

# MUZI & ASSOCIATES

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## LANDMARK RULING FOR CALIFORNIA CONTRACTORS

***Muzi & Associates obtain ruling in prevailing wage dispute brought against contractor and surety based on worker's failure to demonstrate legal right to work in U.S.***

In a bold ruling by the Los Angeles Superior Court, a prevailing wage action brought by four plaintiff employees against three contractors and their sureties for alleged labor code violations and penalties was dismissed by the Court based on the Motion for Summary Judgment brought by Muzi & Associates on behalf of all the contractors and sureties.

The Court, following a 2002 United States Supreme Court deci-

sion, held that plaintiffs' failure to produce any evidence regarding their legal status to work in the United States, exempted them from bringing forth claims against the contractors and sureties.

Plaintiffs have not yet filed an appeal, however, the implications of this ruling suggest that while contractors are still liable to claims and accusations brought by administrative agencies, the courts may no longer entertain actions brought by individual plaintiffs who cannot provide evidence of their legal right to work in the United States. The decision by the Court may lead to review by the California and U.S. Supreme Courts.

## CALIFORNIA COURTS REJECT PREFERENCES IN PUBLIC WORKS CONTRACTS FOR MINORITY BIDDERS

California Public agencies struggle between meeting federal civil rights laws and not violating California Prop 209 (1996) which bans racial/gender preferences in government contracting.

The California Appellate court in September 2004 held Sacramento city's Utility

District, which offered price advantages to minority businesses bidding as prime contractors as well as special credit for the use of minority-owned subcontractors, violated Prop 209 and therefore was illegal. The court reasoned that such a program did not preserve federal funding and thus did not qualify as an exception under Prop 209.



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*If you have any questions regarding this newsletter or any public or private works construction issues, contact*

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## WHEN CALLING YOUR ATTORNEY CAN ACTUALLY SAVE YOU MONEY

Often times contractors contact their attorney when substantial damage on a project has already occurred, in other words, too late!

A 15 minute call to your attorney for counseling or advice regarding problematic issues on a job can often save a contractor substantial damage, attorneys fees and delay costs.

The following are trigger moments when a contractor should contact their attorney:

1. Payment is overdue for work performed.
2. Another trade/supplier is causing a delay to your scope of work.
3. Rumors of contractor bankruptcy.
4. Surety involvement on the Project.
5. Allegations of defective work or noncompliance.
6. Failure to respond to RFIs.
7. Public work violations.
8. Problem with listed subcontractors.
9. Lack of communication from owner/contractor.
10. Payment still overdue when Notice of Completion or Notice of Cessation filed.

## CONTRACTOR WHO REASONABLY RELIED ON SUB'S ERRONEOUS BID MAY RECOVER DAMAGES

The California Appellate Court recently held that where a contractor, on a public works project reasonably relies to its detriment on an erroneous bid by a subcontractor ("sub"), the contractor may recover damages from the sub for the difference between the erroneous bid amount and the actual amount paid for the work.

This ruling came out of the Alameda County case *Diede Construction, Inc. v. Monterey Mechanical Co.*, where the sub made a clerical error in its bid to the general, for a public works job. The sub's bid failed to include the cost of \$302,100, for its controls subs.

The general listed the sub in its bid to the City and the sub found out that it was the lowest bidder. The next day, the sub informed the general that it discovered the error in its bid. The

general replied that it based its bid to the City on the sub's quote, and expected the sub to honor its bid. The following day, the sub forwarded the general declarations stating the bid was a mistake and asking the general to withdraw its bid with the City.

The Court determined that the general was not obligated to withdraw its bid due to the sub's error, and that the general had a basis to collect damages from the sub for the money it lost due to the erroneous bid. The Court held that damages were recoverable if the general could prove

that it reasonably relied on the sub's bid to its detriment.

This ruling is good news for general contractors, but a wake-up call to all subs offering sub-bids for public works jobs.



*CSLB UPDATE:  
The California State  
Licensing Board will be  
implementing its new  
fingerprinting program  
January 1, 2005 for each  
applicant applying for a  
new contractor's license.*

## CONTRACTOR RESOLUTIONS FOR 2005

### **Document, Document, Document**

Confirming oral agreements in writing, securing signed authorization for additional work and keeping proper invoice records can significantly increase collection efforts and enforcement when contractors have to pursue payment.

### **Serve Your 20-Day Preliminary Notice on All Projects**

Save certified mail receipts (green cards).

### **Attorney Fees & Costs Clause for Subcontractors**

If you're a subcontractor, try to include attorney fee & cost provisions in your contracts. Often times subs decide not to pursue legal collection efforts simply because of the fees and costs involved. Including an attorney fees & cost provision can act as leverage to get the other party to make payment and can assist subs when payment must be legally pursued.

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## MUZI & ASSOCIATES

Muzi & Associates has been advising, counseling and representing construction companies throughout the State of California, Arizona, Colorado, Nevada, New Mexico and Florida since January 1998. Our firm specializes in matters relating to construction law, insurance and surety litigation, general, commercial, civil litigation, bankruptcy, real estate and business law. Muzi & Associates has been involved in major construction projects, including airports, stadiums, industrial plants, military bases, recreational parks, resorts, highways, and commercial and public buildings of all types. Our clients include general contractors, subcontractors, government contractors, sureties, architects and engineers, and homeowners.

## MUZI & ASSOCIATES WELCOMES NEW MEMBER TO THE FIRM

### **Shannon C. Lamb, Esq.**

Ms. Lamb joined Muzi & Associates in November 2004, from Lewis, Briscois, Bisgaard & Smith, LLP, bringing extensive contract and property litigation experience to the firm. She also contributes to the firm her expertise in professional negligence, construction injuries and torts. A graduate of Loyola Law School, Ms. Lamb received multiple awards for her scholarship. Ms. Lamb is a member of the California Bar Association and prestigious Legion Lex Inn of Court.

*CIVIL TRIAL AND  
APPELLATE PRACTICE*



*CONSTRUCTION LAW*



*INSURANCE AND  
SURETY LITIGATION*



*GENERAL  
COMMERCIAL  
CIVIL LITIGATION*



*REAL ESTATE AND  
BUSINESS LAW*