

NEWS

January 31, 2002

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SUBJECT: CITY OF LOS ANGELES PREVAILS IN RULING

LOS ANGELES (CA) - On January 30, 2002, the California Court of Appeal in Los Angeles affirmed the decision of the Los Angeles County Superior Court that the City of Los Angeles should be allowed to proceed on the merits with its amended cross-complaint against Kajima Engineering and Construction, Inc., arising out of the Badger Avenue Bridge Project at the Port of Los Angeles. Kajima had sued the City for some \$35 million in alleged cost overruns on the \$42 million Badger Avenue Bridge Project.



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After 5:00 p.m.:

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The City cross-complained for breach of contract and later amended its cross-complaint after initial discovery in the case to add causes of action, among other things, for false billings under California's False Claims Act, for bid shopping and illegal substitution of subcontractors in violation of the Public Contract Code and for various fraudulent acts in violation of the federal RICO statute. These included claims that Kajima had falsely certified that a minority business enterprise subcontractor had a substantial portion of the work when in fact that subcontractor was a mere front for a non-minority business enterprise.

Kajima had argued that the City's amended cross-complaint should be stricken pursuant to California's SLAPP statute which provides a summary procedure for striking a suit or countersuit which is based upon petitioning or speech activities. The SLAPP statute was originally designed, for example, to protect environmentalists from suits by developers arising from protests or petitioning against real estate developments. The trial court had held that only one of the 21 causes of action asserted by the City in its amended cross-complaint was subject to such a motion and Kajima appealed, asserting the City's entire countersuit should be stricken.

The Court of Appeal's opinion affirms the trial court's ruling allowing the City to proceed on the merits on its amended cross-complaint. The City intends to pursue its amended cross-complaint, including against Kajima Corporation, the Japanese parent, which has been joined on allegations that Kajima Engineering is insolvent and without sufficient assets to satisfy any judgment to be obtained by the City. For a copy of the opinion, please contact David McKenna, City Attorney's Office, (310) 732-3750.

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