

Bovis Kyle attorney, Jared Heald, obtains dismissal of payment bond claim

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Bovis Kyle's general contractor client was sued under a payment bond provided in association with a federally funded construction project at Fort Benning, Georgia. The plaintiff in the lawsuit was a former employee of a subcontractor on the project who claimed that his employer did not pay him the prevailing wage required under the Davis Bacon Act. Because his employer was out of business, the plaintiff sued Bovis Kyle's client seeking to recover the allegedly owed back pay under the associated payment bond. Additionally, because there were other former employees of the subcontractor with similar claims, the plaintiff was attempting to get class action certification. The problems with the plaintiff's claims were the lack of a private cause of action under the Davis Bacon Act and the plaintiff's total failure to comply with the Miller Act's notice and filing requirements. After attempts at obtaining a voluntary dismissal of the plaintiff's claims were continually met with demands for nuisance-value settlement, Jared Heald determined that an aggressive course of action was required to halt the plaintiff's attempt to get an undeserved payoff. Accordingly, Mr. Heald served a Rule 11 motion for sanctions on the plaintiff seeking recovery of Bovis Kyle's client's attorneys' fees and costs of litigation from both the plaintiff and his counsel. Jared Heald felt so strongly about his client's position that he served the Rule 11 motion for sanctions prior to filing a dispositive motion in the case. Faced with potential sanctions, the plaintiff dismissed the lawsuit. Because of the aggressive defense presented, none of the other former employees of the subcontractor have filed a lawsuit against Bovis Kyle's client as previously threatened.