



March 3, 2021

Snell & Wilmer
Committed to being your perfect fit.®

*Thank you for joining us for the
California Construction Law Update –
What's New for 2021?*

The webinar will begin shortly.

© 2021 Snell & Wilmer LLP. All rights reserved. The purpose of this presentation is to provide information on current topics of general interest and nothing herein shall be construed to create, offer, or memorialize the existence of an attorney-client relationship. The content should not be considered legal advice or opinion, because it may not apply to the specific facts of a particular matter. As guidance in areas is constantly changing and evolving, you should consider checking for updated guidance, or consult with legal counsel, before making any decisions. The material in this presentation may not be reproduced, distributed, transmitted, cached or otherwise used, except with the express written consent of Snell & Wilmer.

Michael J. Baker, Partner
Kelly C. Smith, Associate

swlaw.com

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County
Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

1

Introduction

This seminar will cover the more significant new laws passed related to construction. We will also go over some important legal decisions impacting the world of construction law in California. This is intended to be an overview, not a definitive presentation on all the nuances and aspects of what happened in 2020, a year a lot of people would like to get past and forget.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

2

2

Introduction (*cont.*)

2020 brings us new laws involving contractor discipline, contractor licensing, adjustments to prevailing wage, public contracts regarding skilled and trained workforce requirements, amendment to DVBE for falsifying information, best value procurements, worker classification and independent contractors – professional services (*Dynamex*), and application of prevailing wage to charter schools. Overall, this may be one of the least busy years in terms of legislation regarding construction. The last several years have seen a lot of revisions and additions to new alternative delivery broader application of the same. The legislature has finally worked its way through those major changes and is primarily interested in tinkering on the edges regarding skill and trained workforce requirements and prevailing wage applications. The California Legislature continues to micromanage labor on construction.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

3

3

Interesting 2020 Cases – Overview

There are some interesting cases in 2020 that have brought implication. They concern the measure of damages in a fraud case involving construction project, a distinction between policies of insurance and indemnity provisions (not the same), substantial compliance with licensor, and one that should concern all in industry, holding that a higher tiered party on a construction project can be liable for intentional appearance with contract.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

4

4

Big Picture – New Administration in Washington, D.C.

With the incoming Biden administration, what is the outlook for the industry needs? For business it is likely a return to regulation, budget reconciliation raises taxes, possible infrastructure deal and likely implementation apprenticeship requirements on public works. There are some big concerns to the industry, not a lot of upside if you own a contracting, design or construction management business. There is also talk of an infrastructure bill, but nothing concrete.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

5

5

New Legislation

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

6

6

Assembly Bill 2210

This is an amendment to the Business and Professions Code relating to professional licensing. In order to do tree work, including maintenance removal, specialty licenses are required plus there is now an addition of disciplinary action against the contractor for violations of specified regulation regarding tree work, including maintenance removal, without regard to whether death or serious injury to employee results. Another safety thing to be concerned about.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

7

7

Senate Bill 1180

This bill would create a new classification of contracting business to be called residential remodeling contracting. They would provide that a residential remodeling contractor's principal contracting business is in projects that make the improvements to, on, or in existing residential wood frame structures that require the use of at least three unrelated building trades or classes for a single contract. Some highlights of the bill include:

- Prohibit a residential remodeling contractor from taking a contract for a project unless the contract includes three or more trades;
- Prohibit a residential remodeling contractor contracted to make structural changes to loadbearing portions of existing structure and from contracting to install, replace, substantially alter, or extend electrical, mechanical, or plumbing systems, or their component parts;
- Expand the definition of the crime to enforce requirements of this law;
- Expand the definition of home improvement to include the reconstruction, restoration, or building of residential property that is damaged or destroyed by natural disaster for which a state of emergency is proclaimed by the Governor or major disaster by the President;
- Expands criminal law to encompass and enhance penalties for people who commit specified crimes as part of a scheme to defraud owners and lessees of residential or nonresidential structures connection with repairs related to a natural disaster;
- Limits what a residential remodeling contractor can take a contract to do;
- Remodeling contractor cannot install, replace, substantially alter, or extend electrical, mechanical, or plumbing systems;
- Redefines Home Improvement Contract;
- Doubles criminal penalties if person has been previously convicted of violating Home Improvement law.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

8

8

Assembly Bill 3308

This is a favor extended to California teachers. It expands The Teacher Housing Act of 2016 authorizing a school district to establish and maintain subsidized housing for schoolteachers. This clarifies the state policy which permits school districts to restrict occupancy on land owned by school districts to teachers and district employees of the school district that owns the land, including permitting school districts and developers in receipt of tax credits designated for affordable rental housing to retain the right to prioritize and restrict occupancy on land by school districts to teachers and school district employees. The bill now allows other members of the public to occupy housing created through the Act. This is an attempt to expand "affordable" housing to a privileged class of public employees, teachers and school district employees, not otherwise available to the general public. The purpose of the law was to facilitate the acquisition, construction, rehabilitation and preservation of affordable rental housing for teachers and school employees. This appears to be the way of the future as California Legislature continues to pick winners and losers of the public largess and control over what is traditionally been private enterprise, development of rental housing.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

9

9

Assembly Bill 2231

Existing law requires that, except as specified, not less than the general prevailing rate of per diem wages, determined by the Director of Industrial Relations, be paid to workers employed on public works projects. This bill would generally provide that a public subsidy is the de minimus if it is both less than \$600,000 and less than 2% of the total project cost. The bill would specifically provide that a public subsidy for a residential project that consists entirely of single-family dwellings is de minimus if it is less than 2% of the total project cost. The bill would specify that these provisions do not apply to a project that was advertised for bid, or a contract that was awarded, before July 1, 2021. This is a clarification primarily designed to encourage public subsidized housing and adjust the threshold for prevailing wage.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

10

10

Assembly Bill 2311

This bill concerned public contracts, skilled and trained workforce requirements. The bill requires a public entity when the use of skilled and trained workforce to complete a project or contract is required pursuant to existing law, to include in all bid documents and construction contracts a notice that the project is subject to the skilled and trained workforce requirements. The bill would additionally provide, if a public entity fails to provide the notice, that the public entity shall not be excused from the requirement to obtain the enforceable commitment and that a bidder, contractor, or other entity is not excused from the obligation to use a skilled and trained workforce as provided. The takeaway here is that your entitled notice, but if the public entity is not giving you notice, so what, not excused from the requirements.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

11

11

Senate Bill 588

This bill addresses existing law on DVBE businesses. Under existing law a DVBE school in an award of contract for which a commitment to achieve a DVBE goal is made, to require the prime contractor that entered into a subcontract with a DVBE to certify to the awarding department specified information regarding amounts paid under the contract, as specified. This bill will require an awarding department, on a contract entered into on or after January 1, 2021, to withhold \$10,000, or the full payment if it is less than \$10,000, from the final payment on a contract until the certification is received by the awarding department. The bill also requires the awarding department to give a prime contract that fails to meet those certification requirements 15 to 30 calendar days to cure the defect. Finally, the awarding department is authorized to deduct \$10,000 from the contractor if not required does not comply within the specified time period.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

12

12

Assembly Bill 1981

This law reestablishes the LAUSD best value procurement method for bid evaluation and selection of public projects that exceed \$1 million. Existing law expired on December 31, 2020 and this bill extends at law until December 31, 2025 and deletes the interim report deadline, extending the remaining report deadline, and the repeal the for the program to January 1, 2026. Note, if the district elects to award a project pursuant to this law, retention proceeds withheld by the district from the selected best value contractor shall not exceed 5% if a performance and payment bond issued by an admitted surety is required as part of the solicitation of the bid. The contractor cannot withhold a retention greater than 5% from its subcontractors if applicable under this law. Use of a skilled and trained workforce to perform all work on the project or contract that falls within falls within an apprenticeship occupation in the building and construction trades is required.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

13

13

Assembly Bill 2257

As predicted when the *Dynamex* decision was implemented by the California Legislature creating carveouts and exemptions from the *Dynamex* criteria, ABC Test, different groups would lobby to get special treatment in turn this bill into an ability of legislators to grant dispensation from the onerous ABC Test. Among the new exemptions are:

- Musician or musical groups for a single engagement live performance
- Individual performance artist presenting material that is their original work
- Deletes the existing professional and service exemptions for services provided by still photographers, photojournalists, freelance writers, editors, and newspaper cartoonists
- Establishes new exemption for services provided by still photographer, photojournalists, videographer, or photo editor, as defined, who works under a written contract that specifies certain terms, subject to prescribed restrictions
- Establishes a new exemption for services provided to a digital content aggregator, photographer, photojournalists etc.
- Establishes a new exemption for freelance writer, translator, editor, content contributor, advisor, narrator, cartographer, producer, copy editor, illustrator, or newspaper cartoonists who works under written contract for specified terms
- Exempts people who provide underwriting inspections and other services for insurance industry, manufactured housing salesperson, subject to certain obligations, people engaged by an international exchange visitor program
- Creates exceptions for a licensed landscape architect, specialized performers teaching master classes, registered professional foresters, real estate appraisers and home inspectors, and feedback aggregators
- Exempt business-to-business relationships between two or more sole proprietors as specified
- The law is effective immediately

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

14

14

Assembly Bill 2932

Once again special treatment by the legislature. This bill would authorize the City of Long Beach, upon approval of the City Council, to use the design build contracting process for the contracts for curb ramps that comply with ADA in accordance with specified procedural requirements and limits. This bill declared it was urgent and took effect immediately.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

15

15

Senate Bill 2765

In yet another blow to the Charter Schools, in full recognition of the power of the teacher's union in California, the legislature has now chosen to impose prevailing wage requirements on the construction of Charter Schools. The bill would expand the definition of "public works" for the purposes of provisions relating to the prevailing wage of per diem wages, to also include any construction, alteration, demolition, installation, or repair work done under private contract on a project for a Charter School, as defined with the project is paid for, in whole or in part, with the proceeds of conduit revenue bonds, as defined that were issued on or after January 1, 2021.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

16

16

Interesting Cases of 2020

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

17

17

Moore v. Teed

Moore v. Teed, Case A153523 (April 24, 2020) is an interesting case involving contractual fraud, construction defect and a novel twist of the application of Business and Professions Code §7160. Case also involved unlicensed contractor, but the court never got to the issue of license and penalty. What the dispute mainly revolved around was whether remodel would cost \$900,000 as promised or the approximate amount of \$4.5 million it ended up costing.

The damages element of the case is interesting because the court had to choose between the “out-of-pocket” measure of damages for the “benefit of the bargain” measure. The “benefit of the bargain” measure is concerned with satisfying expectancy interest of the defrauded party by putting him in the position he would have enjoyed if the false representation relied upon had been true; it awards the difference in value between what the parties actually received and what he was fraudulently led to believe he would receive. The “out-of-pocket” measure of damages is directed to restoring the defrauded party to the financial position enjoyed by him prior to the fraudulent transaction, and thus awards the difference in actual value at the time of the transaction between what the plaintiff gave and what he received. The majority of courts in California have concluded that the benefit of the bargain damages are recoverable and fraud actions were fiduciary induces an individual to purchase, sale, or exchange real property to their detriment. Here that fiduciary was the sales agent/unlicensed contractor. This court applied the benefit of the bargain measuring this case.

In an interesting twist, the parties argued attorney’s fees under Business and Professions Code §7160 which involves the recovery of attorney’s fees in a home improvement contract situation wherein the victim is a victim of false or fraudulent representations. Even though no formal home improvement contract was entered, nor was there the existence of a license contractor, the court upheld the award of fees under this provision. This result should benefit homeowners, many of which are taken advantage of by misrepresentations made by home improvement contractors who, unfortunately, do not follow the law.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

18

18

Carter v. Pulte Home Corporation

This case involved a complicated insurance matter, with cross appeals, concerning which insurer was primarily liable and responsible for cost of defense and liability; and, apportionment among insurers for the loss and attorney's fees. The court determined that the insured cannot shift the costs of defending the contractor against claims unrelated to the contractor's scope of work. The court also made a distinction regarding indemnity claims and claims for which the party did not promise to indemnify and defend the contractor, are not the same as insured claims. If a party's failure to comply with their contractual obligation to indemnify and defend the contractor for claims arising from the contractor's work, it does not make the contractor liable for losses due to the work of other independent contractors, not the contractor. The court noted that equitable subrogation allows a loss to be shifted from one who is legally liable to another who is more responsible for the same loss.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

19

19

C. W. Johnson and Sons, Inc. v. Carpenter

This is the case about the lapse of a contractor's arm of a license due to death of the RMO who the principal of the contracting company was. Work was performed in 2016, with all proper licensing in order. The replacement of the license holder was not approved until 2018. The work in question was performed in March and September 2016 but not prior to the RMO passing away on September 21, 2016. The contractor was subsequently sued for breach of contract and failure to be licensed. The contractor's whose license lapsed sued the owner of the property where it installed flooring. The defendant owner moved the court to have the case dismissed on the grounds that the license lapsed.

The court recognized an exception to the license requirement if a contractor can show it substantially complied with the licensing requirements of the Contractor Licensing Law. In short, the contractor has to prove it was a duly licensed contractor prior to and during the part of the performance of the contract; that the contractor recently did not know or have reason to know that he was not the license holder for the company at the time of the death; that the contractor as soon as it realized it was not properly licensed applied to be the designated licensee; and, the CSLB grants the application shortly thereafter. Here, the contractor got around the motion to dismiss by pleading that it substantially complied, but it is questionable if this contractor will make it in the long run. The takeaway here is that the successor compliance doctrine is still alive and well, but its application is quite limited. Generally speaking, an RMO has to be replaced within 90 days of death and missing this deadline could result in disgorgement of any monies received if unlicensed.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

20

20

RGC Gaslamp, LLC v. Emcke Sheet Metal Co

In this case, a subcontractor recorded a mechanics lien of \$250,000 for allegedly unpaid work, and the owner subsequently secured and recorded a bond to release the lien. This was only the beginning of a nightmare scenario for the owner who, unfortunately, did not know how to attack an improper lien and ended up not only losing the case, but paying the subcontractor's attorney's fees.

After the initial lien was recorded as noted above, the owner subsequently secured and recorded a bond to release the lien. Normally, in such situations, if the case is not settled, the contractor brings an action for breach of contract and enforcement of the lien release bond. However, in this case, two months after the release bond was obtained, the subcontractor recorded another lien in the same amount. Then several months after recording the second lien, that second lien was withdrawn, and a third lien was recorded. As if that wasn't enough, the subcontractor then withdraws the third lien and records yet a fourth lien for the same amount. By the time of the recordation of the fourth lien, the owner filed a complaint against the subcontractor for slander of title. One can understand the owner's frustration here.

The subcontractor in turn filed what is known as an anti-SLAPP suit against the owner for retaliation against the subcontractor for participating in a protected/privileged activity. The court found that statements made in preparation for litigation or in anticipation of bringing an action are protected statements. The court held that because the recording of a mechanics lien is a prerequisite to filing a lien foreclosure lawsuit, recording a lien is "protected prelitigation statement." Significantly, the court held this was true regardless of whether the subcontractor had any right to file the liens or actually intended to foreclose them. The lien recording fell within the litigation privilege regardless of any evidence the party recording the lien had any intention of actually foreclosing. This resulted not only in a dismissal of the owner's lawsuit against the subcontractor but also an award of attorney's fees to the subcontractor.

Alternative procedures to consider are to seek declaratory and injunctive relief challenging the validity of the lien, or, proceeding under applicable statutory scheme to challenge lien; or, request that the court release the duplicate of liens in lieu of posting a single bond for the lien amount. All of these options were available to the owner, but the owner did not avail itself of those options. This is yet another warning to proceed carefully when fighting a lien on the property if you're an owner but opens another avenue to the contractor to counter any owner's move seeking to sue for slander of title by filing the anti-SLAPP action.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

21

21

Caliber Paving Company, Inc. v. Rexford Industrial Realty and Management, Inc.

In this case the court examined whether a higher tiered party on a construction project can be liable for intentional interference with a contract when it interferes with the contract between lower tiered parties even though the higher tiered party has an economic interest in the contract between the lower tiered parties. Here, the owner, Rexford, got involved in a contractor – subcontractor dispute. The contractor kicked the subcontractor off the job after being told that the owner wanted the subcontractor off the job. The subcontractor later sued both the contractor, for breach of contract, and the owner, for intentional interference with contract. The owner filed a motion for summary judgment arguing that it was a stranger to the contract and could not be sued for interfering with it and claimed that the subcontractor's evidence was inadmissible double hearsay. The trial court ruled in favor of the owner here noting that "it is hard to envision where the alleged party does not have a more direct economic interests the contract than one between its general contractor and the subcontractor over how the property is improved." After losing, subcontractor appeal. On appeal, the trial court was reversed, the court noted that "a defendant who is not a party to the contract or an agent of a party to the contract is not immune from liability for intentional interference with contract by virtue of having an economic or social interest in the contract," because without potential liability, a non-contracting party, including one claiming a social or economic interest contractor relationship, has no incentive to refrain from interfering with the contractual relationship. Everyone needs to pay attention to this case. When problems arise on a job with a subcontractor and everyone gets involved, parties need to be aware of where they are at and understand along with what is being said and demanded.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

22

22

Government Contractors Beware: False Claims Acts “Objective Falsity” Requirement Dispute Between Circuits Persists

In February of this year, the US Supreme Court denied certiorari to adhere to petitions, which would have resolved a Circuit Court split regarding whether the False Claims Act (“FCA”) requires “objective falsity” of information or claim to establish liability. The California FCA is modeled on the federal law.

The FCA is a federal statute whose enactment dates back to the Civil War and has been amended by Congress three times. In general terms, the FCA set forth liability for any person who knowingly submits a false claim to the government or causes another to submit a false claim to the government or knowingly makes a false record or statement to get a false claim paid by the government. False Claim violations can be extraordinarily expensive, resulting in steep fines and in some circumstances may lead to debarment of participating in the government contract process.

Liability under the FCA requires proof that the individual had (1) actual knowledge that the claim or information was false; (2) deliberate ignorance of the truth or falsity of the information, or (3) a reckless disregard of the truth or falsity of the claim of information. The FCA’s construction and application has been the subject of thousands of court decisions. At issue most recently is whether proof is required to establish that the information we claim is actually false. The Federal Circuit courts are split on this issue. On one side, the 11th Circuit Court held that a reasonable difference of opinion is not sufficient on its own to suggest that those judgments, or any claim based upon them, are false under the FCA. In reaching this decision, the Courses of proof of “objective falsity” is required. That is, statements or information of claims must be more than “objectively untrue, they must be trader suggests intentional deceit.” In contrast with the 11th circuit, the Third Circuit ruled that evidence of “objective falsity” for FCA claims is not required, and that the difference in opinions, particularly where another expert calls another’s opinion into question after the fact can constitute legal falsity.

Here, in California, the Ninth Circuit, similarly held at proof of “objective falsity” is not a requirement under the FCA where a pleading sufficiently alleges “more than just a reasonable difference of opinion” among expert physicians regarding necessity of inpatient hospital admissions. This is in the healthcare context, but an analogy can be drawn to construction and design government contracting.

Following the Supreme Court’s denial of the petitions, all circuit courts will likely have to pick a side, which will inevitably create a larger schism among courts. The varied applications of the “objective falsity” standard for FCA claims will also subject government contractors across the country to different levels of litigation risks. In comparison, the courts in the Ninth Circuit, Arizona and California, take a more evenhanded approach, such as holding that the FCA claims cannot be based on a reasonable disagreement among experts without additional evidence, thereby recognizing instances where a more stringent standard of “objective falsity” may be appropriate and others where it may not be necessary. Government contractors and their counsel should be aware that an internal expert deposit is reasonable opinion, by itself, and no longer insulates them from FCA liability. Government contractors and their counsel may want to consider reviewing internal decision-making policies, as well as ensuring proper due diligence measures are in place, for decisions tied to an expert’s opinion. Furthermore, companies should consider outside programs and audits.

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

23

23

What Does the New Administration in Washington, D.C. Mean for the Construction Industry?

While no one can accurately predict the future, with a new administration in Washington, there will be new priorities. So, what can we expect in 2021?

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

24

24

Some Likely Outcomes

- Congressional Review Act to overturn regulations
- Budget Reconciliation Act to raise taxes
- No break on Administration/judicial nominees
- No GOP oversight of Federal agencies
- Continued pressure to eliminate the filibuster

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

25

25

Potential Impacts to All Contractors

- Override state right to work laws
- Quickie labor elections
- Reverse card check
- Mandatory arbitration for first contract
- Restrictions on use of independent contractors
- Officer/director personal liability for ULP's

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

26

26

Move Towards Pro Union

- Government mandated PLA's on federal projects
- Apprenticeship requirements
- Firing NLRB General Counsel
- NLRB rulemaking on "joint employer"
- Expanded paid family leave
- Responsible contractor "blacklisting" rule
- Will there be pension reform?

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

27

27

Potential Infrastructure

- "Biden Plan" – What is it?
- Appropriations in Play (funding for existing programs)
- Budget Reconciliation (Undo Trump Tax Cuts?)
- Traditional Infrastructure Bills (Highway, WRDA)

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

28

28

Regulatory Reform Rollback

- OSHA standards for the pandemic – protection/respirators
- Reduction in employer drug testing
- Reinstate Obama WOTUS rule
- Eliminate environmental permitting streamlining the name of “climate justice”
- Pipeline construction moratorium

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

29

29

Thank you Questions?

© 2021 Snell & Wilmer L.L.P. All rights reserved. The purpose of this presentation is to provide information on current topics of general interest and nothing herein shall be construed to create, offer, or memorialize the existence of an attorney-client relationship. The content should not be considered legal advice or opinion, because it may not apply to the specific facts of a particular matter. As guidance in areas is constantly changing and evolving, you should consider checking for updated guidance, or consult with legal counsel, before making any decisions. The material in this presentation may not be reproduced, distributed, transmitted, cached or otherwise used, except with the express written consent of Snell & Wilmer.



Michael J. Baker

Partner | mjbaker@swlaw.com



Kelly C. Smith

Associate | kcsmith@swlaw.com

Snell & Wilmer

Albuquerque | Boise | Denver | Las Vegas | Los Angeles | Los Cabos | Orange County | Phoenix | Portland | Reno | Salt Lake City | San Diego | Seattle | Tucson | Washington, D.C.

30

30