

## EXPERT ANALYSIS

### Federal Miller Act Rights Trump State Statute Precluding Claims by Non-Licensed Contractors

By Aron Beezley, Esq.  
Bradley Arant Boult Cummings LLP

In a recent decision, the 9th U.S. Circuit Court of Appeals held, for the first time, that California's contractor licensing requirement cannot be used to bar a federal subcontractor from pursuing a claim under the Miller Act, 40 U.S.C. § 3131, for payment in connection with a federal government contract. In reversing the district court's grant of summary judgment in favor of the defendant prime contractor and its surety, the 9th Circuit joined the 10th and 8th circuits and the U.S. Supreme Court in holding "that rights and remedies under the Miller Act may not be conditioned by state law." *Technica LLC ex rel. United States v. Carolina Cas. Ins. Co.*, 749 F.3d 1149 (9th Cir. Apr. 29, 2014). The 9th Circuit's decision is noteworthy because it provides much-needed clarity regarding the rights and defenses available to federal contractors and their sureties in the context of Miller Act suits.

The dispute in *Technica* arose out of a federal construction project, the Immigration and Customs Enforcement Detention Center in El Centro, Calif., a city situated near the U.S.–Mexico border. As required by the Miller Act and the terms of its contract with the government, the prime contractor on the project, Candelaria Corp., provided a payment bond, which was issued by its surety, Carolina Casualty Insurance Co. In December 2007, Candelaria entered into a subcontract with Otay Group Inc. under which Otay was to perform a portion of the work that was called for by the prime contract. Otay, in turn, contracted with Technica LLC to act as a sub-subcontractor on the project.

Between 2007 and June 2008, Technica provided \$893,698 worth of material, labor and services in connection with the project. Technica invoiced both Otay and Candelaria for this work, but it only received payments totaling \$287,862. In June 2008, Otay's subcontract was terminated by Candelaria and, in September 2008, Technica filed suit in the U.S. District Court for the Southern District of California, invoking its rights under the Miller Act to recover against the payment bond for outstanding amounts owed pursuant to the subcontract.

Candelaria and Carolina Casualty subsequently filed a motion for summary judgment, arguing, among other things, that California's contractor licensing statute, Cal. Bus. & Prof. Code § 7031(a), precludes Technica's Miller Act claim. In pertinent part, the statute provides:

Except as provided in subdivision (e) [*i.e.*, the "labor provider" exception], no person engaged in the business or acting in the capacity of a contractor, may bring or maintain any action, or recover in law or equity in any action, in any court of this state for the collection of compensation for the performance of any act or contract where a license is required by this chapter without alleging that he or she was a duly licensed contractor at all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.

Candelaria and Carolina Casualty argued that because Technica did not possess a California contractor's license and did not fall within the so-called "labor provider" exception to the licensing requirement, Technica could not necessarily pursue its Miller Act claim. After considering the parties' arguments, the district court found there was no dispute that Technica lacked a California contractor's license. The district court also found that California's contractor licensing statute

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applied and that the "labor provider" exception did not. Accordingly, the district court granted summary judgment in favor of Candelaria and CCIC, concluding that Technica's Miller Act claim was barred by state law.

Thereafter, Technica appealed the district court's ruling to the 9th Circuit. In framing the issue before it on appeal, the 9th Circuit stated, "The question before us is whether California's contractor's licensing law restricts 'the substance of the rights' afforded to Technica under the Miller Act."

Before answering this question, however, the 9th Circuit provided a succinct overview of the Miller Act, explaining:

The Miller Act is the modern-day remedy to the historical dilemma faced by contractors and materialmen denied compensation in federal construction projects. The common law doctrine of sovereign immunity prevented liens against property of the federal government, and federal statutes only allowed those in privity of contract with the government to sue to enforce contractual rights. Recognizing that other parties who contribute to the performance of a federal construction contract, including subcontractors, should in some way be assured payment of their claims, Congress enacted the Heard Act in 1894. In 1935, the Heard Act was repealed and the Miller Act enacted in its place.

The Miller Act requires a general contractor on a federal construction project to furnish a payment bond "for the protection of all persons supplying labor and material in carrying out the work provided for in the contract." Under the Miller Act, any person who has furnished labor or material in carrying out work on a federal construction project and

[who] has not been paid in full within 90 days after the day on which the person did perform the last of labor ... may bring a civil action on the payment bond for the amount unpaid at the time the civil action is brought and may prosecute the action to final execution and judgment for the amount due.

40 U.S.C. § 3133(b)(1).<sup>1</sup>

Quoting the U.S. Supreme Court's decision in *F.D. Rich Co., Inc. v. United States ex rel. Industrial Lumber Co.*, 417 U.S. 116 (1974), the 9th Circuit went on to reason that because the Miller Act provides Technica with a federal cause of action,<sup>2</sup> "the scope of the remedy as well as the substance of the rights created thereby is a matter of federal not state law."

In determining that state laws cannot be used to provide an award of attorney fees to a Miller Act claimant where such a right is not provided by federal law, the Supreme Court, in *F.D. Rich*, cited the federal interest in the uniform application of law. According to the 9th Circuit, the Supreme Court, in *F.D. Rich*, also noted that many federal construction contracts involve construction in more than one state, and frequently the parties to Miller Act suits have little or no contact, other than the contract itself, with the state where the project is located.

The 9th Circuit further noted that the 10th Circuit, following *F.D. Rich*, previously concluded in *Hoepfner Construction Co. v. United States ex rel. E.L. Mangum*, 287 F.2d 108 (10th Cir. 1960), that state statutes cannot "condition the rights available to a subcontractor" under the Miller Act because state laws "do not condition or otherwise proscribe in any manner the right of the United States to institute and maintain in the United States Court for the use and benefit of a subcontractor an action against the prime contractor."

In *Hoepfner*, the 10th Circuit considered a proffered defense to a Miller Act claim that was based on a Colorado statute that precluded partnerships from maintaining an action to collect debts in cases in which the partnership failed to record an affidavit with the county recorder's office identifying the names of the individual partners. The 10th Circuit rejected this defense, holding that the right to pursue a Miller Act action "does not have its source" in Colorado law and, therefore, Colorado law could not be used to limit a subcontractor's rights under the Miller Act.

The 9th Circuit also cited the 8th Circuit's decision in *Aetna Casualty & Surety Co. v. United States ex rel. R.J. Studer & Sons*, 365 F.2d 997 (8th Cir. 1966). In that case, the 8th Circuit held that a South Dakota statute disallowing enforcement of a contract on behalf of a foreign corporation

could not be used to defeat a Miller Act claim brought by a joint venture that included a Montana corporation. In reaching its decision, the 8th Circuit reasoned that the Miller Act is “highly remedial in nature” and that state statutes that restrict a party’s rights “should not and will not be enforced by the federal courts in Miller Act cases.”

Furthermore, the 9th Circuit noted that the case law cited by Candelaria and Carolina Casualty is distinguishable because the cited cases pertain to the “application of the substantive law of contracts and not the rights established by the Miller Act.” Accordingly, the 9th Circuit went on to hold that California’s statutory limitation on the right of a non-licensed contractor to pursue an action for collection of payment does not apply to Miller Act actions. As the 9th Circuit observed, “[A]pplication of California’s licensing statute as a defense to a Miller Act claim would, at best, condition the rights of a subcontractor on the procedural requirements of state law, and, at worst, result in the nullification of those rights entirely.”

In addition, the 9th Circuit noted that enforcement of state licensing requirements against Miller Act claimants would “wreak havoc on the uniform application of the Miller Act,” given that federal subcontractors routinely perform projects throughout the country. In this connection, the 9th Circuit stated that requiring federal subcontractors to comply with contractor licensing requirements in every state in which they work “is contrary to the intent of Congress in enacting the Miller Act, which was meant to reduce the substantive and procedural hurdles placed on federal subcontractors, labor providers and materialmen in seeking payment or wages denied to them.”

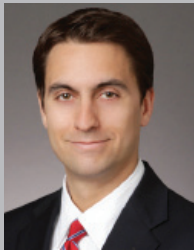
The 9th Circuit’s decision in *Technica* is noteworthy because it provides a greater degree of clarity regarding the rights and defenses available to federal contractors and their sureties in the context of Miller Act actions. The fact that the 9th Circuit has joined the 8th and 10th circuits (as well as the U.S. Supreme Court) in holding that rights and remedies under the Miller Act may not be conditioned by state law certainly increases the likelihood that other circuits will eventually follow suit.

## NOTES

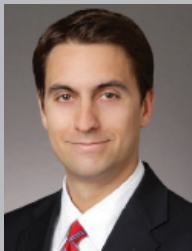
<sup>1</sup> *Technica LLC ex rel. United States v. Carolina Cas. Ins. Co.*, 749 F.3d 1149, 1151-1153 (9th Cir. Apr. 29, 2014) (internal citations omitted).

<sup>2</sup> The Miller Act explicitly affords sub-subcontractors, such as *Technica*, the right to pursue an action against a prime contractor’s payment bond. See 40 U.S.C. § 3133(b)(2) (“A person having a direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing the payment bond may bring a civil action on the payment bond.”).

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