

CONSTRUCTION SUPERCONFERENCE

CHANGING TRENDS IN GOVERNMENT CONTRACTS & CLAIMS

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ARTBA American Road & Transportation Builders Association

MODERATOR

- **James G. Zack, Jr.**
 - Executive Director, Navigant Construction Forum™

SESSION OVERVIEW

- Panel will discuss some trends in areas of
 - Efforts to criminalize construction site safety incidents
 - Government contract compliance when dealing with quasi-governmental agencies
 - Performance Bond trends
 - Current issues in EPC contracting & government contracts
 - Trends related to False Claims Act
 - Strategies for managing cost of data production

PRESENTERS

- **Michael G. Serafino**
 - Chief Compliance & Litigation Officer, Lendlease
- **Bobby Brown, Jr.**
 - Assistant General Counsel – Energy – Kiewit Energy Group
- **Laura Rehfeldt**
 - Deputy District Attorney, Office of Clark County District Attorney
- **Shelly Ewald**
 - Senior Partner, Watt, Tieder, Hoffar & Fitzgerald
- **Kelly Heuer**
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Criminalization of Safety Incidents

- Recent trend to try to criminalize construction site safety incidents
 - Department of Justice (DOJ) & Department of Labor (DOL) cooperative effort
 - Charged with increasing the frequency of criminal prosecutions
 - OSHA empowered to refer alleged violations to DOJ for potential criminal prosecution
 - The government (Federal, State and Local) believe that individual prosecutions are the key to effective deterrence
 - The landscape is changing and now specifically designed to criminally punish safety violations
 - Recommendations:
 - Adopting a Safety Culture
 - Accountability
 - Training

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Government Contract Compliance

- Quasi-governmental entities
 - QGEs?
 - Identifying applicable rules & regulations
 - Identifying conflicts between contracts & rules & regulations
 - Specific areas of concern
 - Diversity contracting
 - Audit
 - Claim processes
 - Others

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Performance Bonds

- Performance bonds
 - Triggering bond obligations (notice/default)
 - Trends in negotiating takeover agreements
 - Pros/Cons
 - Timing
 - Ownership & use of funds (earned & unearned)
 - Claims for Liquidated Damages
 - Remedies

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EPC Contracting

Update on current issues in EPC contracting & government contracts

- Risk allocation clauses in EPC contracts
 - Differing Site Conditions, Permits, Access, Changes, Scheduling & Delays
- *US ex rel Escobar*
 - Supreme Court decision on Implied False Certification

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Managing Cost of Litigation

- Strategies for managing costs of data production in litigation
 - Technology Assisted Review (“TAR” AKA “Predictive Coding”)
 - Practical measures
 - Producing in native format
 - Targeted collection and processing
 - Centralizing data and removing duplicates

Managing Cost of Litigation

Case Study: Electric Utility Company

Dispute between our client and a contract vendor hired to build a facility

— Key Issues / Goals

- In response to the arbitration, both parties agreed to produce relevant documents for the specified custodians in under four months
- Our client began with a starting population of 1.8 million documents for review after isolating key custodians and timeframes

— Solution

- Using the TAR approach, our client only reviewed 41k documents out of the entire population of 1.8 million documents in order to achieve 80% recall with 84% precision
 - Based on the TAR model, our client was able to produce 750k responsive documents to the opposing side by the deadline
 - TAR was also used to surface potentially privileged documents prior to production
- Our client is now using the TAR model to analyze the files produced TO them by the opposing side and quickly isolate documents related to the various deficiency issues

QUESTIONS?

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THANK YOU

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