

Quiz 2 essay questions due October 6

1. In *Kiewit Infrastructure West Co. v. United States*, 972 F.3d 1322 (Fed. Cir. 202), the court determined that the owner essentially represented that the contractor would not need to purchase the wetlands mitigation credits at the heart of the dispute. The constructive change doctrine, however, does not afford the contractor a remedy when the owner merely insists that the contractor perform the work according to the agreed plans and specifications. See *Aleutian Constructors v. United States*, 24 Cl. Ct. 372, 389-90 (1991) (rejecting a claim for additional compensation where the evidence showed that the contractor was merely being required to correct work that failed to comply with contractual requirements). Was there a credible argument in the *Kiewit* case that when the contractor purchased the additional mitigation credits fees, it was simply doing what the contract documents required? Explain your analysis.

2. This assignment is based on Arkansas law concerning implied warranties for new residential construction. The leading cases include: *Wawak v. Stewart*, 449 S.W.2d 922 (Ark. 1970); *Wingfield v. Page*, 644 S.W.2d 940 (Ark. 1983); *Bullington v. Palangio*, 45 S.W.3d 834 (Ark. 2001); *Morris v. Rush*, 69 S.W.3d 876 (Ark. Ct. App. 2002); *Crumpacker v. Gary Reed Construction, Inc.*, 2010 Ark. App. 179 (2010). Your client is an Arkansas homebuilder who is concerned about the warranties implied into residential building contracts under Arkansas law, which the client has heard about repeatedly through various industry groups and conferences. The client has consulted you concerning the extent to which those warranties may be excluded or limited by appropriate contract language. While the client worries about the risks that the implied warranties create, the client is also mindful that the home building business is competitive and that many homebuilders offer express warranties as a marketing device. Draft a provision for the client to include in its standard contract form that you believe will be effective to limit the implied warranties, but that will not frighten away prospective buyers by suggesting that the client does not build quality houses or does not stand behind its work. The ideal solution will be a carefully crafted and limited express warranty. In addition to submitting your proposed limited warranty, briefly discuss how you anticipate that a court might interpret or apply such a disclaimer in light of the Arkansas cases.