



Michael Rich Discusses Major Bid Protest Ruling with Law360

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Following the December 7 Federal Circuit ruling reviving Harmonia Holdings Group LLC's dispute over a \$325 million U.S. Customs and Border Protection (CBP) contract, Burr attorney Michael Rich was quoted in *Law360* sharing insight on the lengthy case and the Federal Circuit's decision.

The matter centered on whether Harmonia had waived its right to protest a CBP cargo screening application by failing to "diligently pursue" the case in the Court of Federal Claims. The court ruled that the company preserved its right by timely submitting an earlier protest to the agency itself, meaning a delay in bringing the case to the claims court did not trigger the "Blue & Gold" rule. Stemming from a 2007 Federal Circuit decision, the Blue & Gold rule suggests that contract bidders must flag patent or clear errors in solicitation before bidding closes or effectively waive their chance to challenge those errors.

Rich, who was previously a member of Harmonia's legal team at his prior law firm but did not speak on behalf of the company, explained that the long pendency of the matter was driven by the unusually long wait after the November 2020 oral arguments. He called the decision "a narrower ruling than we expected" because, among other reasons, it sidesteps a standing issue that had been extensively briefed by the parties.

He added that in *Insero*, Judge Reyna had previously noted Blue & Gold is a forfeiture, not a waiver. "I think Judge Reyna and the rest of the panel were unwilling to hold that Harmonia had forfeited a substantive right when it followed the Federal Circuit's

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precedent on how to preserve that right,” Rich said. “And I think that this stands as a curtailment of the Court of Federal Claims’ expansion of Blue & Gold.”

For the full article, please [click here](#).

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