



# LITIGATION SNAPSHOT

How AGC is Protecting Contractors in the Courts

## WHY IT MATTERS

AGC's judicial advocacy is a critical component of its broader advocacy efforts. Litigation enables AGC to challenge overreaching regulations that are unreasonable, unachievable, or downright unfair.







We can stop harmful precedents - in things like construction, insurance, and employment law - before they hit your bottom line.

### SUPPORT THE FIGHT!

The Construction Advocacy Fund powers AGC's litigation efforts - helping challenge harmful regulations and protect the industry.



## AT-A-GLANCE CASE TRACKER

CASE	STATUS
 <b>PFAS</b>	Pending Decision
 <b>Subcontractor Default</b>	On Appeal
 <b>Davis-Bacon</b>	Settlement Discussions
 <b>OSHA Walkaround</b>	Awaiting Oral Arguments
 <b>Bargaining Orders</b>	Monitoring Developments
 <b>Government Insourcing of Construction Services</b>	Data Analysis



## AGC WINS!



### STORMWATER PERMITS: LIABILITY CLARIFIED

Supreme Court decision protects contractors from being held responsible for water quality impacts when they followed their permit requirements.



### ENVIRONMENTAL REVIEWS: SCOPE LIMITED

The Supreme Court rejected the expansion of NEPA requirements, reinforcing limits on overly burdensome environmental reviews.



### ASSOCIATION STANDING PRESERVED

AGC retains the ability to sue on behalf of contractors, even when members are not the direct target of regulation.





# THE DEEPER DIVE

## ENVIRONMENT | PFAS SUPERFUND RULE

*Increased Costs for Construction and Risk of Liability*

**THE ISSUE:** EPA designated two PFAS as **hazardous substances**. Contractors could face cleanup liability simply for moving contaminated soil or water, even without knowing about it. In addition, contractors are facing increased costs for shipping and disposal of certain construction debris that contains PFAS. **AGC is challenging** the rule and EPA's failure to consider costs to the construction industry.

**THE LATEST:** Oral arguments held Jan. 20; **court decision pending**.

**NEXT STEPS:** Await court decision; **continue pushing** for **liability protections** and providing **resources** for members.

## INSURANCE | SUBCONTRACTOR DEFAULT

*An Insurance Company Attempts to Clawback \$5M of an Approved Claim*

**THE ISSUE:** When a contractor receives a payment from a Subcontractor Default Insurance (SDI) policy that exceeds damages later awarded in arbitration, can the contractor be forced to repay the difference? AGC is arguing that such a policy **violates a norm of insurance law and creates uncertainty** into how these policies are interpreted nationwide.

**THE LATEST:** A New York trial court ordered the contractor to repay the insurer. **The case is on appeal**.

**NEXT STEPS:** Plaintiff has submitted its brief. Defendant is working on its appellate brief.

## LABOR | DAVIS-BACON RULE

*Expanding Application to Truck Drivers, Material Suppliers, and Contracts without Referencing Clauses*

**THE ISSUE:** The Biden administration's Davis-Bacon **rule** exceeded the Department of Labor's authority by expanding Davis-Bacon coverage to time spent on site by truck drivers, and material suppliers operated by covered contractors, and by making Davis-Bacon requirements apply even when the prime contract fails to reference them.

**THE LATEST:** The case has been on hold since the change in administration, leaving in place a preliminary injunction won by AGC.

**NEXT STEPS:** Parties have begun settlement talks. AGC is seeking agreement to a nationwide permanent injunction from implementation of the challenged regulations.

## SAFETY | OSHA WALKAROUND RULE

*Allows Non-Safety Officials to Accompany Safety Inspections*

**THE ISSUE:** OSHA's **rule** authorizes potentially anyone, regardless of safety training, construction experience, or intent to accompany a federal safety inspector on a jobsite. AGC is arguing the rule is unconstitutional and violates the property rights of employers.

**THE LATEST:** The case is fully briefed and awaiting a schedule for oral arguments.

**NEXT STEPS:** Oral arguments. A similar rule as been proposed at the state level in California.

## LABOR | BARGAINING ORDERS

*Lowering The Standard for Imposing a Bargaining Order*

**THE ISSUE:** In its 2023 *Cemex* decision, the National Labor Relations Board (NLRB) unlawfully expanded the circumstances in which it may require a company to bargain with a union that has not won a representation election.

**THE LATEST:** AGC signed on to amicus briefs in two cases in two circuit courts, supporting employer challenges. The Sixth Circuit rejected the *Cemex* standard as unlawfully adopted, while the Ninth Circuit upheld the bargaining order in the case but didn't rule on the lawfulness of the standard

**NEXT STEPS:** AGC is monitoring developments and how the NLRB responds to the ruling, and will assess further involvement if necessary.

## FEDERAL | GOVERNMENT INSOURCING CONSTRUCTION SERVICES

*Dredging Contractors Must Compete with the Federal Government Self-Performing Construction Work*

**THE ISSUE:** Dredging companies are forced to compete with the U.S. Army Corps of Engineers federally owned and operated ships that are self-performing work private industry can do. AGC has submitted Freedom of Information Act (FOIA) requests to better understand scope of work and taxpayer cost.

**THE LATEST:** AGC received some documents and is evaluating the data with dredging contractors.

**NEXT STEPS:** AGC will leverage data to advocate for the government to utilize private sector for work.