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**ALLEGHENY COUNTY LABOR COUNCIL**  
**REPORT OF LEGAL COUNSEL**  
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**Steel City Wins In Late January 2012**

In 1978, Pennsylvania passed the Steel Act, which requires that steel products used or supplied in public works contracts must be made in the USA. The only exception in the law was when the head of a public agency made a determination in writing that the steel products required in the contract were not made in sufficient quantities in the USA.

In Mabey Bridge & Shore, Inc. v. Barry J. Schoch, Secretary of Transportation of the Commonwealth of Pennsylvania, (January 24, 2012), the United States Court of Appeals for the Third Circuit upheld the constitutionality of the Steel Act following a challenge by a Delaware corporation who provided temporary steel bridges fabricated in the United Kingdom for construction projects directed by PennDOT.

Mabey argued that the Steel Act was preempted by the federal Buy American Act, which ironically contains many exceptions to when a contractor on a public project is actually required to buy American. Notably, the Buy American Act has an exception that is satisfied if the steel purchased for a project includes no “permanently incorporated steel or iron materials.” Since Mabey sold temporary bridges to Pennsylvania, it argued that it complied with the Buy American Act, which thus trumped the state Steel Act.

The Third Circuit heard numerous challenges from Mabey attacking the constitutionality of the Steel Act, but affirmed a lower court ruling that it was constitutional, effectively disqualifying Mabey from bidding on any project in Pennsylvania.

**RESPECTFULLY SUBMITTED,**

**JOSEPH S. PASS, ESQUIRE**