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Bradley Arant Boult Cummings LLP

First Quarter 2020

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Coronavirus/COVID-19

Like most everyone, you likely face a great deal of uncertainty now at home and at work as result of the developing COVID-19 global pandemic. Our firm has endeavored to compile a number of helpful resources to assist our clients to navigate these uncertainties, with a heavy emphasis on issues affecting the construction industry. If you have questions related to the coronavirus and how it may impact you or your business, please visit: https://www.bradley.com/practices-and-industries/practices/coronavirus-disease-2019-covid-19 . This site contains various resources across different areas, including employment, insurance, healthcare, as well as the construction industry.

Additionally, our Practice Group maintains its **BuildSmart Blog** and has recently published a number of coronavirus-related blog posts to help our clients in the construction industry navigate these issues: https://www.buildsmartbradley.com/.

If you have additional questions that are not answered by these resources or you would like to discuss further, please contact an attorney in our practice group to help you find an answer to your question.

Design Flaws in Large Historical Building Renovation Are Recipe For $12.5 Million Contractor Recovery

In a lengthy opinion, the Civilian Board of Contract Appeals ("Board") awarded Suffolk Construction Company, Inc. ("Suffolk") over $12 million, plus interest, on numerous claims against the General Services Administration ("GSA") arising out

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of significant design issues on a large ($136 million) historical building project. Suffolk's scope of work involved massive renovation and restoration work on a 22-story building in Boston, Massachusetts originally built in 1933. The various tenants of the new and improved building included the Environmental Protection Agency, Department of Education, United States Bankruptcy Courts, United States Trustees, and various divisions of GSA.

GSA was responsible for preparing the design plans and specifications. Faced with funding obligation deadlines, GSA hastily bid many aspects of the design work, which truncated the deep investigation necessary to design the renovation of such a large historical building. The resulting design was largely ambiguous and inaccurate, especially in "interstitial" or concealed spaces, such as the spaces between walls, under ceilings, and building shafts and chases (spaces for pipes and conduit). As the work progressed, it became apparent that numerous design changes were necessary to accommodate the actual conditions in the concealed spaces. These changes resulted in a multitude of change orders and delays. The Board decision analyzes numerous direct cost potential change orders ("PCOs") resulting from the changes, for items ranging from less than $1,000 to hundreds of thousands of dollars, and finds Suffolk's entitlement for the vast majority of them. The Board also found entitlement to loss of productivity damages and general conditions costs resulting from delay. The Board did not address entitlement to or calculation of overhead in any detail.

With regard to GSA, the Board determined that GSA was entitled to $229,000 in credits, but summarily denied GSA's warranty claims arising out of two leaks. GSA claimed Suffolk was liable for the leaks pursuant to the Federal Acquisition Regulation warranty clause, which requires a contractor to remedy damage to government-owned or controlled property resulting from defective installation. The Board rejected these arguments, finding, among other things, that GSA had failed to demonstrate defective work and that GSA had not contributed to the leaks.

Although the contractor ultimately prevailed, the Suffolk case is a prime example of the exponential costs that can result from design flaws. When a contractor has no control over, or responsibility for, design, the contractor often has no choice but to mitigate its damages and push for timely completion while the design issues snowball. The Suffolk case also demonstrates the benefit of meticulously detailing changes and extra costs in anticipation of these types of issues. Because Suffolk had what appeared to be detailed and accurate records, the Board was able to carefully confirm its entitlement, no matter the size. Maintaining this level of detail and organization, and requiring the same of subcontractors, can make a world of difference when tackling claims of any size.

By Amy Garber

Can You Gig It? The Basics of California's New Independent Contractor Law

California's Assembly Bill 5 ("AB 5") law codifies and expands the so-called "ABC" test applied in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles County* regarding independent contractors. Under the ABC test, a worker is presumed an employee *unless* a hiring entity can show that the worker:

(A) is *free from the control and direction of the hiring entity* in connection with the performance of the work, both under contract and in fact; and

(B) performs *work that is outside the usual course* of the hiring entity's business, and

(C) is customarily engaged in an *independently established trade, occupation, or business of the same nature* as that involved in the work performed.

Simply labeling a worker as an independent contractor, requiring them to sign an agreement stating they are an independent contractor, or being paid as an independent contractor (*e.g.*, without payroll deductions) does not determine employment status.

AB 5 has carved out multiple exemptions for various industries and professions, such as subcontractors in the construction industry, lawyers, engineers, architects, accountants, and bona-fide business-to-business contracting relationships that exist between two business entities (*e.g.*, LLC, corporation, partnership). Worker status in exempted professions and industries will not be determined by the ABC test, but will instead be subject to the multi-

factor "Borello" test set forth in *Borello & Sons, Inc. v. Dept. of Industrial Relations.* Unlike the Borello test, where no single factor controls the determination of worker status, the inability of an employer to demonstrate any part of the ABC test means that the worker is not an independent contractor.

AB 5 is now in effect, which means that employers with California workers should already be evaluating current and future worker relationships under the ABC framework. Both past and future misclassifications can result in fines and penalties, wage claims, and lawsuits under California's Wage Order, Labor Code, and Unemployment Insurance Code. Any necessary reclassifications of current workers should be made immediately. For future workers, employers should assess whether their current hiring procedures can lead to future worker misclassifications. Further, your legal counsel should have a strong grasp on AB 5 and closely monitor how California courts are applying the ABC test to different industries, professions, and scenarios. Court decisions will help employers better predict and prepare for the types of situations where an "independent contractor" is really an employee under the ABC test (*i.e.*, what is the legal risk?).

As the worker status landscape continues to change, employers outside of California and those with national operations should be prepared for their own state's version of AB 5. New Jersey, Oregon, New York, and Illinois have already made steps towards codifying their own version of the ABC test.

By Sydney Warren

Early Is On Time, and Late Loses Coverage: The Seventh Circuit Explains the Importance of Communication to Insurers

In virtually every environment, communication is important. However, in the insurance world, it is critical: it may determine whether your company has coverage. In a recent decision, the United States Seventh Circuit Court of Appeals, the federal appeals court covering Illinois, Indiana, and Wisconsin, reiterated the importance of notice to your insurer – even if neither you nor the insurer believes the loss will be covered.

In 2008, a construction company's employee was involved in an automobile accident with another individual. The company had a $1 million commercial automobile insurance policy with its insurer (the "Primary Insurer"). It obtained this policy though its insurance broker (the "Broker"). The Broker also helped the company obtain an excess insurance policy from another insurer (the "Excess Insurer"). The Excess Insurer's policy covered loss greater than $1 million, and up to $10 million. After the accident, the company notified the Primary Insurer and the Broker, but did not notify the Excess Insurer.

The individual filed a personal injury lawsuit in Illinois federal court against the company and its employee (collectively, the "Company"). The Primary Insurer assumed defense and hired an attorney to represent the Company. Although the lawsuit proceeded, the Excess Insurer was not notified. The Primary Insurer evaluated the lawsuit within its own policy limits, believing that the Company's loss exposure was under $1 million. To no surprise, the individual disagreed. In 2013, the individual made a $1.25 million demand for settlement. While this amount would have triggered excess coverage, the Excess Insurer was not notified.

In 2014 – approximately six years after the accident and six weeks before trial – the Excess Insurer was finally notified of the lawsuit by the Broker. The Excess Insurer evaluated the lawsuit as valued between $500,000 and $750,000. After this evaluation, Excess Insurer did not provide input towards the Primary Insurer's trial strategy. In 2015, a $2.3 million verdict was entered for the individual. After trial, the Excess Insurer reserved its rights to deny coverage because of the late notice it was provided.

Eventually, the Excess Insurer filed a lawsuit, seeking a declaration that it did not have to cover the Company's loss because of the untimely notice. The district court agreed with the Excess Insurer, concluding that the loss was not covered. The Company appealed to the Seventh Circuit.

On appeal, the Seventh Circuit focused on one issue: was the Company's notice to the Excess Insurer timely? Under Illinois law, when determining whether notice was timely, five factors are considered. First, the specific language of the policy. While the policy did not provide a specific time frame for notice, the six-year delay weighed towards denying coverage. Second, whether the insured was sophisticated in

commerce and insurance matters. The Seventh Circuit noted that the Company had over fifty employees and even had counsel – these facts pointed in the Excess Insurer's favor. Third, the insured's awareness of an event that *may* trigger coverage. Here, the Seventh Circuit noted the individual's $1.25 million demand. While the Company disagreed with this evaluation, which was over $1 million, this demand put it on notice of the need for potential excess coverage. Fourth, the insured's diligence in seeing if coverage was available. Here, the Company did not act as a reasonably prudent company would, given the potential of a jury verdict. And fifth, whether the insurer was prejudiced. Even though the Excess Insurer did not provide advice after receiving notice, the Seventh Circuit said at the worst, it "slightly favored" the Excess Insurer. Each factor leaned in favor of the Excess Insurer and therefore the Company's notice was "untimely and unreasonable."

The Company made three final attempts to justify its delay. The Seventh Circuit denied each, explaining (1) the Excess Insurer's minimal participation after receiving notice does not prevent it from asserting the late notice defense; (2) only performing "traditional brokerage activities," the Broker was not the apparent agent of the Excess Insurer; and (3) the Broker did not have a duty to notify the Company and could not be held liable. The Seventh Circuit affirmed the district court's decision.

In closing, the Seventh Circuit provided a lesson for all insureds: notify your insurers as soon as practicable. Prior to and during litigation, evaluate your possible exposure. Throughout your case, consider the worst possible outcome. Accounting for all outcomes – not just the result you prefer – will help determine whether your insurer should be put on notice. In the end, safe is better than sorry.

By Marcus Miller

The "Early Bird" Gets an Unenforceable Lien: Subcontractor That Prematurely Recorded a Mechanics Lien Prevented From Filing a Lawsuit to Foreclose on its Lien

Construction industry professionals across the country have dealt with the unfortunate circumstances that stem from filing a mechanic's lien late. They are all too familiar with the reality that the protection and recovery of hard-earned money owed to them on a construction project can turn on correctly noting the contractor's last date of work on a project and/or the date of completion of the project. Indeed, many professionals in the construction space champion an "early-bird-gets-the-worm" mentality when it comes to the filing of mechanics' liens. However, the California Court of Appeals recently emphasized an equally important principle: a mechanic's lien that is filed prematurely is void and unenforceable.

In *Precision Framing Systems Inc. v. Luzuriaga*, the defendant contracted with a general contractor for the construction of a veterinary hospital; the general contractor hired Precision Framing Systems, Inc. ("Precision") as a framing subcontractor tasked with providing the "labor, lumber, trusses, and hardware necessary to complete the . . . project." Precision, in turn, selected Inland Empire Truss, Inc. ("Inland") to design and manufacture the trusses. In July and August of 2013, Precision commenced installation of the framing for the Project; in the fall of that year, the city issued two correction notices arising out of the trusses' failure to comply with the architect's plans for the project. Despite the fact that both correction notices were outstanding, the general contractor and Precision did a walk-through of the project on December 23, 2013, and the general contractor determined that Precision had completed its scope of work. Precision never received payment for its work, so it filed a mechanic's lien on the project on January 2, 2014.

On January 29, 2014, the defendant property owner raised the argument that Precision's lien was premature because it had not completed its scope of work, pointing to the outstanding correction notices as proof that the trusses needed additional repairs. On February 12 or 13, Inland revisited the project site and made some repairs related to the structural calculations for the trusses; the President of Precision accompanied representatives from Inland on this visit.

Ultimately, Precision attempted to foreclose on its mechanic's lien and was unsuccessful. The trial court found that Precision filed its lien prematurely given the repairs performed in mid-February 2014 and, therefore, Precision's lien was void and unenforceable.

In support of its ruling, the California Court of Appeals reviewed the history of California Civil Code section 8414 which requires potential lien claimants, other than direct contractors, to file a lien: (a) "after the

claimant ceased work[,]" or (b) the earlier of (1) ninety days after the project reached completion or (2) thirty days after the owner recorded a notice of completion or cessation. Precision alleged that its lien was timely under subsection (a) and contended that it had "ceased" its work prior to the filing of its lien on January 2, 2014. The appellate court disagreed.

The appellate court analyzed both the meaning of "ceased" and "work" under the statute. It found that, in order for work to have actually "ceased," it must have come to an end — not simply winding down or completing punch list repairs. Therefore, in deciding if Precision's work had come to an end, the court had to first decide what constituted the scope of Precision's "work." Relying on two prior California cases, the *Luzuriaga* court found that the repairs Inland performed post-lien filing were part of Precision's required "work," because the repairs were part of the "scheme of the improvement as a whole."

The court looked primarily at the language of Precision's contract. It noted that, in Precision's course of dealings with the general contractor, the architect, and owner, and by the terms of its agreement, Precision was responsible for providing the "trusses . . . necessary to complete the . . . project." With outstanding notices from the city related to the shortcomings of the trusses, Precision had necessarily failed to meet this obligation. Precision knew about these notices, and despite that fact, filed its lien. Thus, the court found that Precision filed its mechanic's lien before Precision had "cease[d] to provide work" on the project. It did note that, had Precision caught its mistake in time, "nothing in the [mechanic's lien laws] prohibited [Precision] from refiling its claim again after the repairs were performed" and its work complete. Unfortunately, Precision did not catch its mistake, and its lien was void.

Luzuriaga makes clear that contractors should focus not only on the deadline to file a lien, but also the date of their first opportunity to file a mechanic's lien. Contractors in states with statutory schemes similar to California need to be cautious of filing a lien prior to their completion of work on a project. In deciding what constitutes "work," the *Luzuriaga* court points out that repairs may very well fall within the scope of work — even if a party higher up the chain has suggested or stated that a contractor's scope of work is complete. Contractors should be wary of filing a lien with notices from municipalities or cities still outstanding. Finally, industry professionals need to ensure that, if there is a chance a lien was filed prematurely, they review the relevant contract and state laws on cancelling and refiling liens so as to preserve a contractor's rights.

By Anna-Bryce Hobson

Eleventh Circuit Emphasizes Deference Granted to Arbitration Awards

It is crucial to carefully consider dispute resolution provisions prior to the execution of an agreement, especially in light of the binding nature of arbitration awards. The Eleventh Circuit Court of Appeals, the federal appeals court encompassing Alabama, Florida, and Georgia, recently reaffirmed the strong federal policy favoring arbitration. The Court's ruling emphasizes the broad deference courts grant to arbitration awards. As seen in this case, this can be especially true for international disputes.

In *Inversiones y Procesadora Tropical INPROTSA, S.A. v. Del Monte Int'l GmbH*, the Buyer enforced the parties' international arbitration provision and brought claims against Seller for allegedly selling a portion of its pineapple supply on the open market - pineapples grown from seeds provided by Buyer to Seller to produce a supply for Buyer's exclusive benefit.

The Seller argued that Buyer did not actually have exclusive ownership of the seeds and that its representation of exclusive ownership at the time of contracting fraudulently induced Seller to enter the agreement. The arbitral tribunal disagreed and found in Buyer's favor, awarding 26 million dollars in damages plus attorneys' fees and costs.

The Seller promptly filed a motion with the tribunal requesting that it adjust its damages award. The tribunal denied the motion on grounds that it did not have authority to revisit the substantive merits of its award.

Seller sought to vacate this award in federal district court, where the Buyer succeeded in a motion to dismiss. The Buyer argued that Seller failed to assert a valid defense under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the

"Convention"), commonly known as the New York Convention. The Convention, ratified by Congress, provides jurisdiction for United States courts to recognize and enforce foreign arbitral awards and agreements and sets forth specific grounds for which a party can move to vacate arbitration awards. One of the reasons to vacate an award as set forth in the Convention is rooted in a public policy argument. Namely, a court may vacate an award if the "recognition or enforcement of the award would be contrary to the public policy of that country."

In this case, the district court found that Seller's motion was not grounded in a valid defense under the Convention. The court explained that to entertain Seller's motion would allow similar requests for vacatur whenever a party merely disagreed with an arbitrator's decision and would undermine "this country's public policy favoring arbitration as an efficient means for resolving disputes."

On appeal, the Eleventh Circuit agreed, upholding the district court's decision. In so doing, the Eleventh Circuit summarily dismissed Seller's request to reconsider the tribunal's award of damages. The Court explained that "[i]t does not matter whether the tribunal's interpretation is correct . . . the tribunal at least arguably interpreted the contract. Thus, the tribunal did not exceed its authority.

Finally, the Court considered Seller's argument that the award violated the public policy defense embodied in the Convention. Seller argued that the tribunal did not adequately consider its fraud in the inducement claim and thus the award violated the public policy exception of the Convention. The Eleventh Circuit found no merit in this argument. Primarily, it noted that consideration of a substantive claim, such as the one in question, would run contrary to contractual arbitration clauses, allowing re-litigation of claims that are subject to binding arbitration. The Court went on to explain that the "public-policy defense under the Convention is very narrow. It 'applies only when confirmation or enforcement of a foreign arbitration award would violate the forum state's most basic notions of morality and justice.'"

This case reaffirms the longstanding public policy favoring arbitration. Courts give great deference to arbitration awards and will only intervene in limited circumstances. Arbitration is favored because of its binding nature – its ability to efficiently and effectively deal with disputes and relieve the court system from juggling nuanced subject matters (such as construction cases) that are not well served by a judge or jury without such expertise or know-how.

Parties entering into agreements with arbitration clauses should keep in mind the deference granted to arbitration and the finality that is typical for most awards. In practice, this means that dispute resolution clauses should be carefully and specifically drafted, anticipating at all times the worst-case scenario – a loss in arbitration. Although the public policy and deference granted to arbitration awards are likely to remain steadfast, there are protections a party can build into an agreement to prepare for the worst-case scenario. Prior to executing an agreement, one would be wise to discuss options with counsel before executing any binding arbitration clause. The tried and true idiom – hope for the best but prepare for the worst – is especially true when considering dispute resolution clauses. Of course, one must also remember that undermining the enforceability of an arbitration award—thinking of your loss—will favor the other side if it is the loser. The original (and remaining) intent of arbitration clauses in construction was to provide speedy, economical, and final resolution of a project dispute.

By Katie Blankenship

Illinois Court of Appeals Holds that General Contractor is Not Covered for Property Damage to Building which was Demolished Because of Construction Defects

The Illinois Court of Appeals has held that a general contractor's Commercial General Liability ("CGL") policy does not provide coverage for property damage caused to existing structures which were completely demolished as a result of faulty construction because the general contractor had "overall responsibility for the renovation and conversion of the Properties' existing structures[.]" The Illinois Court's opinion suggests that, under Illinois law, the most important fact which will determine coverage for a contractor is the scope of work the defendant agreed (or is alleged in the lawsuit) to have undertaken.

In *Certain Underwriters at Lloyd's London v. Metro. Builders, Inc.* ("*Metro Builders*"), a general contractor was hired to convert three existing structures on contiguous lots into three single family dwellings. According to the underlying complaint, the defendant was hired as the general contractor for construction, renovation, demolition and/or other related activities at the three contiguous properties.

While work was being done on one of the three existing structures, the building collapsed causing damage to both the building being worked on as well as damage to the two other buildings included in the project. The collapse caused significant damage to the properties, and all three structures were deemed unsafe and demolished by the city. The owner of the properties turned to its insurer who paid the owner over $1,802,479.88 for repairs, demolition, construction, and other associated expenses arising from the collapse. Its insurer then exercised its right of subrogation and sued the general contractor.

CGL policies on the standard ISO form provide coverage for "bodily injury and property damage […] caused by an 'occurrence'." "Occurrence" is defined as an "accident" and "property damage" as "Physical injury to tangible property". While these are standard definitions in almost every CGL policy issued, courts across the country have split on how these definitions should be applied in construction-defect lawsuits. Illinois follows a version of the minority approach, which holds that allegations of damage solely to the work do not constitute an "occurrence" or "property damage" under the policy and thus there will be no coverage.

The Illinois Court of Appeals employed this minority approach in *Metro Builders* by holding that there could be no occurrence or property damage under the policy so long as the property allegedly damaged was under the "responsibility" of the contractor. For subcontractors, this will likely have little effect on coverage, as the Court made clear that its ruling only applied to damage to part of "the same project over which that contractor was responsible". Thus, for example, if a subcontractor is solely responsible for installing windows and defectively installed windows cause damage to walls, then the policy would provide coverage for property damage to the walls because they were not within the responsibility of the subcontractor. For the general contractor who is remodeling the entire house however, the general contractor may not be covered for the damage to the walls if it is determined the entire house was under its overall responsibility, at least in the minority view.

Before undertaking a new contract, general contractors should be aware of the various pitfalls to coverage there may be in the state where the work is to be done. Contact your lawyer if you are new to a jurisdiction, to protect against potential impacts from novel (to you) legal requirements in that jurisdiction. For example, one wonders after reading this case whether any lawsuit would have ever occurred had the general contractor required a waiver of subrogation from the property owner's insurance or had sought the proper endorsements for its own coverage. Or perhaps the scope of work could have been defined in phases.

By Timothy Cook

Safety Moments for the Construction Industry

Depending on your work site, there may be emergency situations that would require an evacuation plan, such as:

- Fires
- Weather-related danger
- Toxic material release
- Explosions
- Workplace violence

A disorganized evacuation can result in confusion, injury, and property damage. Thus, contractors should consider developing and implementing formal emergency action plans that include an evacuation section that details such items as routes and exits, evacuation conditions, and accounting for employees after an evacuation. It is important for all employees to understand the evacuation plan, which you can confirm through periodic tests/evacuation drills. Always make sure the plan is up-to-date and located in an accessible place.

Bradley Arant Lawyer Activities

Our firm is extremely honored and grateful to our clients to have been recognized as the "**Law Firm of the Year**" in **Construction Law** for 2020 by the *U.S. News & World Report* in its "Best Law Firms" rankings.

Ranked the Top Law Firm in the U.S.
for **Construction Law** 2018 & 2020

In U.S. News' 2020 "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. Birmingham, Houston, Nashville, Jackson, and Washington, D.C. offices received Tier One Metropolitan recognition for Construction Law.

Bradley's Construction Practice was ranked No. 4 in the nation by *Construction Executive* for 2019.

Chambers USA ranks lawyers in specific areas of law based on direct feedback received from clients. **Bill Purdy, Mabry Rogers** and **Ralph Germany** are ranked in *Litigation: Construction*. **Doug Patin, Bob Symon** and **Ian Faria** are ranked in *Construction*. The firm's Washington D.C. office is recognized as a "Leading Firm" for Construction Law.

Jim Archibald, Ryan Beaver, Axel Bolvig, David Owen, David Pugh, Mabry Rogers, Walter Sears, Monica Wilson Dozier, Jim Collura, Ian Faria, Jared Caplan, Ralph Germany, Jon Paul Hoelscher, Bill Purdy, David Taylor, Eric Frechtel, Douglas Patin, Mike Koplan, and Bob Symon have been recognized by *Best Lawyers in America* in the area of Construction Law for 2020. **Jeff Davis** was recognized for Product Liability-Defendant.

Jim Archibald, **Michael Bentley**, **Axel Bolvig**, **Ian Faria**, **David Pugh, David Owen, Mabry Rogers,** and **Bob Symon** were recognized by *Best Lawyers in America* for Litigation - Construction in 2020. **Keith Covington** was recognized by *Best Lawyers in America* in the areas of Employment Law - Management, Labor Law - Management, and Litigation - Labor and Employment. **John Hargrove** was recognized in the area of Litigation - Labor and Employment. **Frederic Smith** was recognized in the area of Corporate Law.

Mabry Rogers, Doug Patin and **David Taylor** were also recognized by *Best Lawyers in America* for Arbitration for 2020.

In *Best Lawyers in America* for 2020, **David Taylor** was named Lawyer of the Year in Construction for Nashville, TN, **Mabry Rogers** was named Lawyer of the Year in Construction for Birmingham, AL, and **Ralph Germany** was named Lawyer of the Year in Construction for Jackson, MS.

Jim Archibald, Axel Bolvig, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, Ian Faria, Doug Patin, Ralph Germany, David Taylor, and **David Owen** were named *Super Lawyers* in the area of Construction Litigation. **Jeff Davis** was named Super Lawyer for Civil Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Luke Martin**, **Bryan Thomas**, **Andrew Stubblefield**, **Aman Kahlon, Amy Garber, Carly Miller, Chris Selman,** and **Jackson Hill** were listed as "Rising Stars" in Construction Litigation. **Ryan Kinder**, **Justin Scott**, and **Mary Frazier** were recognized as "Rising Stars" in Business Litigation. **Monica Dozier** and **Matt Lilly** were named North Carolina *Super Lawyers* "Rising Stars" in Construction Litigation. **Ian Faria** and **Jeff Davis** were ranked as Top 100 in Texas *Super Lawyers*.

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

Jim Archibald, Axel Bolvig, Ian Faria, Eric Frechtel, Mabry Rogers, Bob Symon, David Taylor, **Bryan Thomas** and **Michael Knapp**, have been selected as Fellows of the Construction Lawyers Society of America (CLSA), and **Carly Miller** and **Aman Kahlon** were selected as Associate Fellows of the CLSA.

Mabry Rogers was recently named as a "Thought Leader" in *Who's Who Legal* for 2019. **Jim Archibald, Ian Faria, Doug Patin, David Pugh, Bill Purdy, Mabry Rogers and Bob Symon** were also recently listed in the *Who's Who Legal: Construction 2019* legal referral guide. **Mabry Rogers** has been listed in *Who's Who* for 21 consecutive years.

Luke Martin was recently named one of Birmingham's "Top 40 Under 40" by the *Birmingham Business Journal* in its annual honor for young professionals.

Ian Faria, **Jon Paul Hoelscher** and **Andrew Stubblefield** became board certified by the Texas Board of Legal Specialization in Construction Law. Only about 100 or so attorneys out of more than 100,000 licensed Texas attorneys hold the certification.

Brian Rowlson was recently re-certified by the Florida Bar as a specialist in the field of Construction Law.

David Taylor was named to the Board of Directors of the Nashville Conflict Resolution Center.

Michael Knapp was 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.

David Taylor was reappointed to the Executive Committee of the Tennessee Bar Association's Construction Law Committee. He was also recently reappointed to the Legal Advisory Counsel of the Associated General Contractors of Middle Tennessee.

Lee-Ann Brown recently joined the Legislative Committee of the Associated Builders & Contractors of Washington, DC.

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

Abba Harris recently participated in the 2019 class of Future Leaders in Construction with the Alabama Chapter of the Associated Builders & Contractors.

Kyle Doiron was named as a member of the Associated General Contractors' Construction Leadership Council for Nashville.

Rebecca Muff was appointed to the Board of Directors for the Junior League of Houston, Inc., an organization of women committed to promoting voluntarism, developing the potential of women, and improving communities through effective action and leadership of trained volunteers.

An article authored by **David Taylor** entitled "Is It Time to Get Rid of Retainage" will be published in the March 2020 *Construction Executive Today*.

On March 11, 2020, **Sarah Osbourne** and **Aron Beezley** presented a webinar entitled "REAs and Claims – What's the Difference?" to government contractors from a variety of industries.

Alex Thrasher authored an article entitled "Legal Benefits and Pitfalls of Contractor Quality Control Programs" published in Construction Executive on March 3, 2020.

David Taylor published an article in the February 2020 Nashville Bar Journal called "Top 10 Horrible No Good Mistakes that Lawyers Make in Mediations."

Amy Garber was featured in an interview on the DC Bar "Let's Brief It" Podcast about Government Contracts and Construction Law on February 7, 2020.

On December 5, 2019, **David Taylor** spoke on "Innovative Ways to Recover Legal Fees in Construction Disputes" in New York at the Construction Lawyers Society of America's Mid-Winter Symposium.

David Taylor published an article in the December 2019 *Construction Executive Today* titled "To Arbitrate or Not, That is the Question."

Eric Frechtel presented on November 13, 2019 on "Construction Contracts and Contracting Issues" to representatives from the Children's Hospital in Colorado.

On November 8, 2019, **Kyle Doiron** presented the yearly Caselaw Update at the Annual Fall Meeting of the Tennessee Association of Construction Counsel in Nashville, TN.

As past chair of the Excellence in Construction Committee with Associated Builders and Contractors of the Carolinas, **Monica Dozier** served as a 2019 committee member and judge for ABC Carolinas' Excellence in Construction Competition. Award winners were announced at the Carolinas Excellence in Construction Gala on November 7, 2019, in Charlotte, which was attended by **Michael Knapp** and **Anna-Bryce Hobson**.

Monica Dozier moderated a panel regarding corporate entities as drivers of renewable energy policies and procurements at the Southeast Renewable Energy Summit in Atlanta, GA on October 29, 2019. **Aman Kahlon** also attended the Southeast Renewable Energy Summit.

David Taylor and **Kyle Doiron** presented an update on Tennessee Lien Law and Retainage to the American Subcontractors Association in Nashville, TN on October 17, 2019.

Monica Dozier spoke at the E4 Carolinas Energy Policy Summit in Charlotte, NC on October 4, 2019 regarding recent changes and the evolution of the energy landscape in the Carolinas.

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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.

READER RESPONSES

If you have any comments or suggestions, please complete the appropriate part of this section of the *Construction & Procurement Law News* and return it to us by folding and stapling this page which is preaddressed.

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We are in the process of developing new seminar topics and would like to get input from you. What seminar topics would you be interested in?

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