



## Court Eliminates One Basis For Public Agencies To Recover Attorney Fees In Stop Notice Enforcement Actions

When a public entity receives a stop notice on one of its public works projects, it has a statutory obligation to withhold the amount of the stop notice and its “reasonable cost of any litigation.” (Civ. Code, § 3186.) Many public entities have historically treated “reasonable cost” as including attorney fees. However, in *Tri-State, Inc. v. Long Beach Community College District* (Mar. 12, 2012) \_\_ Cal.App.4th \_\_ (2012 WL 764416), the court ruled that “reasonable cost” does not include attorney fees, although the court noted that public agencies may still recover attorneys’ fees by depositing the funds with the court via interpleader.

In *Tri-State*, a subcontractor filed a stop notice with the public agency owner, and then initiated litigation against the general contractor and owner. The general contractor obtained a stop notice release bond, which the owner chose to accept. Based on the bond, the parties stipulated to the dismissal of the owner, and the owner then sought attorney fees based on Civil Code section 3186. The trial court ruled in favor of the owner.

However, the appellate court reversed and held that the use of the word “cost” was not meant to include attorney fees: “We believe that the Legislature would have expressly provided for an attorney fee award . . . if the Legislature so intended.” The word “cost” merely refers to “ordinary (litigation) costs exclusive of attorney fees.”

Due to the *Tri-State* decision, public agencies should no longer litigate stop notice enforcement actions under an assumption that they will recover their attorney fees as long as sufficient funds were withheld. As pointed out by the appellate court, in order to recover attorney fees, a public agency owner should interplead (i.e., move to deposit) the withheld funds with the court under Code of Civil Procedure section 386.6. Obtaining a dismissal from the subcontractor or accepting a stop notice release bond from the general contractor might end the litigation, but will not permit recovery of attorney fees.

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We recommend that public agencies confer with their legal counsel to evaluate their handling of stop notice enforcement actions in light of the *Tri-State* ruling. If you have any questions about this decision, please feel free to contact one of our [eight offices](#) located statewide. You can also visit our [website](#) or follow Lozano Smith on [Facebook](#).

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