



ACCNJ LEGAL & INSURANCE UPDATE

Updates on Vaccine Mandate Litigation

1. OSHA ETS (FOR EMPLOYERS WITH 100+ EMPLOYEES)

OSHA's Emergency Temporary Standard ("ETS") for employers with 100+ employees remains stayed pending litigation currently taking place in the U.S. Court of Appeals for the Sixth Circuit. As was reported in [last month's Legal and Insurance Update](#), OSHA has announced that it is suspending enforcement of the ETS until further court orders are provided on OSHA's request to lift the stay.

On Friday, December 3rd, the Sixth Circuit denied the Biden Administration's request for an accelerated schedule. The current briefing schedule calls for all briefs to be submitted by December 10th. Accordingly, a decision is unlikely this week, but we will continue to monitor any new developments.

2. FEDERAL CONTACTOR MANDATE (Executive Order 14042)

The Biden Administration suffered another loss on November 30th, when a federal judge for the Eastern District of Kentucky issued a preliminary injunction blocking implementation of Executive Order 14042, which imposes COVID-19 vaccination requirements on federal contractors. The decision only applies to federal contractors in Kentucky, Ohio, and Tennessee. However, similar challenges are currently underway in other jurisdictions with more likely to come. The main reason cited for the injunction was the Court's belief that President Biden exceeded his authority in issuing EO 14042. The Court seemed to be particularly bothered by a federal agency's ability to request amendments to current contracts not "officially subject" to EO 14042.

For the time being, local contractors should still plan as if EO 14042 will apply to their federal projects. ACCNJ will continue to monitor local dockets for decisions concerning the federal mandate that would have binding authority in our jurisdiction.

New Jersey Supreme Court to Hear Appeal in Lawsuit Concerning Public Bidding Requirements on County Improvement Authority Projects

The battle over whether Local Public Contracts Law (“LPCL”) applies to county improvement authorities will make its way to the New Jersey Supreme Court. In the litigation between Dobco, Inc. (“Dobco”) and the Bergen County Improvement Authority (“BCIA”), the New Jersey Supreme Court granted BCIA’s request for an appeal and will address the following questions:

1. *Can a principal of a corporate entity challenge a procurement process if the corporate entity is barred from doing so?*
2. *When a county improvement authority is designated as the redevelopment entity under the Local Redevelopment and Housing Law (“Redevelopment Law”), do the public bidding requirements of the Local Public Contracts Law apply to the county improvement authority’s selection of a redeveloper to serve as general contractor?*

Of particular importance to the contracting community is issue number 2. The applicability of LPCL requirements to county improvement authorities and projects commissioned under the Redevelopment Law have been hotly contested issues for quite some time.

In July, an Appellate Court held in favor of Dobco by ruling that the BCIA must comply with public bidding requirements for an \$80 million renovation to the historic Bergen County Justice Center. The Appellate Court determined that BCIA skirted LPCL requirements by improperly using a “shortlist” procurement method not permitted by the LPCL. The Appellate Ruling effectively mandates that county improvement authorities select general contractors in accordance with LPCL requirements when the contractor is to be paid with public funds. This portion of the ruling will now be reviewed by the Supreme Court.

The Supreme Court’s decision will also likely impact a second project involving procurement challenges raised by Dobco. In separate litigation against Union County, Dobco alleged similar violations by the Union County Improvement Authority (“UCIA”) in connection with a \$145 million government complex project. In that litigation, Phase 1 of the project was permitted to move forward. However, Phase 2 remains in limbo and will likely be impacted by the Supreme Court’s decision in the Bergen case.

ACCNJ will continue to bring you the latest on this litigation as it develops. For more background on the Dobco litigation, members can refer to previous writeups in the Legal & Insurance Updates for [July](#) and [August](#).

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