Spotlight on California’s Changing Legal Landscape

Inside:
MCM Scores Another Success on High Profile Bay Bridge Project
2012 – Navigating Carefully Through Choppy Waters

By Andre Campbell, AGC Legal Advisory Committee Chair

It is hardly news to any of you that the California economy – and with it, the California construction industry – has been hard hit in the past few years. Private financing is still difficult to obtain, and partially because of this, private projects are few and far between. While there are many more public works than private projects, the California budget crisis has significantly reduced the funding available for public works.

Moreover, the migration of contractors to public works and the reduced number of projects have combined to drive bid prices down so far that margins are razor-thin. In addition, the business side of construction has never been more complicated, with new legislation and recent court cases changing the rules of the game in ways that often do not benefit contractors.

Happily, there are a few glimmers of hope on the horizon. While what ultimately happens in 2012 is uncertain, instead of a further decline, many people believe that 2012 will actually be “flat.” In addition, some contractors are reporting anecdotal evidence that the availability of construction projects is getting slightly better.

However, just like the ocean immediately after a hurricane has swept by, the worst may be over but the sea is still choppy. In conditions like these, where one legal mistake can have huge consequences, you need to carefully chart your course. This is where the AGC of California Legal Advisory Committee (LAC) can help.

As many of you may know, the LAC is a group of construction lawyers who are passionate about representing contractors and donate their time to help AGC achieve its goals. The list of LAC members reads like a “Who’s Who” of construction lawyers. The LAC includes some of the brightest, most experienced and impressive construction lawyers in California, and indeed, the nation. Some of the ways in

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Wide Range of Legal Issues Impact the Industry

California Constructor magazine gives special thanks to the AGC Legal Advisory Committee, whose members prepared articles on a host of legal issues that are impacting the construction industry and your business.

Additional legal articles that could not be included in this issue will be featured in upcoming months in our Legal News column, or alternatively as an AGC Legal Brief.

Look for in-depth, informative articles on a variety of other legal topics in the months ahead including, among others:

- “Blissful California Dreamin’ Interrupted, Less Likely After Opinski and Other Recent Extra Work Cases” by Jonathan J. Dunn and Robert H. Shaffer, Sedgwick
- “Builders Risk Insurance: Do You Know When Your Coverage Ends?” by Walter Schneider, Hanson Bridgett LLP
- “Who is a “Subcontractor” for Purposes of Mechanics Lien, Stop Notice and Payment Bond Claims?” by Conor H. McElroy, Esq., Porter Law Group, Inc.
which the LAC supports AGC include the following:

- **Drafting amicus briefs.** The LAC drafts and files amicus (“friend of the court”) briefs, usually to the California Supreme Court, in critical cases that would greatly impact how contractors do business in California. The purpose of an amicus brief is to ensure that the court understands AGC’s position on a case before the court. The LAC has recently filed an amicus brief regarding the attempt of a bank to eviscerate the bonded stop notice payment remedy, which is of critical importance to contractors.

- **Holding monthly meetings.** LAC members meet monthly to discuss legal issues confronting the construction industry in California. This includes analyzing recent court cases and emerging legal issues, so AGC may get the word out to its membership.

- **Preparing standard contracts.** The LAC has prepared a number of standard contract forms for AGC members to use. The LAC is currently in the process of revising its standard subcontract to address recent issues and new legislation, particularly regarding indemnity and insurance.

- **Operating the legal hotline.** The legal hotline is designed to provide AGC members with quick answers to focused legal questions. LAC members respond to AGC member questions on a variety of legal subjects.

- **Preparing “Legal Briefs.”** The LAC prepares “Legal Briefs,” which are short, targeted bulletins on legal subjects that contractors can use as a tool. The legal briefs are available through the AGC website at www.agc-ca.org.

- **LAC Legal Retreat.** The LAC legal retreat is a two-day retreat that features high-level presentations on cutting edge construction law issues. For example, last year’s legal retreat involved presentations on subjects such as public/private partnerships, insurance coverage issues on construction projects and recent case law restricting contractors’ ability to recover for change order work.

- **Drafting legal articles.** Throughout the year, LAC members draft legal articles on subjects that affect the construction industry in California, including the articles in this “Legal Edition.”

- **Assisting the Legislative Committee.** LAC members participate in the AGCC Legislative Committee to identify issues in proposed legislation and attempt to shape the legislation so that it is friendly to contractors.

The LAC, in essence, works for you. If you have any suggestions regarding how the LAC can be of more assistance to the AGC membership, please raise them through your AGC District, or e-mail me at acampbell@hansonbridgett.com.

Please enjoy this “Legal Edition” of your California Constructor, and the articles contributed by your LAC Members.

Andre Campbell is the 2012 Chair of the AGC of California Legal Advisory Committee. He is a partner at Hanson Bridgett LLP in Sacramento.

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**Wendel Rosen’s Construction Practice Group** proudly welcomes veteran lawyers Roger M. Hughes and Eric J. Phillips. Roger will lead the firm’s established, highly-skilled Construction Practice, which has a proven track record in the industry. Long time members of AGC of California, these two bring extensive experience resolving highly technical disputes and work with some of the nation’s largest project owners and contractors on high-stakes claims.

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