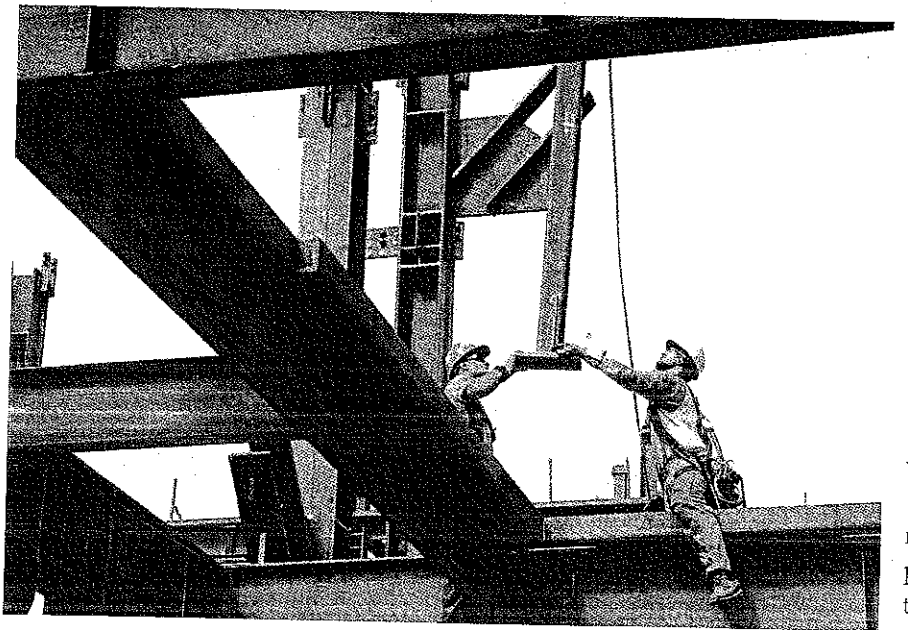


# 2009 Legal Firms Directory



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**Attorneys say the economy is creating some problems that have not been seen in years, such as increases in mechanic's liens and stop notices as well as bid protests. Plus, in order to meet federal stimulus deadlines, some projects may be rushed through the process and may not go through the proper review and inspection.**

By Joe Florkowski

The economy's present recession may lead to some messy legal problems in the future if builders are not careful about what work they take.

The recession has left many companies scrambling to find some project, any project, to work on. However, at the same time, those companies may find they are taking on a job with a smaller profit margin or contract language they would not normally agree to.

Subcontractors, especially, are finding themselves in a tough bargaining position, says Scott Holbrook, partner with Covina-based Crawford & Bangs.

"They are looking at contracts more closely, but at the same time they want to get a job," says Holbrook, whose firm represents mostly subcontractors.

Because many contractors want to find work, they are chasing work downwards, says Marilyn Klinger, partner in the Los Angeles office of Sedgwick, Detert, Moran & Arnold LLP.

"They are not really looking as carefully at the contract language," she says. >>

The economy is forcing many companies to behave differently, but the attorneys interviewed for this story – which is being published with California Construction's third-annual legal firms directory – say that the worst thing that companies should do is panic and take on work simply to have work.

Instead the attorneys advocate using caution and that all parties in a project – the owners, builders and designers – use the legal profession if they have a question.

The economy is creating some problems that have not been seen in years, the attorneys say. For instance, mechanic's liens and stop notices are increasing.

And the number of bid protests is the most that Holbrook says he has seen in 20 years.

The increase in bid protests is related to firms who are bidding irresponsibly and much lower than they should, says D. Michael Schoenfeld, partner with Sac-

A general contractor who takes on a federal stimulus project and has never worked on such an endeavor before should be cautious, Klinger says.

"If those contractors are not familiar with federal contracts, it's scary stuff," Klinger says.

Federal stimulus contracts will include stipulations including provisions that require a builder to have a code of ethics and buy American provisions, she says.

For subcontractors, working on a federal job can also make it more difficult to collect payment, Holbrook says. With a state job, there are multiple avenues to collect, but a federal job has only one -- the Miller Act -- through which to collect, he says.

While subcontractors may seek payment through mechanic's liens and stop notices, others may not be as fortunate.

Some in the industry are electing to not chase funds because they don't have the resources, Schoenfeld says.

**"Contractors and architects need to read the contract again and make sure the risks they are taking are still tolerable in this economy," Marilyn Klinger, partner with Sedgwick, Detert, Moran & Arnold LLP.**

ramento-based Murphy, Austin, Adams, Schoenfeld LLP.

"Today, I worked on two bid protests. Historically, I would work on four or five a year," Schoenfeld says.

The prospect of federal stimulus funds may be a plus for the construction industry, but the attorneys say that anyone who works on such a project still needs to exercise caution.

In order to meet federal stimulus deadlines, some projects may be rushed through the process and may not go through the proper review and inspection, Schoenfeld says. And that can lead to claims and disputes down the road, he says.

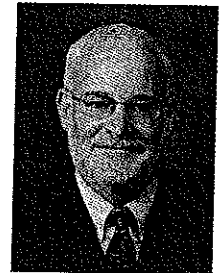
There are some things that contractors can do to ensure that they will not encounter problems down the line, Klinger says.

One key thing is to clearly find out if there is enough money to build a project, she says.

Another is that a contractor working for a private owner can do to protect themselves is to go back and reread the contract language of previous contracts, Klinger says.

Some in the industry get into such a comfort level with an owner that they OK the documents job after job, she says.

"Contractors and architects need to read the contract again and make sure



Top left: Marilyn Klinger; top right: D. Michael Schoenfeld; bottom left: Scott Holbrook

the risks they are taking are still tolerable in this economy," she says.

In this economy, some companies are going to have to learn to just say "no" if a contract or work isn't right for them, Schoenfeld says.

"(Companies) are going to have to work on smaller margins and be efficient and walk away when they can't commit sufficient resources," he says. <<