

# LEGALLY SPEAKING

## California case law, statutes update for 2007

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It is that time of year, again, for your dose of California case law and statutes updates. The following is a summary of some of the appellate court decisions issued in 2006 which are of interest to EGCA members.

### CALIFORNIA CASES

#### Mechanic's Liens

#### North Bay Construction, Inc. v. City of Petaluma, Court of Appeals of California,

Case No. A111591 (September 28, 2006)

This case tackles the long standing debate as to whether a mechanic's lien may be filed against a publicly owned property on which private work is performed. In this particular case, the City of Petaluma owned real property which it leased to a developer for construction of a sports complex. Under the terms of the lease, the developer was to operate the facility on a for profit basis. Ultimately, the developer failed to pay the grading subcontractor. As such, the grading subcontractor, North Bay Construction, filed a mechanic's lien against the property, and filed suit on all parties including the City. The City challenged the mechanic's lien asserting that a mechanic's lien cannot be asserted against a public entity.

Ultimately, the court of appeals agreed. The court concluded under the mechanic's lien statutes there is no right to impose a lien on property owned by a public entity. North Bay Construction attempted to argue that the same was limited to public works. The appellate court disagreed contending that the statute did not so state.

North Bay further argued that a distinction should be drawn between publicly owned property used for governmental purposes and public property used for private, proprietary purposes as was in this case. The appellate court disagreed. The appellate court did note that the subcontractor had a remedy via the bonded stop notice procedure; however, the subcontractor had failed to pursue the same.

#### CAL-OSHA

#### Teichert Construction v. California

#### Occupational Safety and Health Appeals Board, 44 Cal.Rptr.3d 833 (3rd Dist. 2006)

In this case, a general contractor challenges the enforceability of a CAL-OSHA safety order alleging that the same is vague and ambiguous, and as such, unenforceable. In this case, the safety order pertains to hauling operations and requires the same to be conducted in a manner "... to ensure that the equipment or vehicle operators know the presence of [other employees] in the area of their operations." The facts of the case relate to the operation of a scraper which was dumping material on an adjacent site. Notably, as designed, scrapers have a large blind spot on the right-hand side of the vehicle.

The operator of the scraper misunderstood the location to drop her load. After dumping her load, she was returning to the project site, and ran over an employee located in her blind spot.

The Superior Court concluded that the safety order was reasonably written to require that the employer control operations in such a way that the equipment operator would be aware of the presence of workers in the immediate area of operation of the equipment. As such, it was enforceable.

#### Sully-Miller Contracting Company v. California Occupational Safety and Health Appeals Board, 138 Cal.App.4th 684 (3rd Dist. 2006)

In this case, a subcontractor, Sully-Miller, was cited by the Department of Industrial Relations for a serious violation of an employer safety provision set forth in Title 8 of the California Code of Regulations. Specifically, CAL-OSHA asserted that Sully-Miller failed to have an injury prevention program in which it instructed its employees to refuse to work on a roller without operative seatbelts.

Sully-Miller had leased one of its employees to another subcontractor, Manhole Adjusting, Inc. Manhole Adjusting, Inc. provided the employee with a roller that did not have operable seatbelts. The employee was operating the roller on a steep grade when another roller went out of control and rammed the Sully-Miller employee's roller from the rear. The employee was thrown to the pavement and seriously injured. The court concluded that

Sully-Miller was responsible as the primary employer, and Manhole Adjusting as a secondary employer.



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### Legislative Update

On Jan. 1, 2007, legislation that was passed and signed into law last year has been enacted. As a contractor, and a company doing business in California, several of these laws will have an impact on the way you do business in 2007 and beyond. The descriptions below are not intended to cover every aspect of the legislation only the highlights.

#### Excavation

#### **AB 463: Subsurface installations: excavation.**

Allows a contractor to use vacuum excavation devices, power-operated or power-driven, and excavating or boring equipment if it is mutually agreeable to the operator(s) of the subsurface installation and the excavator.

#### **SB 1359: Underground excavations**

Requires the owner of underground utilities to meet with the excavation contractor prior to the commencement of work when the excavation will occur within 10 feet of a high voltage cable or hazardous fuel line.

#### **SB 1605: Public contracts: public works**

Specifies that a contractor notify the local public entity in writing of any subsurface or latent physical conditions that differ from the conditions indicated by information about the site made available to bidders prior to the deadline for submitting bids.

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