

CLIENT ALERT

One Employee's Fraud Bars Company's Monetary Claim

Jul.19.2016

In *Laguna Constr. Co. v. Carter* (July 15), the Federal Circuit denied Laguna's claim seeking \$2.9 million in unpaid invoices because an employee pled guilty to accepting subcontract kickbacks in Iraq – fraudulent conduct that the court imputed to the company and ruled was a breach of the "Allowable Cost and Payment" clause. The court ruled that the ASBCA had jurisdiction to rule on the government's affirmative defense of "prior material breach" that was based on a fraud conviction, that this affirmative defense does not require a separate CO final decision per *Maropakis*, and that the contractor's fraud-based breach excused the government's subsequent breach (failure to pay for the completed and invoiced work) – a reminder to contractors of the importance of ethics training and monitoring.

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