
23           think, sends us a lot of certified questions, and they tend  
24           to be pretty specific in asking us what they think is  
25           essential for them to resolve the dispute in front of them.

1 MR. ROZGER: Right. And it would be essential to  
2 know what the limitations period in this case actually is.  
3 If - - -

4 JUDGE RIVERA: Yes. But if we said yes, if we  
5 answer in the affirmative - - - again, assuming no  
6 reformulation of the question, just staying with the  
7 question as presented. If we answered in the affirmative,  
8 disposes of the case; we answer in the negative, disposes  
9 of the case, right? And that's all they need. They want  
10 to dispose of the action before them. Which is what the  
11 rule of certification is - - - focuses on anyway. It's  
12 going to dispose of that case.

13 MR. ROZGER: Yeah.

14 JUDGE RIVERA: Not as an attempt for us to  
15 provide an advisory opinion when it's unnecessary in an  
16 action.

17 MR. ROZGER: I think it's necessary to express  
18 that if the - - - if any shortening is unreasonable and  
19 enforceable to express that, because then the Second  
20 Circuit will be faced with the question of, okay, if one  
21 year is not reasonable, then what is reasonable? And I  
22 don't think they are any more able to answer that question  
23 than certainly this court is.

24 JUDGE RIVERA: And then without answering it  
25 we're just setting this up for multiple litigations, and

1 they're either coming to this well or they're not.

2 MR. ROZGER: Much as I love being in this  
3 courtroom, Your Honor, I'd rather not do it in this case  
4 again.

5 CHIEF JUDGE WILSON: Thank you.

6 MR. ROZGER: Thank you, Your Honor.

7 MS. TWINEM: May it please the court. Alexandria  
8 Twinem, on behalf of the Department of Labor, as amicus.  
9 DOL agrees with appellants, that the court should conclude  
10 that a term to pay prevailing wages is implicit in every  
11 public works contract, and also that parties cannot agree  
12 to shorten the statute of limitations period to one year.

13 On the first certified question, I think the  
14 court need go no further than the text of Labor Law section  
15 223-A itself. The last sentence of which says such  
16 contracts shall contain a provision that each laborer and  
17 other groups shall be paid wages herein.

18 JUDGE HALLIGAN: On the second question, if I can  
19 - - -

20 MS. TWINEM: Yes.

21 JUDGE HALLIGAN: - - - would you address the  
22 issue we were discussing just before your colleague sat  
23 down, which is the second certified question. Were we to  
24 conclude that a one-year statute of limitations was not  
25 appropriate, do we need to decide what an appropriate

1 duration is as the way the question is framed?

2 MS. TWINEM: I don't think the court needs to  
3 identify what the statute of limitations is, but I think it  
4 has to identify why one year is not appropriate, because I  
5 think if this court says one year is unreasonable, then the  
6 court will have already implicitly suggested the statute of  
7 limitations can be shortened based on reasonability. So I  
8 think the answer - - -

9 JUDGE HALLIGAN: And what's your view about the  
10 answer to that question?

11 MS. TWINEM: So we agree with appellants that we  
12 don't think the statute of limitations can be shortened,  
13 that it would be against public policy. It would eliminate  
14 some individuals' claims entitlements - - -

15 JUDGE CANNATARO: And do you agree that the claim  
16 is contractual and that it's six years?

17 MS. TWINEM: We do agree that the claim is  
18 contractual and it should be six years. And I think that  
19 goes to the language of the CPLR provision. CPLR 214(2).  
20 And what that says is that where the cause of action is  
21 created by statute, that those are governed by a three-year  
22 period here, because the cause of action is from the  
23 contract. All that the CP - - - all that the Labor Law is  
24 doing is requiring a term to be added to the contract, but  
25 it is not creating the cause of action itself. That's

1 still contractual.

2 CHIEF JUDGE WILSON: So if we were to answer the  
3 first question, the way you suggest, right?

4 MS. TWINEM: Uh-huh.

5 CHIEF JUDGE WILSON: Affirmatively, essentially.  
6 Doesn't that implicitly answer the second question?

7 MS. TWINEM: I'm not sure I understand why that  
8 would be true, Your Honor.

9 CHIEF JUDGE WILSON: Well, if we say that the  
10 contract has a term in it, we imply a term into it from the  
11 statute, right? And so the contract now contains that  
12 term. The suit is on the contract.

13 MS. TWINEM: Then that is in the contract. To  
14 me, that - - -

15 CHIEF JUDGE WILSON: Right. And then it's an  
16 action on the contract?

17 MS. TWINEM: I agree. I think that's absolutely  
18 - - -

19 CHIEF JUDGE WILSON: I mean, if we imagine that  
20 we take all these contracts and we add to them the words of  
21 the statute, right, which is what we're implicitly saying  
22 has to - - - if we were to answer it that way, then it's in  
23 the contract. And if you were suing and it was in the  
24 contract, it's a contract suit.

25 MS. TWINEM: I agree, I think that's a great



1 argument.

2 CHIEF JUDGE WILSON: Well, that - - - but so - -  
3 - but then the question is, do we then need to actually  
4 answer the second question with an explanation?

5 MS. TWINEM: I - - -

6 CHIEF JUDGE WILSON: If we were to answer the  
7 first question that way.

8 MS. TWINEM: I think if the court says that one -  
9 - - that it cannot be shortened to a one-year statute of  
10 limitations and says nothing else - - -

11 CHIEF JUDGE WILSON: Uh-huh.

12 MS. TWINEM: - - - where it doesn't say it's  
13 because it's unreasonable and it has left open fully the  
14 question of, you know, whether the contract can be  
15 shortened or not, I do think that is sufficient. I  
16 certainly think this court could save itself future  
17 versions of this case, if it were to go further and  
18 explain, you know, whether the statute of limitations can  
19 be shortened at all. I think that perhaps would be even  
20 more sort of useful than saying what the outside term of  
21 the statute of limitations is in the given - - -

22 CHIEF JUDGE WILSON: I guess what I'm asking in a  
23 different way is maybe the - - - maybe the Second Circuit  
24 thinks that they can determine what it is, as long as we  
25 tell them that it can't be whittled down to one. I mean, I

1 don't know.

2 MS. TWINEM: I think that's certainly something  
3 that this court would be able - - - would be able to do.

4 JUDGE GARCIA: You disagree with the city that it  
5 should be three years?

6 MS. TWINEM: We do, for the reason just said that  
7 - - - that I think that's a slight misreading of the CPLR  
8 as to where the cause of action comes from. But I think  
9 where the city and Department of Labor agree is that in any  
10 case, one year does not work either because the statute of  
11 limitations cannot be shortened at all, or because it is  
12 unreasonable given the types of issues that arise in these  
13 prevailing wage third-party beneficiary contract claims.  
14 And for the reasons that are already outlined in our brief.

15 JUDGE HALLIGAN: Is it your view that three years  
16 instead of six as a policy question, is not tenable in  
17 terms of vindicating these rights or just that as a matter  
18 of the legal analysis, you think that - - - that the six-  
19 year rule controls, for the reasons the Chief identified?

20 MS. TWINEM: Our basis for saying the six-year  
21 statute of limitations is based on sort of the textual  
22 language of the CPLR, it may be that three years would be a  
23 reasonable time to - - - for many claims to be litigated,  
24 if that were the statute of limitations time that applied.  
25 Although, as we do note in our brief three years is the

1 time that governs DOL. And of course, DOL in litigating  
2 these claims has many advantages that an individual  
3 layperson does not. And so it may be that a slightly  
4 longer statute of limitations is within the overall policy  
5 considerations here. If there are no other questions.

6 CHIEF JUDGE WILSON: Thank you.

7 MS. PIZZUTELLI: Good afternoon, Your Honors.  
8 Jessica Pizzutelli with the law firm Littler Mendelson on  
9 behalf of the Respondent Comfort Systems USA, Syracuse,  
10 Inc., doing business as ABJ Fire Protection.

11 I too would like to start with the second  
12 certified question. The question should be answered in the  
13 affirmative, and that derives from four bedrock principles  
14 of New York law. The first, freedom of contract. This  
15 court has held in the 159 MP Corp. case - - -

16 JUDGE TROUTMAN: What about the public policy  
17 argument?

18 MS. PIZZUTELLI: Sure. There is no public policy  
19 that supports a shortening of the contractual limitations  
20 provision here. And there are numerous reasons why. My  
21 adversaries do not cite to a single New York case or  
22 authority that supports that a contractual limitation  
23 provision should be excised from a contract, just because a  
24 prevailing wage claim is at issue. My adversaries do not  
25 address New York Labor Law section 220(G), which we have

1 highlighted in our papers, which is in Section 220 itself -  
2 - -

3 JUDGE TROUTMAN: Well, although you wanted to  
4 start with the second question, if the prevailing wage is  
5 implicitly in, because of the statute, doesn't shortening  
6 the statute of limitations to one year effectively  
7 negatively impacts?

8 MS. PIZZUTELLI: No, Your Honor. I don't think  
9 it negatively impacts because workers still have their  
10 legislatively-provided administrative remedy - - -

11 JUDGE TROUTMAN: But if there's a requirement  
12 that it has to be a part of the contract, why should  
13 parties be able to - - - or why is it appropriate that  
14 parties contract out the normal contract time that you can  
15 sue?

16 MS. PIZZUTELLI: Well, I'd answer that question a  
17 couple ways. One, because it's authorized by the CPLR  
18 itself. The CPLR allows parties to contract to a shorter  
19 limitations provision. That's not limited to just the  
20 parties to the contract. They can limit to any - - - they  
21 can contract for any shorter limitations.

22 CHIEF JUDGE WILSON: So could they contract for  
23 any third-party claim has a one-day statute of limitation  
24 and everything else is six years? Could they contract for  
25 that?

1 MS. PIZZUTELLI: Well, Your Honor, for that  
2 question, I would look to the Farage case from this court.  
3 And what the court says is, well, what's reasonable? And  
4 what's reasonable is based on the facts of the case before  
5 it. And in this case, I would submit to you that whether I  
6 could argue a one-day provision is enforceable, I'm not  
7 arguing that. What I'm arguing is that a one-year  
8 provision is enforceable and - - -

9 CHIEF JUDGE WILSON: No. I understand that, but  
10 - - - so you're saying that the freedom to contract that  
11 you've been talking about is bounded in some way. It's not  
12 unrestrained.

13 MS. PIZZUTELLI: It is bound in some ways,  
14 because what the courts have said is you can - - - you can  
15 contract for a shorter limitations period. But it has to  
16 be reasonable and the burden - - -

17 CHIEF JUDGE WILSON: And can you contract for a  
18 different one for let's say, wage claims and then one for  
19 everything else?

20 MS. PIZZUTELLI: You could because the burden - -  
21 - and the burden, Your Honors, is on Appellants to prove  
22 that the one-year limitation provision is unreasonable  
23 here. And I would submit to you on the record before this  
24 court, on the record before the Second Circuit, and on the  
25 record before the District Court, that they have not met

1 their burden of proving - - -

2 JUDGE RIVERA: Why not?

3 MS. PIZZUTELLI: - - - that a one-year limitation

4 - - -

5 JUDGE RIVERA: Why not?

6 MS. PIZZUTELLI: Well, I would point you - - -

7 JUDGE RIVERA: Even the DOL recognizes that a

8 worker really has a hard time satisfying a shortened

9 statute of limitations to bring these claims.

10 MS. PIZZUTELLI: Well, Your Honor, and I would

11 revert back to Farage case because what the Farage case

12 says - - - well, I have two responses to that. The Farage

13 case says we won't rely on conclusory assertions to support

14 the - - - an argument as to reasonableness as to the

15 shortening of the statute of limitations. And I would

16 argue that everything the DOL has submitted to this court

17 and argued to you today has been - - -

18 JUDGE RIVERA: What would they have to show?

19 MS. PIZZUTELLI: - - - total conclusory - - -

20 JUDGE RIVERA: Let me try it a different way.

21 What would they have to show to establish one year is not

22 reasonable?

23 MS. PIZZUTELLI: Well, I think what you would do

24 is look to the legislative scheme itself. And that's where

25 I circle back to Section 220(G), where the legislature

1           itself - - -

2                   JUDGE RIVERA:  So if there's a particular policy  
3           that animates that scheme, as is true for all legislation,  
4           and that particular policy is one that focuses on wages - -  
5           - prevailing wages, excuse me, being paid so much so that  
6           it requires in every contract that there - - - that it  
7           includes that provision.  Why wouldn't that be enough to  
8           show that shortening the time frame is not what the  
9           legislature anticipated?

10                   MS. PIZZUTELLI:  Well, I would look to what the  
11           legislature says in the statute.  And so the legislature  
12           does not say in the statute that you cannot shorten a  
13           contractual limitations provision.

14                   JUDGE RIVERA:  Does it need to say that in the  
15           statute when everything else is weighing in the other  
16           direction?

17                   MS. PIZZUTELLI:  Yes, Your Honor.  It does need  
18           to say that in the statute itself, because the CPLR  
19           authorizes just that.  The CPLR section 201 does not apply  
20           just to contractual claims.  It applies to statutory claims  
21           as well.  And we've cited to numerous examples in our  
22           papers where the New York Labor Law - - -

23                   JUDGE RIVERA:  Yeah.  But again, you're missing  
24           that phrase reasonable, right?  So the question of  
25           reasonableness tracks back then to the statute.  What's the

1 policy behind the statute? What are the larger societal  
2 interests in the prevailing wage being paid?

3 MS. PIZZUTELLI: And - - -

4 JUDGE RIVERA: So it's not as blanket as I think  
5 you make it seem in your argument that, oh, we can always  
6 just shorten it.

7 MS. PIZZUTELLI: Well, but I - - - it's - - - and  
8 I'm not suggesting that. I'm suggesting it has to be  
9 reasonable. And how do we determine reasonable? Well,  
10 one, has the other side put forward any evidence on the  
11 record to suggest that it's unreasonable? I would submit  
12 to you they have not.

13 Second, I would look to what the legislature has  
14 said in the statute itself. And that's when I circle back  
15 to section 220(G), which my adversaries haven't addressed  
16 at all, which endorses a similar one-year limitations  
17 period for workers to sue on a bond running from the date  
18 of the unpaid wages. And so the legislature itself has  
19 said in the statute, we recognize that a one-year  
20 limitations provision is reasonable in this context when  
21 suing on a bond. I raised it in my papers. The Appellants  
22 have not addressed that at all. The Department of Labor  
23 has not addressed that at all.

24 And I think it's also critical that we note in  
25 our papers that the legislature has, in fact, considered

1 and rejected proposed legislation to amend the New York  
2 Labor Law to deem unconscionable, void, and unenforceable  
3 any provision in a contract waiving any substantive or  
4 procedural right or remedy relating to a claim of  
5 nonpayment of wages. That bill died in committee. The  
6 legislature has not passed that bill, saying that you  
7 cannot agree to a limitations provision that shortens a  
8 right to nonpayment - - - or a nonpayment of wages.

9 CHIEF JUDGE WILSON: So how did - - -

10 JUDGE SINGAS: Did that have to do with a third-  
11 party beneficiary?

12 MS. PIZZUTELLI: It didn't. But I think it  
13 speaks to the legislative intent - - -

14 JUDGE SINGAS: Isn't that significant though?  
15 Isn't that significant? Because the whole point is that  
16 the legislature passed a statute to say we need to protect  
17 workers, because this isn't a typical third-party  
18 beneficiary situation. This is one where the parties could  
19 feasibly shut the door on a worker's claim by shortening  
20 the statute of limitations to such a degree that they will  
21 never get access. And the legislature is saying, no, you  
22 know, we're going to protect workers. We're building this  
23 into every contract. And it's different than all the other  
24 cases that you just cited.

25 MS. PIZZUTELLI: Well, but respectfully, I don't

1 think the legislature has said that. I mean, the  
2 legislature does not provide - - - it is clear there are  
3 numerous cases that have said that that we've cited in our  
4 papers that there is no private right of action to bring a  
5 Section 220 claim by workers. So workers try to bring that  
6 claim through this back door implied third-party  
7 beneficiary breach-of-contract cause of action. The  
8 legislature is very specific in Section 220 - - -

9 JUDGE RIVERA: Which they've had - - - they've  
10 had a common law, right? I mean, it's a claim they've  
11 always had.

12 MS. PIZZUTELLI: It's - - - right. And if - - -  
13 if you're going to bring a third third-party - - -

14 JUDGE RIVERA: So how is it backdoor if it's a  
15 claim they've always had?

16 MS. PIZZUTELLI: It's not a claim that they've  
17 always had, though. It is a claim that they have had when  
18 there is prevailing wage language in the contract itself.  
19 And - - -

20 JUDGE RIVERA: Yeah. But it has to be in the  
21 contract.

22 MS. PIZZUTELLI: Exactly. It has to be in the  
23 contract.

24 JUDGE RIVERA: Correct.

25 JUDGE HALLIGAN: That's the question - - -



1 MS. PIZZUTELLI: And if it's not there - - -

2 CHIEF JUDGE WILSON: Well, wait, so - - -

3 MS. PIZZUTELLI: - - - they have no right - - -

4 JUDGE RIVERA: So you can't avoid the  
5 requirements and undermine their claim by simply not  
6 including it in the contract.

7 MS. PIZZUTELLI: Well - - -

8 JUDGE RIVERA: You can't close your eyes and  
9 think all of a sudden, I don't have to pay these people  
10 their prevailing wages.

11 MS. PIZZUTELLI: Well - - -

12 JUDGE RIVERA: Which is now question one. So  
13 we've moved on to question one.

14 MS. PIZZUTELLI: Right. And I was just going to  
15 say, I see we're shifting now to question one. And I think  
16 question one can be kind of - - -

17 JUDGE HALLIGAN: But before you address question  
18 one itself, if we were to disagree with you on question  
19 one, why doesn't that also answer question two? I mean,  
20 you're saying the reason it doesn't, I think, is because  
21 the term is not in the contract. But if we disagreed with  
22 you on question one, we would be saying it is effectively  
23 in the contract.

24 MS. PIZZUTELLI: Well, I think if you disagree  
25 with me on question one and the term is within the contract

1 - - -

2 JUDGE HALLIGAN: Yes.

3 MS. PIZZUTELLI: - - - then we are in the world  
4 of contract law. We are looking to the dormitory  
5 authorities cases.

6 JUDGE HALLIGAN: But how do we then grapple with  
7 the point that Judge Singas was raising that the  
8 legislature's determination might suggest that these rights  
9 should not be subject to the same kind of shortening the  
10 two parties to a contract otherwise generally have.

11 MS. PIZZUTELLI: Well, I don't think the  
12 legislature has suggested that at all, is my point. The  
13 legislature does not act by implication here. So the  
14 legislature is very, very specific in Section 220 as to  
15 requirements as detailed as - - - and this kind of goes to  
16 another point, you know, the legislature in 2007, passed  
17 notice requirements. And contractors are required to  
18 provide their workers with notice of what the prevailing  
19 wage rate is.

20 JUDGE HALLIGAN: What about the city's argument  
21 that this is essentially a statutory right if - - - if it  
22 is in fact that and so the three-year statute of limitation  
23 should follow along with that?

24 MS. PIZZUTELLI: Well, the statute says nothing  
25 about an applicable statute of limitations.

1 JUDGE HALLIGAN: No. But they're suggesting  
2 that, you know, with a statutory right comes that three-  
3 year statute of limitations.

4 MS. PIZZUTELLI: And my response is that's  
5 irrelevant, because whether it's a three-year - - -

6 JUDGE HALLIGAN: Why?

7 MS. PIZZUTELLI: - - - limitation provision,  
8 whether it's a six-year limitation provision, parties to a  
9 contract under basic New York black letter, third-party  
10 beneficiary law and under the CPLR itself, can agree to a  
11 shortening limitations - - -

12 JUDGE HALLIGAN: I think that's the question - -  
13 -

14 MS. PIZZUTELLI: - - - provision.

15 JUDGE HALLIGAN: - - - before us, though, in  
16 question two, is whether or not those principles, which  
17 certainly are substantial, as you indicate, are overridden  
18 by the determination the legislature made in the prevailing  
19 wage law. That's the question, I think.

20 JUDGE CANNATARO: I think this - - - this is like  
21 a conflict between your freedom of contract and the  
22 legislature's desire to provide every worker in New York  
23 with a prevailing wage and a right to enforce it.

24 MS. PIZZUTELLI: And this isn't the first time  
25 the court has grappled with that issue. So the courts have

1 said, when I have conflicting public policies, what do I do  
2 with them? Can I reconcile them in some way? Can I  
3 balance them so I can do justice to both? And I would  
4 submit to you that the way we've - - - that we've asked the  
5 court to answer the certified questions does justice to  
6 both.

7 So in the first certified - - - the - - - of the  
8 workers' prevailing wage section 220 rights, which were  
9 very explicitly given by the legislature with an  
10 administrative remedy, are completely preserved. Nothing  
11 that the court decides on the contract actions - - - the  
12 contract questions before it impacts the workers'  
13 prevailing wage rights and administrative remedies under  
14 the statute. And the court can still honor the freedom of  
15 contract. The basic public policy that courts will not  
16 rewrite contracts, will not excise or insert terms, and  
17 when balancing the public policies can be honored by - - -

18 JUDGE TROUTMAN: But with respect to the  
19 prevailing wage, it says it shall contain. So are you  
20 suggesting you can write it out because you have freedom of  
21 contract?

22 MS. PIZZUTELLI: What I'm suggesting, Your Honor,  
23 is - - - and maybe it's a slight reformation of the second  
24 - - - of the first question, which is if you don't include  
25 that term in the contract, what is the consequence? And if

1           you don't include that term in the contract - - - and I  
2           think the DOL will openly admit based on its anecdotal  
3           evidence that the parties aren't doing that.

4                    JUDGE TROUTMAN:  So if you don't, can you void  
5           the statute?

6                    MS. PIZZUTELLI:  I'm not suggesting you void the  
7           statute.  The question is what is the - - -

8                    CHIEF JUDGE WILSON:  Well, let me suggest - - -

9                    JUDGE SINGAS:  But that would be the expected - -  
10          -

11                   CHIEF JUDGE WILSON:  Let me suggest something  
12          else to you, which is if the statute says a contract must  
13          include a term and you don't put it in there, your contract  
14          is void, right?  And if your contract is void, what is the  
15          statute of limitations for quantum meruit or unjust  
16          enrichment?

17                   MS. PIZZUTELLI:  If the contract is void, you  
18          have no breach of contract claim.  The contract is void.

19                   CHIEF JUDGE WILSON:  That's true.  You have - - -  
20          but people have actually worked and performed labor at a  
21          rate that the statute specifies, right?

22                   MS. PIZZUTELLI:  In which - - -

23                   CHIEF JUDGE WILSON:  So what is the statute of  
24          limitations for quantum meruit or an unjust enrichment  
25          action?

1 MS. PIZZUTELLI: Well, then I'd have to - - - I  
2 think it's three years, Your Honor, but I'm not entirely  
3 sure. But you would then go and look at your  
4 administrative remedies. And I think - - -

5 CHIEF JUDGE WILSON: Why is that? You've entered  
6 into - - -

7 MS. PIZZUTELLI: You have no contract.

8 CHIEF JUDGE WILSON: You've entered into an  
9 illegal contract.

10 MS. PIZZUTELLI: Well - - -

11 CHIEF JUDGE WILSON: No?

12 MS. PIZZUTELLI: No. And I would direct the  
13 court to the Schlessinger - - -

14 CHIEF JUDGE WILSON: That's because the term is  
15 implied into the contract?

16 MS. PIZZUTELLI: It's - - - I think the question  
17 is if the term isn't in the contract, does that make it  
18 illegal? And what is the consequence for that?

19 CHIEF JUDGE WILSON: So your view is if the  
20 legislature says you must put a term into a contract and  
21 you don't do it, you have a valid contract?

22 MS. PIZZUTELLI: No. I'm not suggesting that.

23 CHIEF JUDGE WILSON: Then you have an invalid  
24 contract?

25 MS. PIZZUTELLI: I'm suggesting that - - - what

1 is the consequence of that? And I would submit - - -

2 CHIEF JUDGE WILSON: Do we need to know whether  
3 the contract is valid or invalid before we determine the  
4 consequence?

5 MS. PIZZUTELLI: I think that your contract is  
6 still valid if you don't have that term in it. And to that  
7 point - - -

8 JUDGE RIVERA: And so then isn't the consequence  
9 that you must read into the contract what the statute says  
10 every contract must include?

11 MS. PIZZUTELLI: No, that's not the consequence.  
12 And I - - -

13 JUDGE RIVERA: Why not?

14 MS. PIZZUTELLI: It's not the consequence because  
15 then you look to the statute to say - - -

16 JUDGE RIVERA: What is the consequence?

17 MS. PIZZUTELLI: Well, the consequence is, if you  
18 don't include that term and you don't pay prevailing wages  
19 - - -

20 JUDGE RIVERA: Right.

21 MS. PIZZUTELLI: - - - then under the detailed  
22 administrative scheme created by the legislature - - -

23 JUDGE RIVERA: So what's the incentive to include  
24 it?

25 JUDGE CANNATARO: Yeah.

1 JUDGE RIVERA: Because all you've said is it's  
2 what it usually would be even if you included it.

3 JUDGE CANNATARO: That's no consequence at all.

4 MS. PIZZUTELLI: It is a consequence because if  
5 you haven't paid prevailing wages to your workers, then  
6 there are severe penalties under the statute.

7 JUDGE CANNATARO: No.

8 MS. PIZZUTELLI: There are administrative fees -  
9 - -

10 JUDGE HALLIGAN: Administrative penalties.

11 MS. PIZZUTELLI: Administrative penalties.

12 JUDGE CANNATARO: There's no consequence for not  
13 - - - this statute does say it shall appear in the  
14 contract, right? That's the last sentence of 223. And it  
15 didn't appear in this contract. And you're saying, I  
16 think, that you cannot take - - - you, Court of Appeals,  
17 cannot take that word - - - those words, it shall appear,  
18 and read them into the contract because the statute says it  
19 has to be there because my right to contract trumps that  
20 statutory requirement.

21 MS. PIZZUTELLI: Well, I think the Schlessinger  
22 vs. Valspar Corp. case that we cite in our papers speaks to  
23 this tension, right, and this issue. And in that case,  
24 this court considered a very similar claim where, you know,  
25 the court held that the purported breach of contract claim

1 in that case would not have existed absent provisions in  
2 the statute. So the parties' contract was inconsistent  
3 with what the statutory requirement was. And in that case,  
4 it was dealing with the General Business Law.

5 And what this court held was that they will not -  
6 - - that the purported claim would not have existed absent  
7 a provision in the statute, and to hold otherwise would  
8 invite a backdoor private cause of action to enforce the  
9 statute. In that case, it was the Martin Act that they  
10 were just considering, in contradiction to our holding,  
11 that there is no private right to enforce the statute.

12 JUDGE HALLIGAN: But here there's a very specific  
13 requirement that the term be included in the contract,  
14 right? And so I am trying to understand why the answer  
15 isn't either that it is implied in the contract, or the  
16 contract is void. Otherwise, I don't see what the  
17 consequence is for noncompliance. And I don't think we  
18 generally understand the legislature to enact requirements,  
19 particularly ones so specific, that have no traction at  
20 all.

21 MS. PIZZUTELLI: Well, I think if the contract is  
22 void, there's no contract to sue upon for a third-party  
23 beneficiary breach of contract claim. And - - -

24 JUDGE HALLIGAN: Well, I certainly would be  
25 surprised if that were a way to preclude any recovery by a

1 worker who has worked X hours of time. But in any event -  
2 - -

3 MS. PIZZUTELLI: But the worker - - - I'm sorry.

4 JUDGE HALLIGAN: Go ahead.

5 MS. PIZZUTELLI: The worker would have their  
6 administrative remedy that. And I think that's my whole  
7 point, which is if the language isn't included - - -

8 JUDGE RIVERA: But don't they have that anyway?  
9 If the language is included and you don't pay them. So  
10 again, what consequence befalls you for failing to comply  
11 with the statute? I'm not understanding your argument.  
12 I'm not trying to be difficult. I just really don't  
13 understand this argument.

14 MS. PIZZUTELLI: Well, I think the argument is,  
15 Your Honor, that if the language - - - if there is the  
16 consequence, you have to look at what the statute says.  
17 And the statute doesn't have a consequence other than you  
18 could suffer criminal penalties for not paying prevailing  
19 wages. You're going to have to pay back wages for not  
20 paying prevailing wages. You could suffer potential  
21 disbarment. So there are very, very firm penalties in the  
22 statute itself. And again, I think the Schlessinger case  
23 speaks to this issue because what the Schlessinger case  
24 said is I understand - - - I understand the statute has  
25 that requirement. Just because your contract is

1 inconsistent with it, I'm not going to allow you to have a  
2 breach of contract claim. But there are administrative  
3 remedies - - -

4 JUDGE CANNATARO: So there's a panoply - - -

5 MS. PIZZUTELLI: - - - that address this - - -

6 JUDGE CANNATARO: There's a panoply of remedies  
7 that could punish the - - - the contractor - - - the  
8 contracting parties but not pay the laborers who are the  
9 very subject of the statute.

10 MS. PIZZUTELLI: One of those penalties is  
11 payment of back wages.

12 JUDGE CANNATARO: So that's a - - - that's  
13 another way to do it?

14 MS. PIZZUTELLI: Through the administrative  
15 procedures, of course.

16 JUDGE RIVERA: Based on prevailing wage?

17 MS. PIZZUTELLI: Based on the prevailing wage.  
18 So - - -

19 JUDGE RIVERA: How far back can you go in?

20 MS. PIZZUTELLI: And I believe it's three years,  
21 Your Honor.

22 CHIEF JUDGE WILSON: But really, what you're  
23 saying, I think, is this Judge Rivera's point is that if  
24 you violate the statute and fail to put the prevailing wage  
25 provision in your contract, then all that the workers can



1 get is the other things that they were otherwise entitled  
2 to get anyway. Essentially, by failing to put the  
3 provision in, you defease them of their right to bring a  
4 common law right of action, and they're left with the  
5 balance.

6 MS. PIZZUTELLI: And my point is, that isn't a  
7 right that the legislature gave them in the first place.  
8 The courts say the legislature did not create a private  
9 cause of action for workers. What the legislature created  
10 was an administrative remedy. So you're not depriving them  
11 of any right - - -

12 CHIEF JUDGE WILSON: Right. But before that - -  
13 -

14 MS. PIZZUTELLI: - - - that the legislature  
15 bestowed upon them.

16 CHIEF JUDGE WILSON: But before that was created  
17 and still today, they have a common law right of action.  
18 No?

19 MS. PIZZUTELLI: If they can meet the elements of  
20 that cause of action.

21 CHIEF JUDGE WILSON: And you can - - - and your  
22 argument essentially is you can eliminate that by violating  
23 the statute?

24 MS. PIZZUTELLI: My argument is - - -

25 CHIEF JUDGE WILSON: You can eliminate the common

1 law right to sue by not - - - by violating the statute.

2 Yes?

3 MS. PIZZUTELLI: I'm not suggesting - - - what I  
4 - - - I'm not suggesting that there is a common law right  
5 to sue. That is my point. My point is that with a third-  
6 party ben - - -

7 JUDGE RIVERA: So if we disagree with you, is the  
8 Chief Judge correct in his articulation of your argument?

9 MS. PIZZUTELLI: Well, I think you can have a  
10 three - - - you can have - - - if you have a third-party  
11 beneficiary breach of contract claim, there needs to be  
12 express language in the contract that allows for - - -

13 CHIEF JUDGE WILSON: So you're saying that there  
14 is a common - - -

15 MS. PIZZUTELLI: - - - the third-party to  
16 recover.

17 CHIEF JUDGE WILSON: You're saying there is a  
18 common right - - - common law right of action if and only  
19 if there is language in the complaint that guarantees a  
20 prevailing wage? Yes?

21 MS. PIZZUTELLI: That is my argument. Yes.

22 CHIEF JUDGE WILSON: Okay. And if you violate  
23 the statute and do not include that language, that then  
24 defeats the common law right of action. So what you have  
25 left is your other remedies that you had before anyway.

1 MS. PIZZUTELLI: That is my argument, but I would

2 - - -

3 CHIEF JUDGE WILSON: Okay.

4 MS. PIZZUTELLI: - - - submit to you, Your Honor,

5 that there are multiple cases from this court which have

6 held that parties can do just that. Parties can contract -

7 - -

8 JUDGE RIVERA: But why would the legislature when

9 it is so concerned about ensuring that workers are not only

10 paid, but that they're paid at a particular wage, create

11 the system you say they created? Why would they do such a

12 thing?

13 MS. PIZZUTELLI: I would submit, why would they -

14 - - why would they not expressly put within section 220

15 itself?

16 JUDGE RIVERA: Because it harms workers and it

17 benefits the employer.

18 MS. PIZZUTELLI: I'm not sure I understand the

19 question.

20 JUDGE RIVERA: Well, because you're cutting off

21 claims.

22 MS. PIZZUTELLI: But I'm saying if the

23 legislature felt so strongly - - -

24 JUDGE RIVERA: You're cutting off claims and

25 you're trying to shorten the statute of limitations also.

1 MS. PIZZUTELLI: If the legislature felt so  
2 strongly that individual workers should have a private  
3 cause of action - - -

4 JUDGE RIVERA: Which they already have - - -

5 MS. PIZZUTELLI: - - - under New York Labor Law  
6 220 - - - to recover New York Labor Law - - -

7 JUDGE RIVERA: - - - all in the statute.

8 MS. PIZZUTELLI: - - - 220 prevailing wages.

9 JUDGE RIVERA: And they felt that was unnecessary  
10 because they already had claims.

11 MS. PIZZUTELLI: The - - - I - - - the  
12 legislature is so explicit in other parts of the contract  
13 to the point of - - -

14 JUDGE RIVERA: Regarding what it does under the  
15 Labor Law, not what other claims they may already have that  
16 are preexisting.

17 MS. PIZZUTELLI: But with a - - - with something  
18 that is so important as whether a worker has a cause of  
19 action under 220, one would think that if the legislature  
20 intended to give them that right, they would have made that  
21 very explicit in this - - - in 220 itself.

22 CHIEF JUDGE WILSON: Maybe they didn't do that  
23 because they wanted a six-year statute of limitations  
24 instead of three.

25 MS. PIZZUTELLI: I think that's reading the

1 statute - - - that is reading the statute too far. The  
2 legislature would have put that in there. And what it - -  
3 - what it's done instead is said that a one-year limitation  
4 is reasonable. And I'm talking about 220(G). So I'm full  
5 circle back. So even if the court does read in - - -

6 CHIEF JUDGE WILSON: That's for a suit on a bond.

7 MS. PIZZUTELLI: - - - this - - - for suit on a  
8 bond. But I think it speaks to the legislature's - - -

9 CHIEF JUDGE WILSON: Which is different.

10 MS. PIZZUTELLI: - - - intent. And it refers to  
11 workers' ability to sue on a bond for unpaid wages.

12 CHIEF JUDGE WILSON: A bond, yeah.

13 JUDGE RIVERA: Doesn't that suggest that perhaps  
14 there's a different statute of limitations that's longer  
15 when it's not on a bond?

16 MS. PIZZUTELLI: I don't think so.

17 JUDGE RIVERA: That that's why they had to refer  
18 to the bond?

19 MS. PIZZUTELLI: I don't think so. I think it's  
20 directly analogous.

21 CHIEF JUDGE WILSON: Thank you.

22 MS. PIZZUTELLI: Sorry. I know I've been past my  
23 time.

24 MR. ROZGER: Just a couple of points I want to  
25 raise - - -

1                   JUDGE RIVERA: Address this issue about the one-  
2 year statute of limitations on the bond.

3                   MR. ROZGER: A prevailing wage plaintiff only  
4 sues in a bond if they're not going to be able to collect  
5 from the contractor or the subcontractor. If you're not  
6 able to sue in the bond, you still have all your rights as  
7 against the employer, the direct contract beneficiary. And  
8 I have no special insight as to why the legislature set  
9 that one-year statute of limitations. But it's for suing  
10 on a bond. I guess finality may have an issue - - - maybe  
11 part of the consideration about it. It reduces bonding  
12 costs if the statute of limitations is shorter. But the  
13 fact of the matter is that's been the case for a very long  
14 time. And employees and workers have been suing and  
15 getting their prevailing wages based on the six-year  
16 statute of limitations this entire time.

17                   I want to address a little bit to the city's - -  
18 - the City Comptroller's suggestion about a three-year  
19 statute and proceeding directly under the statute. The - -  
20 - I think that's not thoroughly thought out because, in  
21 effect, what the City is saying, okay, repeal section 223,  
22 which is what requires the contract language be in the - -  
23 - the prevailing wage language - - - language be in the  
24 contract and what gives rise to this third-party  
25 beneficiary claim. In effect repeal that and just likely

1           it will go directly under the statute. But that's not, I  
2           think, what this court can do. If in fact, there was a  
3           implied right of action directly under 220, yes, that would  
4           be subject to a three-year statute of limitations. But  
5           that would tell you nothing about what the statute of  
6           limitations on a third-party beneficiary claim for the same  
7           - - - for the same case would be. So I don't think that  
8           really brings us any closer to what an answer is on the  
9           second certified question.

10                         And finally, on the second question, I just want  
11           to remind the court of the context in how these cases come  
12           about. This is not a tort or some incident that happens  
13           very clearly at a point in time when the plaintiff will  
14           know they're injured and the statute of limitations is  
15           starting to tick. Employers don't - - - the workers don't  
16           negotiate these contracts. They don't often see them.  
17           They don't know about them. They have no idea that there  
18           is a shortened statute of limitations. They'll be working  
19           a job. No employer is eager to sue their employer while  
20           they're working there. As a plaintiff's attorney, I often  
21           see these cases once someone leaves for some other reason  
22           or the job shuts down.

23                         JUDGE CANNATARO: But surely, they know they're  
24           not getting the prevailing wage, right?

25                         MR. ROZGER: Some do. And you know, the

1 Department of Labor does do their outreach and try to get  
2 the word out. But that still raises the question of, are  
3 you going to sue your employer? Are you going to bring an  
4 action against your employer while you're there? And I  
5 think, you know, the public policy behind enforcing and  
6 allowing these prevailing wage claims, you know, counsels  
7 toward a longer statute of limitation because it's hard to  
8 get justice from the person you're working for.

9 CHIEF JUDGE WILSON: Thank you.

10 MR. ROZGER: Thank you, Your Honors.

11 (Court is adjourned)

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C E R T I F I C A T I O N

I, Bobby Hodges, certify that the foregoing transcript of proceedings in the Court of Appeals of Walton v. Comfort Systems USA, No. 53 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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Agency Name: eScribers  
Address of Agency: 7227 North 16th Street  
Suite 207  
Phoenix, AZ 85020  
Date: May 30, 2026