

WACA ALERT

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Industry Updates

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California Supreme Court Limits a Direct Contractor's Ability to Withhold Money from Subcontractors

The California Supreme Court recently provided a significant win for subcontractor prompt payment rights. The court unanimously held in the case of *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.*, that the direct contractor may only delay payment to its subcontractors when there is a good faith dispute regarding the sufficiency of the subcontractor's performance of the work that is directly related to the monies that are being held. Specifically, the case clarified what constitutes a good faith dispute that allows an owner or direct contractor to withhold payment under prompt payment laws.

Under most prompt payment statutes, the party who is supposed to make payment may withhold 150% of any amount in dispute from the sums that the party otherwise would be required to pay. Over the past decade, there were two conflicting lines of appellate cases with regard to what constitutes the type of dispute for which funds may be withheld.

One line of cases, including *Martin Brothers Construction, Inc. v. Thompson Pacific Construction, Inc.*, interpreted the withholding language very broadly and held that any dispute, of any kind, would justify withholding of payment. Under these cases, even an affirmative claim (such as a request for a change order) by the party seeking payment could justify withholding of payment of undisputed amounts.

The second line of cases interpreted the withholding language more narrowly. Under this line of cases, which included *East West Bank v. Rio School Dist.*, the courts held that withholding retention is only justified by disputes related to the retention's security function.

The California Supreme Court ruling in *United Riggers & Erectors, Inc. v. Coast Iron & Steel Co.*, resolved the conflict between these two lines of cases. The Supreme Court decided to follow the line of cases that more narrowly interpreted the statutory withholding language and disapproved *Martin Brothers*.

The facts of the case were straightforward. On a project for Universal Studios, Coast Iron subcontracted to United Riggers the installation of the fabricated metalwork. The work was done to everyone's satisfaction.

Universal Studios paid retention to Coast Iron, but Coast Iron failed to pay United Riggers retention that had been withheld from its progress payments. Coast Iron had continued to withhold retention from United Riggers because Coast Iron was aware of substantial claims that United Riggers had against Coast Iron relating to other aspects of the job. United Riggers demanded the balance of its original contract, increased expenses which it attributed to Coast Iron's mismanagement, and another sum for outstanding change order requests.

United Riggers argued that because the base contract work was completed satisfactorily, Coast Iron was obligated, at a minimum, to pay the uncontested base contract balance, including the retention. The Supreme Court agreed and determined that Coast Iron had wrongfully withheld payment and held that United Riggers was entitled to recover interest, prompt payment penalties, and attorney's fees, stating that:

The dispute exception excuses payment only when a good faith dispute exists over a statutory or contractual precondition to that payment, such as the adequacy of the construction work for which the payment is consideration. Controversies concerning unrelated work or additional payments above the amount both sides agree is owed will not excuse delay; a direct contractor cannot withhold payment where the underlying obligation to pay those specific monies is undisputed.

In other words, the court stated that base contract progress payments and retention can only be withheld if the dispute deals with work in the original contract or the retention itself.

Labor and Workforce Development Agency Announces Record Number of Apprentices

California Labor and Workforce Development Agency Secretary David M. Lanier announced that there are nearly 82,000 active apprentices, across all industries, in California – the highest number in the 79-year history of formal apprenticeship job training in the state. In 2015, California had approximately 53,000 active apprentices and is on track to double the number by the end of 2020.

“Apprenticeship programs provide workers with paid on-the-job training that can lead to good-paying careers and supply employers with skilled workers.” said Secretary Lanier. “We have made significant progress during this period of economic growth in strengthening existing apprenticeship opportunities – reflected by the nearly 50,000 apprentices in state-approved apprenticeships in the building trades – and in creating new programs in high-growth industries.”

California is home to the nation's largest and fastest-growing apprenticeship system. According to the State Building and Trades Construction Council of California, the state-supported apprenticeships make more jobs available for young people out of high school.

“California has a highly trained and streamlined workforce of 450,000 men and women who are ready to build public infrastructure and private projects while earning middle-class wages – which enables them to buy a home, support a family and drive our economy,” said State Building and Construction Trades Council President Robbie Hunter. “Apprentices who learn skilled trades will be the workers of the future who keep California's economy strong.”

California Adopts First in Nation Solar Panel Requirement

California has become the first state in the country to require that all new homes be built with solar panels. The mandate is aimed at reducing California's overall greenhouse gas emissions.

The California Energy Commission voted unanimously to recommend energy efficiency standards that are set to be added to state building standards later this year, effecting all construction after January 1, 2020.

Under the new rules, builders will be required to either build each new home with its own solar power system or build a shared solar power system to serve a group of homes. In addition to single family homes, the requirement will also apply to apartment and condominium complexes of three stories or less.

The solar panel rule next goes before the California Building Standards Commission (CBSC), which typically adopts recommendations from the energy commission. CBSC is expected to take up the matter in October or November.

Cal/OSHA Reminder: Protect Outdoor Workers from Heat Illness

The California Division of Occupational Safety and Health (Cal/OSHA) is reminding employers to protect their outdoor workers from heat illness as temperatures reach triple digits in parts of California. Workers should be encouraged to take preventative cool-down breaks in the shade.

California's heat illness prevention regulation requires employers with outdoor workers to:

- Develop and implement an effective written heat illness prevention plan that includes emergency response procedures.
- Train all employees and supervisors on heat illness prevention.
- Provide free, fresh, pure, suitably cool water so that each worker can drink at least one quart of water per hour. Encourage workers to do so.
- Provide shade when workers request it and when temperatures exceed 80 degrees. Encourage workers to take a cool-down rest in the shade for at least five minutes. Workers should not wait until they feel sick to cool down.

Heat illness can develop into serious illness or death. Supervisors need to be effectively trained on emergency procedures in case a worker gets sick so the sick employee receives treatment immediately.

Cal/OSHA provides online information on heat illness prevention requirements and training materials at: <https://www.dir.ca.gov/dosh/heatillnessinfo.html>

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