

## **CONSTRUCTION & CONSTRUCTION DEFECT**

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### **LEGISLATION:**

Bus & PC §7026.1 to provide that a common interest development manager does not need a contractor's license when performing management services for the association.

PCC §20146 - Construction manager at-risk contracts; utilization for county construction project; subcontractors; public inspection of contract; retention proceeds.

PCC §4104 - Contents of bids or offers.

PCC §20133 - Alternate elective procedure for bidding on building construction projects in excess of two million five hundred dollars; legislative intent; labor compliance program; cost reimbursement; four-step process for design & build projects; bonding; subcontractors; list of subcontractors, bidders, and bid awards deemed public records; reporting.

Civil Code §2782 - Construction contracts; void and unenforceable indemnification provisions; agreements between subcontractors, builders, or general contractors.

### **CSLB ANNOUNCEMENTS:**

SB 261 and 262 – New and amended laws expand CSLB's disciplinary authority.

SB 407 – Water-conserving plumbing fixtures required to receive final permit approval.

SB 822 – CSLB licensees have an opportunity to correct timely but incomplete renewal applications.

AB 1236 – A contractor licensed as an LLC may obtain statutorily required liability insurance from a surplus line insurer.

AB 44 – Contractors making public works project bids or offers must list each subcontractor license number on their bid or offer documents.

AB 164 – Agreements between a local government agency and private entity for infrastructure projects must include payment and performance bonds.

SB 7 – Charter cities that do not require contractors to comply with state wage laws on public works projects cannot receive nor use state funding or assistance.

### **CASE LAW:**

Right to Repair Act is not sole remedy for homeowner or insurer when construction defect causes actual damage to structure or personal property.

*Liberty Mut. Ins. Co. v. Brookfield Crystal Cove LLC* (2013) 219 Cal.App.4th 98.

Arbitrator is not sole judge of truth: Court has discretion to review arbitration award that failed to enforce disgorgement requirement under Contractors' State License Law.  
*Ahdout v. Hekmatjah* (2013) 213 Cal.App.4th 21.

The United States Supreme Court upheld a challenge to the enforceability of a forum selection clause holding that such clauses should be enforced unless extraordinary circumstances unrelated to the convenience of the parties clearly favor a transfer.  
*Atlantic Marine Construction Co., Inc. v. United States District Court for the Western District of Texas*, 134 S.Ct. 568 (2013).

Sophisticated contract parties have the right to abrogate or waive the delayed discovery rule concerning latent construction defects and substitute an accrual from the date of substantial completion.  
*Brisbane Lodging, L.P. v. Webcor Builders, Inc.* (2013) 216 Cal.App.4th 1249.

Appellate Court upheld trial court decision that homeowner's policy precluded damages recovery resulting from constant or repeating gradual, intermittent, or slow release of water or infiltration of presence of water over a period of time.  
*Leroy Brown v. Mid-Century Insurance Company* (2013) 215 Cal.App.4th 841.

Policy language must be unambiguous when an insurer seeks to limit its obligations under an insurance policy concerning the duty to defend in connection with a self-insured retention (SIR).  
*American Safety Indemnity Company v. Admiral Insurance Company* (2013) 220 Cal.App.4th 1.

Contractor who was not entitled to penalty under Public Contract Code section 7107(f) is not a "prevailing party" entitled to attorneys' fees under the statute.  
*Underground Construction Co. v. City of Oakland – NOT OFFICIALLY PUBLISHED*  
First Appellate District, Division 4 (Alameda Co.) May 15, 2013.

Court may appoint arbitrator.  
*HM DG, Inc. v. Amini*, 219 Cal.App.4th 1100 (September 20, 2013).

Contractor must tell broker what coverage it needs.  
*San Diego Assemblers, Inc. v. Work Comp For Less Insurance Services, Inc.*,  
220 Cal.App.4th 1363 (4th Dist. 2013).

Equitable indemnity claim did not accrue with filing of original complaint that did not include claim for which indemnity was sought.  
*Centex Homes v. Superior Court* (2013) 214 Cal.App.4th 1090.

Renewed motion for relief from default must meet requirements of CCP §1008.  
*Even Zohar Constr. & Remodeling v Bellaire Townhouses* (2013) REVIEW GRANTED,  
superseded opinion at 215 Cal. App.4th 277.

A one-year debarment from bidding or working on public projects is not violative of a fundamental vested right.  
*Ayodeji A. Ogundare v. Department of Industrial Relations* (2013) 214 Cal.App.4th 822.

Offsite landscaping work is not necessarily part of a public works project and subject to full recovery on a payment bond.

*Nissho of California, Inc. v. Bond Safeguard Insurance Company* (2013) 220 Cal.App.4th 974.

Plaintiff and other property owners were not intended third-party beneficiaries to enforce the terms of a road improvement agreement and performance bond.

*The H. N. and Frances C. Burger Foundation v. Perez* (2013) 218 Cal.App.4th 37.