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Third Quarter 2017

CONSTRUCTION AND PROCUREMENT LAW NEWS

Recent federal, state, and local developments of interest, prepared by Bradley's Construction and Procurement Group:

Undefinitized Contracts - Turner Construction Co. v. Smithsonian Institution

The Civilian Board of Contracts Appeals ("CBCA"), the federal administrative court tasked to resolve disputes between government contractors and federal civilian executive agencies, recently issued a decision in *Turner Construction Co. v. Smithsonian Institution*, addressing how a board should respond if the contracting parties cannot agree to a firm price for an undefinitized contract that a contractor fully performs. Turner Construction Company ("Turner") filed three appeals from the contracting officer's decisions after the Smithsonian Institution ("Smithsonian") failed to pay for additional costs arising from the design and construction of a long-term, multiple-phase project known as the "Public Space Renewal Project" at the National Museum of American History.

The case was unique because Turner and the Smithsonian were supposed to have negotiated a firm fixed price contract during the design phase of the contract, but the parties failed to do so. This failure meant that the Smithsonian could not rely on "many of the safeguards and defenses that would have been available to it under a firm fixed-price agreement," including the contract's equitable adjustment clause. Instead, the CBCA agreed with Turner and concluded that Turner was entitled to recover in *quantum meruit*. The Board's task, then, was to definitize the undefinitized portion of the contract after extensive evidentiary hearings.

Ordinarily, in *quantum meruit* cases, one values the services rendered based on the reasonable value of those services in the marketplace. In this case, Turner argued that because there was no "marketplace" for the

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complex design-build renovations that Turner provided at the museum, the Board should award Turner its reasonable costs plus overhead and profit. The Board agreed with Turner and clarified that under this approach it was not "equitably adjusting" the contract price, but was instead "finalizing the price of the base contract work." Hence the contract Equitable Adjustment clause or a contractual agreement to limit general conditions and fee on changes did not bind the Board. Ultimately, the Board awarded Turner and its subcontractors over six million dollars.

The Board also rejected the Smithsonian's claim for overpayment. After Turner submitted its claim to the Smithsonian, the Smithsonian conducted an audit and alleged that it had overpaid Turner by approximately forty million dollars. The Smithsonian, relying in part on document requirements for cost-type contracts, argued that Turner could not produce documentation adequate to support its costs. The Board disagreed and reiterated that the contract was not awarded as a cost-type contract (even though, as it turned out, the parties never agreed on a firm fixed-price), and that Turner was not required to maintain the level of documentation sought by the Smithsonian, including time and materials tickets for change order work.

This case presented a unique set of circumstances because of the parties' inability to reach a firm fixed-price as contemplated by the contract when awarded. The CBCA's decision that *quantum meruit* was the appropriate measure of recovery for Turner will serve as a reference because it allowed Turner its reasonable costs plus overhead and profit, where reasonable costs were not based on the marketplace costs. Bradley construction lawyers in its Washington DC office represented Turner in this case.

By Lisa Markman

The Consequences of Failing to Exhaust Administrative Remedies Prior To Filing Suit

The Fourth Circuit Court of Appeals, the federal appeals court covering Maryland, Virginia, West Virginia, North Carolina, and South Carolina, affirmed the trial court's decision to dismiss a contractor's breach of contract claim against the City of Baltimore ("City") due to the contractor's failure to first exhaust its contractual administrative remedies prior to filing its lawsuit. The dispute in *Balfour Beatty Infrastructure, Inc. v. Mayor, et al.* stemmed from a contract to build a wastewater treatment center to help combat pollution in the Chesapeake Bay.

The contract contained a "time is of the essence" provision and a liquidated damages provision that applied a daily-liquidated damages rate if the contractor completed the project late. The contract also incorporated the dispute resolution process set forth in the City's Department of Public Works Specifications, more commonly known as the Green Book. The contract's multi-tiered dispute resolution process required the contractor to give "prompt notice of any claim or dispute to the Department of Public Works engineer assigned to [the] project." That engineer, along with the project's inspector and division head, provide the initial review of the claim. If the contractor appealed their decision, the bureau head of the Department of Public Works would review the claim. If the contractor appealed the decision of the bureau head of the Department of Public Works, the Director of Public Works would review the contractor's claim and issue a final decision. The contract provided that only after the Director of Public Works issued its final decision could the contractor "bring its claim to a 'court of competent jurisdiction.'"

The contractor alleged that it encountered a number of delays throughout the project resulting from the City's "design errors, omissions and inconsistencies" which interfered with its completing the project as originally agreed. Nonetheless, after the contractor missed the contractually required substantial completion date, the City notified the contractor that it would begin assessing liquidated damages at the rate of $20,000 per day until the contractor completed the project. In response, the contractor bypassed the contract's administrative dispute resolution process and filed a lawsuit in federal court for breach of contract. The contractor alleged that the City had breached the contract by declaring it in default and assessing liquidated damages without first pursuing its claim through the contract's dispute resolution procedures. The contractor

contended that the City's actions "amounted to an illegal and *ultra vires* 'abandonment' of the Green Book administrative process, relieving [the contractor] of any obligation to use that process itself."

The trial court disagreed with the contractor and held that the contractor was required to exhaust the administrative remedies set forth in its contract with the City. The trial court emphasized Maryland's "strong preference for administrative exhaustion," a preference that is consistent with federal law. It explained that, under Maryland law, "it is well established that '[w]here an administrative agency has primary or exclusive jurisdiction over a controversy, the parties to the controversy must ordinarily await a final administrative decision before resorting to the courts for resolution of the controversy.'" However, the trial court recognized that an exception to the exhaustion requirement was warranted when the "reviewing agency is 'palpably without jurisdiction' to adjudicate a party's claim," and the complaining party pleads that it will suffer an "irreparable injury" if it is forced to comply with the contractual administrative process. The trial court reasoned that such an exception did not apply to the facts of this case.

The trial court further explained that the contractor's question regarding the unlawfulness of the City's assessing liquidated damages without first engaging in the contract's prescribed dispute resolution process is the type of "regulatory interpretation issues that 'should be decided administratively before proceeding to judicial review.'" The trial court stated that even if the City "acted without authority in taking liquidated damages absent administrative review, that would not excuse [the contractor] from exhausting its administrative remedies." The trial court also rejected the contractor's argument that submitting its claim through the administrative dispute resolution process would be futile because the City employees that would review its claims were biased in favor of the City.

On appeal, the Fourth Circuit affirmed the trial court's decision and agreed that the contractor "was required to exhaust its contractual administrative remedies before filing [its] action in federal court." The Fourth Circuit further explained that the "palpably without jurisdiction" exception to the exhaustion requirement applied "when the agency charged with administrative review is not empowered to adjudicate the issue presented or to grant effective relief," a situation that was not present based on the facts of this case.

This case is a reminder of the importance of complying with contractual dispute resolution provisions. Work with your lawyer to make sure you have a thorough understanding of the contractual requirements concerning claims or disputes and that you follow the process stipulated by your contract before filing a lawsuit that may be deemed premature. By engaging in the contractually required dispute resolution process, you may be able to resolve the dispute without incurring the high costs and unpredictability usually associated with litigation. Regardless, even if unsuccessful, the administrative process may be required for pursuit of a valid claim in court.

By Jasmine Gardner

Contractor Assumes Non-Delegable Duty of Care for Safety of All Project Employees Through Standard Form Contract

The construction industry's use of standard form contracts (such as the AIA family of documents) is widespread and provides parties with consistent terms that govern their respective project obligations and the allocation of risk. However, standard forms are not ordinarily tailored to specifically comply with the law of the state governing the contract. For example, risk-shifting provisions in form contracts such as pay-if-paid or pay-when-paid clauses or indemnity clauses may be unenforceable in states such as Florida that have nuanced laws on these issues. Relying on a standard form contract that has not been properly harmonized with the applicable law may inadvertently result in a party's assuming obligations and liability in excess of what was originally contemplated when negotiating the agreement and price. The recent Indiana Supreme Court case of *Ryan v. TCI Architects/Engineers, Contractors, Inc.,* highlights the significant (and potentially non-delegable) exposure that a party

may unexpectedly assume in a standard form contract.

The long-standing rule in Indiana (like many states) is that a principal is generally not liable for the negligent acts of an independent contractor. A general contractor therefore ordinarily does not owe a duty of care to a subcontractor's employees for safety-related issues on a project unless the contractor contractually assumes such an obligation. In *Ryan*, general contractor TCI Architects/ Engineers/Contractors, Inc. ("TCI") entered into a design-build prime contract with owner Gander Mountain for renovations to Gander Mountain's retail store in Lafayette, Indiana. TCI and Gander Mountain used the Design Build Institute of America's (DBIA) 1998 Standard Form of Agreement Between Owner and Design-Builder (Form 530) and Standard Form of General Conditions of Contract Between Owner and Design-Builder (Form 535).

Paragraph 2.8 of Form 535, Design-Builder's Responsibility for Project Safety, stated that TCI would "assume [] responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work" and designate a safety representative "with the necessary qualifications and experience to supervise the implementation and monitoring of all safety precautions and programs related to the Work." TCI's designated representative was also contractually required to conduct daily inspections and hold weekly meetings with the project participants. TCI further agreed to comply with all legal requirements relating to safety.

TCI entered into a subcontract with mechanical subcontractor Craft Mechanical ("Craft"). The TCI-Craft subcontract stated that Craft assumed the responsibility for ensuring employee safety at the project. Craft later entered into a sub-subcontract agreement with B.A. Romines Sheet Metal ("Romines"), whereby Craft assumed as to Romines the same obligations that TCI assumed as to Craft, and Romines assumed the responsibility for implementing safety standards and complying with the applicable laws regarding the same.

A Romines employee (Ryan) working at the project sustained serious bodily injuries when he fell off a ladder that was purportedly too short. Romines' foreman disputed Ryan's account as to the availability of other height-appropriate ladders on-site, and Ryan admittedly made no efforts to raise the issue with either TCI or Craft prior to his accident.

Ryan nevertheless asserted a negligence claim against TCI, arguing that TCI had a non-delegable duty to provide him with a safe workplace, and that his injury on-site arose directly from TCI's breach of that duty. The trial court and Court of Appeals both found that TCI owed no such duty to Ryan. The Indiana Supreme Court, however, disagreed and reversed the Court of Appeals. While acknowledging the general rule that TCI owed no common law duty to employees of its subcontractors, the court held that "TCI assumed a duty of care related to worksite safety for all employees when it entered into a contract with Gander Mountain." The court specifically found that Paragraph 2.8 of the standard form TCI-Gander Mountain prime contract - including the requirement to designate a safety representative and to accept sole responsibility for coordinating project safety meetings and conducting safety inspections, coupled with TCI's control of the means, methods, and techniques of construction - evidenced a clear intent to assume "a duty of care not ordinarily imputed to a general contractor." The court also held that TCI's attempt to delegate its safety obligation to Craft and/or Romines in the subsequent agreement was irrelevant, because the "four corners" of the TCI-Gander Mountain contract was unambiguous as to TCI's safety obligations and did not expressly incorporate by reference the later agreements.

While TCI owed a legal duty to Ryan, the case was ultimately remanded to the trial court so that a jury could decide whether TCI in fact breached this duty. The takeaway from *Ryan* is that the "contract rules all" with respect to the parties' rights and obligations. Owners, contractors, and subcontractors should closely review and harmonize their contracts with applicable law to avoid the assumption of unknown future liability. This principle is especially important when standard form contracts are involved that have not been specifically tailored to the unique conditions and requirements of the project. Here, for example, the outcome may differ, if the general contract

(TCI) qualified its Owner contract to state that it planned to subcontract with many trades and that the general contractor would delegate to each trade the primary safety obligation for its employees.

By Brian Rowlson

Owners Should Avoid Exercising Control over Contractor's Means and Methods of Performing the Work

An owner that dictates a contractor's means and methods of constructing a project can be liable to the contractor for breach of contract. In the *Port of Houston Auth. v. Zachry Constr. Corp.,* a case from one of the courts of appeals in Texas, the Port Authority hired a contractor to construct a wharf at the Bayport Ship Channel in Texas. The contractor's bid was based on the contractor's plan to build the wharf "in the dry" by using a frozen earthen wall method to seal out the water from the nearby bay. By building the wharf "in the dry" as opposed to "in the wet," the contractor estimated that it would save significant time and money.

After construction began, the Port Authority issued a change order request for a proposal to extend the size of the wharf. The contractor based its proposal on using the frozen earthen wall method.

After the parties agreed upon and executed the change order, the Port Authority refused to allow the contractor to use the frozen earthen wall method. Consequently, the contractor was forced to construct the wharf "in the wet." The contractor later sued the Port Authority for the increase in costs that it incurred for switching from working "in the dry" to working "in the wet."

There were two principal contract provisions at issue. On the one hand, the parties agreed to a standard "independent contractor" provision in which the Port Authority agreed that it did not have the "right to control the manner in which or prescribe the method by which the contractor performs the Work." Further, the contractor agreed to be "solely responsible" for performing the Work using the means and methods that the contractor chose. This contractual provision clearly contemplated that the contractor had authority to control the means and methods of performing the work. According to the Court, these provisions benefited the Port Authority because they insulated it "from the liability to which it would be exposed were it exercising control over [contractor's] work."

On the other hand, the Port Authority relied upon a "review and resubmit" provision in support of its argument that it had the authority to reject the contractor's use of the frozen earthen wall method. This provision required the contractor to submit designs, drawings, specifications, and other information to the Port Authority for its review. Under this "review and resubmit" provision, the Port Authority had the ability to accept, reject, and require resubmission of plans and designs. The Port Authority argued that, under this provision, it had the contractual right to disapprove of the contractor's use of the frozen earthen wall plan and require the contractor to use an alternative design to construct the wharf.

The case went to trial, and the jury returned a verdict for the contractor. The jury found that the owner had breached the parties' contract by requiring the contractor to change its means and methods of construction, and the Port Authority appealed.

On appeal, the Texas appeals court agreed with the jury and held that the Port Authority breached the "independent contractor" provision of the contract. In its analysis, the Court recognized that some of the provisions of the contract allowed the Port Authority to receive submittals concerning the means and methods of construction. However, this did not mean that the Port Authority had the ability to "exercise control" over the contractor's means and methods of construction. Otherwise, the Port Authority would risk losing the insulation from liability that the "independent contractor" provision afforded it. The Court also emphasized that the frozen earthen wall would not become a part of the permanent work, and therefore, was a method of performing the construction work.

Most construction contracts contain the "independent contractor" provision and "review and resubmit" provision, and this case is a good example of how the provisions are interpreted and work together. It is important for an owner to retain control with regard to final designs and the overall finished work. After all, it is the owner who

will utilize the complete project after final completion. Nevertheless, assuming that the contractor has assumed the risks of construction and safety, the contractor must have control over its means and method of construction, especially where the means and method of construction will not become a part of the finished project. The contractor factors the means and methods of construction into the contract price and project schedule, and a change to those means and methods could have a significant impact on the contractor's bottom line and ability to meet the schedule. Moreover, the owner typically wants the contractor to be solely responsible for the means and methods of construction, thereby insulating the owner from liability if the contractor fails to perform the work in a safe manner. If an owner desires to exercise control over the means and methods of construction, the owner must recognize that it may be liable for any resulting increased costs.

By Daniel Murdock

The New Partnership Audit Rules Are Here: Are You Ready?

The January 1, 2018 effective date of the new federal partnership audit rules is almost here, and we encourage all entities taxed as partnerships to consider addressing the issues posed by these new rules as soon as possible. These rules are applicable not only to partnerships, but also to multi-member LLCs classified as partnerships and their members where appropriate. Below are answers to some frequently asked questions about the new rules.

1. Why should I be concerned about the new rules?

The Bipartisan Budget Act of 2015 created a comprehensive and radically new partnership audit regime. The current rules are repealed effective for tax years beginning after December 31, 2017. Going forward, there will be no such thing as a "tax matters partner" or the fundamental principle that partnerships are not taxpayers for income tax purposes. The partnership audit will be performed by the IRS (and perhaps by the states) at the partnership level, and by default, the partnership will be directly liable for any income tax deficiency, interest, and penalties.

Obviously, traditional partnerships and multi-member LLCs are covered by the new rules, but here's the first surprise: so are joint ventures and other business arrangements that the IRS will try hard to classify as partnerships. Indeed, Treasury officials have stated publicly that they want these new rules to apply to as many arrangements as possible.

2. What do you mean my partnership (or joint venture) is covered by the new rules? We only have 3 partners!

Many of you may be surprised to learn that your partnership or joint venture is covered by the new rules. That could result from having one or more ineligible partners, or failing to make the annual opt-out election on a timely-filed Form 1065.

The new rules provide relief from the risk of entity-level tax assessments only for partnerships that (a) have **100 or fewer eligible partners**, (b) are owned by some combination of **individuals, estates of deceased partners, C corporations, and S corporations**, and (c) **timely file their Form 1065 and check the correct box to opt-out each year**. (There are special headcount rules for partners that are S corporations.) So far, if even one member of the partnership is an LLC or a trust – even a disregarded single-member LLC or a grantor trust – the opt-out election is not available. And, any tiered partnership structure won't be permitted to opt-out.

3. Who controls the audit? Will partners have a say-so?

Under the new rules, each partnership must designate a "partnership representative" ("PR") for each tax year, and that individual or entity will make the opt-out election if it's available and, if not, control the audit and any settlement or appeal. By statute, the PR is the only person empowered to work with the IRS.

However, the partnership agreement may require the PR to provide notice of and updates on audit proceedings, to obtain partner votes on various issues, and otherwise restrict the actions of the PR. Obviously, it's extremely important to appoint a qualified PR (and a designated

individual if the PR is an entity). Failing to do so will allow the IRS to appoint one.

4. So what do we do now?

Examine your ownership structure. If, for example, one of your partners is ineligible (*e.g.*, an LLC or family trust), consider transferring its membership interest to an eligible partner or buy it back. This must be done by December 31, 2017 since eligibility will be determined as of each January 1 thereafter.

Each partnership agreement needs to be amended to address your particular situation, but here is one common theme: every partnership/LLC (big or small) should have a PR, who must be officially appointed and in place before the 2018 tax return is due. So consider now who would be the best PR.

There are a number of issues that need to be addressed in any new or amended partnership agreement, and this column only scratches the surface. Our July 2017 *Federal Tax Alert*, available on our website (https://www.bradley.com/insights/publications/2017/07/july-2017-federal-tax-alert-new-partnership-audit-regulations), provides a list of items that should be considered for inclusion in any new or amended agreement. These amendments should be made before December 31 to be safe. Any new partnership or LLC agreement should also address these issues.

If you have questions about the new federal partnership audit rules and how they might impact your organization, please contact Bruce Ely, Will Thistle, or Stuart Frentz in our Birmingham office; Mark Miller in our Nashville office; or Steve Wilson in our Jackson office.

By Bruce Ely and Will Thistle

Bruce Ely and Will Thistle are tax partners of our firm. They also serve as Co-Chairs of the ABA Tax Section's Task Force on the State Implications of the New Federal Partnership Audit Rules and are frequent lecturers and writers on the topic.

Safety Moments for the Construction Industry

Lack of proper housekeeping on the job is one safety hazard common to all construction projects until after final cleanup. Good housekeeping can help improve not only the safety on the job, but also the morale and productivity of the job. Keeping equipment, materials, tools, and rubbish organized is an important daily obligation for everyone on a construction site.

Bradley Arant Lawyer Activities

On October 4, 2016, our firm opened an office in **Houston, Texas**, with a small office in Dallas, bringing with it a host of dynamic, experienced and committed construction lawyers. We are delighted to welcome these lawyers. **Jacquelyn Rex** and **Sabrina Jiwani** have since joined our Houston office, and we look forward to their work with our clients, learning from their prior experiences, and introducing them to our construction practice.

A press release and announcement with further details about our expansion into Texas can be found here: http://www.bradley.com/insights/news/2016/10/bradley, and our announcement welcoming our new Houston lawyers may be found here: http://www.bradley.com/insights/news/2017/02/bradley-welcomes-construction-attorneys-to-houston-office.

In U.S. News' "Best Law Firms" rankings, **Bradley's Construction and Procurement Practice Group** received a Tier One National ranking, the highest awarded, in Construction Law and a Tier Two ranking in Construction Litigation. The Birmingham, Nashville, Jackson, and Washington, D.C. offices received similar recognition in the metropolitan rankings.

Jim Collura was recognized by *Best Lawyers in America* in the area of Construction Law for Texas for 2018.

Axel Bolvig, **Ralph Germany**, **David Owen**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers, Wally Sears, Bob Symon**, **David Taylor**, **Jim Archibald** and **Eric Frechtel** were recently recognized by *Best Lawyers in America* in the area of Construction Law for 2017.

Mabry Rogers and **David Taylor** were recognized by *Best Lawyers in America* in the areas of Arbitration and Mediation for 2017. **Keith**

Covington and **John Hargrove** were recognized in the area of Employment Law – Management. **Keith Covington** was also recognized in the area of Litigation – Labor and Employment. **Frederic Smith** was recognized in the area of Corporate Law.

Jim Archibald, Ryan Beaver, Ralph Germany, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, David Taylor, and **Darrell Tucker** were named *Super Lawyers* in the area of Construction Litigation. **Arlan Lewis** and **Doug Patin** were similarly recognized in the area of Construction/Surety. **Frederic Smith** was also recognized in the area of Securities & Corporate.

Brian Rowlson was named a 2017 North Carolina *Super Lawyers* "Rising Star" in Construction Litigation.

Aron Beezley was named a 2017 Washington, DC *Super Lawyers* "Rising Star" in Government Contracts Law.

Jon Paul Hoelscher, **Ryan Kinder**, and **Justin Scott** were named 2017 Texas *Super Lawyers* "Rising Stars."

Wally Sears was recently named Birmingham's *Best Lawyers* 2017 Lawyer of the Year in the area of Construction Law.

Jim Archibald, **Axel Bolvig**, **Jim Collura**, **Keith Covington**, **Arlan Lewis**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, **Bob Symon**, and **David Taylor** have been rated AV Preeminent attorneys in Martindale-Hubbell.

Aron Beezley was recently named by *Law360* as one of the top 168 attorneys under the age of 40 nationwide.

Axel Bolvig, **Stanley Bynum**, **Keith Covington**, and **Arlan Lewis** were recently recognized by *Birmingham's Legal Leaders* as "Top Rated Lawyers." This list, a partnership between Martindale-Hubbell® and ALM, recognizes attorneys based on their AV-Preeminent® Ratings.

Arlan Lewis has been appointed to lead the Division Chairs Standing Committee of the American Bar Association Forum on Construction Law. This committee manages the operations of the Forum's 14 substantive divisions. Arlan's tenure as committee chair will begin during the Forum's June 2017 leadership retreat in Park City, Utah.

David Pugh was recently installed as the President of the Alabama Chapter of the Associated Builders & Contractors for the 2017 calendar year.

Chris Selman serves on the Board of the Young Professionals of the Alabama Chapter of the Associated Builders & Contractors. **Carly Miller** and **Aman Kahlon** are currently serving as Members of the Young Professionals of the Alabama Chapter of the Associated Builders & Contractors.

Arlan Lewis was selected to participate in the Associated Builders & Contractors of Alabama's 2017 *"Future Business Leaders: Advanced Organizational Leadership – The Masters Course."*

Daniel Murdock was selected to participate in the 2018 class of Future Leaders in Construction with the Alabama Chapter of the Associated Builders & Contractors.

David Taylor was recently reappointed to the Executive Committee of the Tennessee Bar Association's Construction Law Committee.

Bridget Parkes recently became the President of the Associated Builders and Contractors (ABC) Middle Tennessee Chapter Emerging Leaders.

On August 17, 2017, **Keith Covington** spoke on "Form I-9 Compliance: HR Best Practices" at the Northeast Alabama Human Resources and Manufacturing Conference, which was held at Northeast Alabama Community College in Rainsville, Alabama.

On October 12, 2017, **Jim Collura** will be speaking on "Hot Contracting Issues – What You Need to Know about Master Service Agreements and New Contracting Approaches in this Continued Low-Price Environment" at the 7th Annual Oilfield Services Law Conference for the Institute of Energy Law.

On June 21, 2017, **Aron Beezley** conducted a webinar titled "Cyber Hot Topics: Recent Developments for Government Contractors."

On May 26, 2017, **Aron Beezley** published a *Law360* "Expert Analysis" articled titled "Risks for Contractors with New Info after Proposal Submission."

David Taylor spoke about Tennessee Retainage laws at the Spring meeting of the Tennessee Association of Construction Counsel on May 8 in French Lick, Indiana.

David Taylor and **Bridgett Parkes** spoke at the firm's 16th Annual Commercial Real Estate seminar in Nashville on Architect and Engineer's Contracts on May 3, 2017.

The Construction & Procurement Practice Group hosted our annual Construction Seminar Series in our offices on the following dates: **Charlotte, NC** on May 5, **Nashville, TN** on May 12, **Birmingham, AL** on May 19, and **Houston, TX** on May 26.

David Taylor recently published an article in the April edition of the Tennessee Bankers magazine entitled: "Update on Tennessee Retainage Law—What Bankers Need to Know."

In April, **Aron Beezley** was elected to join the Fellows of the America Bar Foundation, which is an honorary organization recognizing attorneys, judges, law faculty and legal scholars who have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

Jim Archibald, **Bill Purdy**, **Wally Sears**, and **Mabry Rogers** attended the American College of Construction Lawyers annual meeting on March 16-19, 2017 in Amelia Island, FL.

On March 16, 2017, **Arlan Lewis** conducted a seminar on construction project management for an owner client in Birmingham, AL.

Axel Bolvig, **David Pugh** and **Mabry Rogers** attended the annual induction ceremony of the State of Alabama Engineering Hall of Fame, on February 18, 2017. Brian D. Barr (Brasfield & Gorrie) and Bill L. Harbert (BL Harbert International) were among those inducted. Mr. Harbert was inducted posthumously.

Michael Knapp was recently appointed to the Board of Trustees for the Patriot Military Family Foundation, a group that raises money and awareness to benefit wounded veterans and their families.

Chambers annually ranks lawyers in bands from 1-6, with 1 being best, in specific areas of law, based on in-depth client interviews. **Bill Purdy** and **Mabry Rogers** are in Band One in the area of *Litigation: Construction*. **Doug Patin** was ranked in Band One and **Bob Symon** in Band Two, both in the area of *Construction*. **Ian Faria** was ranked in Band Three in the area of *Construction.* **Ralph Germany** was ranked in Band Three in the area of *Litigation: Construction.*

The Construction Lawyers Society of America has named **Jim Archibald**, **Ian Faria**, **Mabry Rogers**, and **David Taylor** to its inaugural College class. Mabry Rogers attended the first annual meeting in Southern California, September 13-15,2017.

NOTES

An electronic version of this newsletter, and of past editions, is available on our website. The electronic version contains hyperlinks to the case, statute, or administrative provision discussed.

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