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Bradley Arant Boult Cummings LLP

Third Quarter 2019

# CONSTRUCTION AND PROCUREMENT LAW NEWS

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

### *Termination for Default – the Government's Burden*

In *Alutiiq Manufacturing Contractors, LLC v. United States*, the U.S. Court of Federal Claims ruled that the Government had improperly terminated a construction contract for default and ordered that the default termination be converted into a termination for convenience.

Under FAR 52.249-10, the Government may "terminate the right to proceed with [a contract] that has been delayed." However, a contractor can avoid termination if the delay "arises from unreasonable causes beyond the control and without the fault or negligence" of the contractor and the contractor "notifies the Contracting Officer in writing of the causes of delay" within 10 days from the beginning of such delay.

Moreover, under FAR 49.402-3, the Contracting Officer must consider the following factors before terminating a contract for default: (1) the terms of the contract and applicable laws and regulations; (2) the specific failure of the contractor and the excuses for the failure; (3) the availability of the supplies or services from other sources; (4) the urgency of the need for the supplies or services and the period of time required to obtain them from other sources, as compared with the time delivery could be obtained from the delinquent contractor; (5) the degree of essentiality of the contractor in the Government acquisition program and the effect of a termination for default upon the contractor's capability as a supplier under other contracts; (6) the effect of a termination for default on the ability of the contractor to liquidate guaranteed loans, progress payments, or advance payments; and (7) any other pertinent facts and circumstances.

Additionally, under the so-called *Lisbon* standard, to justify a termination for default, the Government must demonstrate a "reasonable belief on the part of the contracting officer that there was no reasonable likelihood that the [contractor] could perform the entire contract effort within the time remaining for contract

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performance." A termination for default must be based on "tangible direct evidence reflecting the impairment of timely completion." Further, "a court's review of default justification does not turn on the contracting officer's subjective beliefs, but rather requires an objective inquiry."

In *Alutiiq*, the Court determined that even though the contractor had failed to perform its work properly in certain respects and was responsible for some project delay, the Government improperly terminated the contractor for default. The default termination was based on an analysis by the Contracting Officer's Representative ("COR") of a recovery schedule that the contractor submitted prior to the default termination. In the Court's view, the COR's "quick glance" and "cursory" assessment of the recovery schedule was inadequate. The COR's conduct during the project did not help the Government's cause. The Court found that the COR's "history of dishonesty and hostility towards [the contractor]" undercut the Contracting Officer's ability to "form an independent and reasonable belief" as to whether the contractor could complete the contract on time.

Ultimately, the termination for default was overturned because the Contracting Officer's decision was not based on a reasonably held belief as to the contractor's inability to complete the project in a timely manner. The Contracting Officer failed to assess all seven of the FAR 49.402-3 factors, including considering excusable delay, the urgency of the project, or the period of time required for other sources to complete performance. Additionally, the Contracting Officer ignored other pertinent facts and circumstances, such as steps taken by the contractor to improve its performance, and certain design issues that were not the contractor's responsibility.

This recent decision reflects the gravity of a potential default termination. Regardless of a contractor's performance deficiencies, the Government must support a decision to terminate a contractor's right to proceed under a contract for default by showing that the Contracting Officer considered all of the FAR factors and that an objective review of the facts demonstrates that the contractor could not have completed the project on time.

*By: Eric Frechtel*

## *OSHA: Solar Panel Installation is Not Roofing Work*

In June, the United States Court of Appeals for the Ninth Circuit decided that rooftop solar panel installation is not "roofing work" under Occupational Safety and Health Administration ("OSHA") regulations. This decision has immediate implications for any contractor installing solar panels, as a more stringent employee fall protection standard applies to solar panel installation compared to the less stringent standard for "roofing work."

In *Bergelectric v. Secretary of Labor*, a contractor was hired to install solar panels on the roof of a Marine Corps Air Station hanger in San Diego, California. While the contractor's employees worked on the project, OSHA conducted a two-day safety inspection of the work site. The contractor's employees informed OSHA inspectors that they were using both warning lines and a safety monitor to comply with fall protection requirements. Additionally, the contractor's employees told the inspectors that, in the event the workers needed to go outside the warning line zone, they would use a personal fall arrest system ("PFAS") for protection.

Following the inspection, OSHA issued a citation claiming three major violations of the fall protection standards. The decision to find a violation of the fall protection standard rested on the "general standards of 29 C.F.R. § 1926.501(b)(1), which require employees working near the unprotected sides and edges more than 6 feet above the level below to be protected by guardrail systems, safety net systems, or a PFAS." None of these were used by the employees.

At an administrative hearing regarding the validity of the citation, an administrative law judge for OSHA found that the citation issued to the contractor was proper, as the installation of solar panels was not "roofing work" under OSHA regulations. The contractor appealed OSHA's decision to the Ninth Circuit Court of Appeals, which affirmed the administrative law judge's holding.

To reach its decision, the Court looked to OSHA's rules for the definition of "roofing work." Solar panel installation is not referenced in OSHA's definition of "roofing work." On that basis, the Court decided that the plain language of the definition makes it clear that "roofing work" does not cover all materials and equipment which can be installed on a roof, but instead is narrowly defined to cover literal "roofing" material used to construct the physical roof structure. Because the

contractor's work on the hanger was not connected to constructing the hanger roof, but rather installing solar panels on the already completed roof, the less stringent "roofing work" fall standard was inapplicable. This meant that the contractor had to comply with the more robust fall protection standard found in 29 C.F.R. § 1926.501(b)(1), which requires employees to wear a PFAS and be provided with safety nets or guardrails to prevent or lessen the impact of falls.

What can contractors take away from the OSHA enforcement standard and the decision in *Bergelectric Corp.* related to installing solar panels? When contractors are hired to install solar panels on roofs with unprotected sides and edges more than six feet above a lower level, they must equip their employees with a PFAS, and also either install guardrails or safety nets. The PFAS is a necessity. Contractors may choose whether guardrails or safety nets would be better for the job site. Because the failure to comply with OSHA fall protection standards can result in fines and other consequences (including criminal liability), contractors must have plans in place to ensure that they maintain their employees' safety and comply with all applicable OSHA and other workplace safety standards. Moreover, general contractors and subcontractors in the rooftop solar panel installation business should consider whether safety manuals and contractual language require modification.

Contractors should understand that the Court's holding in *Bergelectric Corp* may apply to any contractor tasked with installing rooftop affixed equipment six feet or above a lower level. Under this holding, HVAC, standby generator, and satellite dish installation projects are not "roofing work", and contractors may be required to implement similar robust fall protection systems to comply with OSHA rules.

*By: Connor Rose*

### *Government's Over-Inspection Sufficient to Support Breach of Duty of Good Faith and Fair Dealing*

The Armed Services Board of Contract Appeals' recent decision in *Appeal of Watts Constructors, LLC* gave life to a contractor's claim that the government violated its implied duty of good faith and fair dealing. Under a contract awarded by the U.S. Army Corps of Engineers, Watts Constructors, LLC ("Watts") was required to complete construction at Fort Carson, Colorado by November 22, 2016. Watts failed to achieve completion by this date, and the parties ultimately agreed to modify the contract to establish December 21, 2017 as the new contract completion date. In doing so, the modification stated that the Government allowed continued performance without waiving its rights, "including the right to assess liquidated damages until contract completion."

On September 20, 2017, the contracting officer sent Watts a cure notice based on its overall lack of progress and failure to maintain project milestones. On September 30, Watts responded that it would not complete the project until May 25, 2018. On December 20, 2017, the contracting officer notified Watt's surety that a termination for default appeared imminent. Watts failed to complete the project by December 21, but continued working. During a January meeting, the Government agreed to review a resource-loaded schedule showing how Watts planned to complete construction by May 25. Watts submitted this proposed schedule on January 24.

On January 30, the contracting officer terminated the contractor for default after concluding that Watts' delay in completion did not arise from unforeseeable causes beyond Watts' control and without the fault of Watts and its subcontractors. She also rejected the January 24 schedule because she found it was not fully resource loaded, inaccurately listed activities as complete, forecasted durations for tasks that were unrealistic, and failed to provide for the correction of deficiencies.

Watts appealed the termination for default on five grounds, two of which implicate the government's implied duty of good faith and fair dealing. First, Watts argued that the government breached its duty because the contracting officer abused her discretion and was improperly influenced by the government's quality assurance representative's animus toward Watts. Second, Watts alleged that the government breached its duty by over-inspecting Watts' work.

As an initial matter, the Board rejected the Government's motion to dismiss both claims due to Watts' failure to submit them to the contracting officer as "claims." The Board found that an affirmative defense to a termination for default is not a claim that must be submitted to the contracting officer.

Watts' first good faith and fair dealing allegation was that the Government's quality assurance representative ("QAR") made offensive comments about Watts and its employees, excluded Watts from meetings, and refused to allow Watts to document project information in accordance with its preferred practices. Watts claimed

that this conduct demonstrated "animus, improper motive, and an intent to harm Watts, reflecting an abuse of discretion in terminating the contract that breached the implied duty of good faith and fair dealing." The Board rejected this argument and found that there were no allegations that the contracting officer was influenced by the QAR. Although the QAR's conduct may have been unpleasant, it was not an abuse of discretion by the contracting officer in terminating the contract for default.

However, the Board did find that the QAR's interference with Watts' work, over-inspection of waterproofing, lathe and finish work, and slow, repetitive and redundant inspections did indicate a need for more factual development of Watts' fifth claim, which precluded summary judgment. In addition to the negative comments, Watts presented evidence that the QAR made Watts scrape glue resin without justification, clean out and brush the interior of an electrical box, and paint wires. The QAR even directed the work of subcontractors without Watts' knowledge and performed multiple inspections of the same work.

The Board observed that '"confusing and vacillating' inspections, 'multiple inspections to differing standards,' or 'arbitrary and capricious' inspections leading to additional 'work not required by the contract,' have established a basis for contractual recovery under a constructive change theory." Accordingly, the Board determined that Watts presented adequate evidence of "interference, slow, redundant, and multiple inspections" and denied the Government's motion for summary judgment on Watts' fifth claim.

An analysis of whether a breach of the implied duty of good faith and fair dealing has occurred often turns on an intensive factual analysis. As the Court of Appeals for the Federal Circuit explained in the seminal *Metcalf Constr. Co., Inc. v. U.S.* case (in which a team of Bradley lawyers represented the contractor against the Government), "[t]he covenant of good faith and fair dealing ... imposes obligations on both contracting parties that include the duty not to interfere with the other party's performance and not to act so as to destroy the reasonable expectations of the other party regarding the fruits of the contract." The *Watts Constructors* decision demonstrates how important it is to document the day-to-day events that occur over the course of a project that provide evidence of interference or of destruction of reasonable expectations by another party. Here, Watts' evidence regarding over-inspection was sufficient to form the basis for a breach of the duty of good faith and fair dealing claim against the Government.

*By: Alex Thrasher*

### *Limiting Project Engineer's Supervisory Duties*

Project engineers should be wary of contractual language, as well as conduct, that may impose supervisory responsibilities to warn and protect employees of other contractors from dangerous conditions located on a project. A recent Mississippi Supreme Court case sheds additional light on this potential responsibility and liability.

In *Waltman v. Engineering Plus, Inc.*, a case decided by the Supreme Court of Mississippi, an employee of the general contractor filed suit against the project engineer claiming that the engineer had an affirmative duty to warn him of a dangerous condition on the jobsite, which he failed to do. The trial court ruled in the engineer's favor, on a summary disposition prior to trial, finding that the engineer had "no contractual or common law duty" to affirmatively warn the contractor's employee of the dangerous condition. The contractor's employee appealed this decision to the Supreme Court of Mississippi.

On appeal, the Mississippi Supreme Court noted that, for a project engineer to undertake a duty to warn or protect a general contractor's employee from a dangerous condition, the project engineer must assume "the responsibility of maintaining the safety of the construction project," either through contract or through its conduct.

The Court first addressed whether the project engineer had a contractual duty to warn the employee. The employee argued that since the prime contract stated that the project engineer was responsible for direct supervision of the project, the engineer affirmatively assumed a duty to warn all employees of the risks associated with the project. The court disagreed, noting that the prime contract specified that the general contractor was "responsible for all loss or damage arising out of the nature of the work . . . and for all the risks of every description connected with the work for faithfully completing the whole work[.]" This contractual language, more detailed and specific than the broader supervisory language concerning the project engineer, limited the supervisory responsibility strictly to the general contractor. The Court therefore concluded that the project engineer did not assume a duty to warn the

general contractor's employee through the language of the prime contract.

The Court then looked at the project engineer's actions. In Mississippi, courts look to a variety of factors in determining whether "an engineer ha[s] a supervisory duty outside the provisions of [a] contract," including: "(1) actual supervision and control of the work; (2) retention of the right to supervise and control; (3) constant participation in ongoing activities at the construction site; (4) supervision and coordination of subcontractors; (5) assumption of responsibilities for safety practices; and (6) the right to stop work." In considering these factors, the Court concluded that the employee failed to show any evidence that the project engineer engaged in any of the actions listed above. In fact, the only evidence provided by the employee was that the project engineer had knowledge of the dangerous condition. Knowledge alone, however, will not impose a supervisory duty according to the Court.

Although the Court did not find the project engineer liable, this case should caution engineers to become familiar with the contractual language that sets forth their project scope and responsibilities. If contract language explicitly requires the project engineer to undertake a supervisory role on the project, the engineer may have a duty to warn and protect employees of the general contractor from dangerous conditions. Engineers should also be mindful of their conduct on a project, above and beyond their contractual responsibilities, which may also imply a duty to warn and expose the engineer to potential liability to non-employees.

*By: Corbin Potter*

### *GSA Issues Solicitation Merging 24 Multiple Award Schedules*

On October 1, 2019, the General Services Administration (GSA) issued its much-anticipated consolidated schedule solicitation, merging 24 Multiple Award Schedules (MAS) into a single schedule for products, services, and solutions.

Under MAS (also commonly referred to as Federal Supply Schedules and the GSA Schedules), the GSA "establishes long-term, governmentwide contracts with commercial firms offering more than 10 million commercial supplies and services that federal, state, and local agencies order directly from GSA Schedule contractors, or through the GSA Advantage!® online shopping and ordering system."

The GSA's issuance of the consolidated Schedule solicitation represents the initial phase of MAS consolidation. According to the GSA, "[a]t this time, only new contracts will be placed on the consolidated schedule solicitation, which streamlines and simplifies the order process for new contractors." However, "[c]ontractors already on Schedule will not be affected by the new solicitation until the mass modification takes effect in calendar year 2020." Further, the GSA has stated that "Federal agencies should see no disruptions to their purchasing practices during the transition."

According to the GSA, "The MAS transformation is part of GSA's Federal Marketplace strategy to make the government buying and selling experience easy, efficient and modern. It supports GSA's strategic goal to establish the agency as the premier provider of efficient and effective acquisition solutions across the government."

The GSA reports that approximately $31 billion dollars "is spent through MAS each year." If you have any questions about how this noteworthy development may impact your company, please do not hesitate to contact a member of Bradley's Government Procurement Practice Group.

*By: Aron Beezley*

### *Not All Debts Are Created Equal*

Alabama's materialman's lien statute (specifically, Ala. Code § 35-11-211) was drafted with the intent of providing construction lenders priority over materialmen as to debts relating to construction projects. This intent was recently confirmed by an Alabama Supreme Court decision.

In *GHB Construction and Development Co., Inc. v. West Alabama Bank and Trust*, GHB Construction contracted with Guin, the owner of the property, to construct a house. GHB alleged that it completed construction and submitted its final bill for the work, and that Guin failed to pay the amount owed. GHB thus filed a verified statement of lien in December 2016 claiming that it was owed more than $100,000. GHB brought suit against Guin to collect the balance owed. GHB also brought suit against the lender, West Alabama Bank and Trust ("Lender") seeking a judgment declaring that its materialman's lien had priority over Lender's mortgage on the property.

Lender moved to dismiss GHB's complaint arguing that, under Alabama law, a materialman's lien cannot take priority over a mortgage if the mortgage was

recorded before the materials were furnished or construction began. In response, GHB argued that the priority of Lender's mortgage, which was a future-advance mortgage, was not established on the date it was recorded because Lender had yet to make any advances on the promissory note, and that Lender was not unequivocally bound to make any future advances under the terms of the promissory note. GHB argued that Lender's mortgage lien was not secured until Lender made its first advance to Guin, which did not occur until after GHB had started work.

The trial court dismissed GHB's claim because GHB failed to plead that it delivered materials to the property or began construction work before the date that Lender's mortgage was recorded. GHB appealed.

Alabama's materialman's lien statute, Ala. Code § 35-11-211(a), states that a materialman's lien "shall have priority over all other liens, mortgages, or encumbrances created subsequent to the commencement of work on the building or improvement. Except to the extent provided in subsection (b) below, all liens, mortgages, and encumbrances (in this section, 'mortgages and other liens') created prior to the commencement of such work shall have priority over all liens for such work."

The central issue, therefore, was whether GHB could show that it had commenced work – or provided any materials – *before* Lender's mortgage was created (*i.e.,* when it was recorded). The mortgage was executed and recorded in April 2015, but the first advance to Guin under the promissory note occurred in October 2015. Although GHB failed to establish when it first commenced work or provided materials, it is clear that it did so after April 2015 but before October 2015. Importantly, GHB did not dispute that Lender's mortgage was recorded before GHB commenced construction or provided materials to the property. GHB's argument, however, was that it began work and began delivering materials prior to the date that Lender made its first loan payment to Guin, and that the mortgage was not created until a debt it secured was incurred (so, October 2015).

The Court reasoned that future-advance mortgages may remain valid even absent any initial consideration. (Note: if the mortgagee attempted to foreclose on the property without ever advancing any funds, then the mortgagor could bring an action in equity to have the foreclosure enjoined and the mortgage voided.) As such, the Court determined that the mortgage executed in favor of Lender was legally valid and was superior to the materialman's lien filed by GHB.

Although this case does not set any new precedent, it confirms new application of a principle established by statute (in Alabama and in many other jurisdictions): a contractor's materialman's lien shall have priority over a mortgage on the property only if work began prior to the recording of the mortgage. Contractors or subcontractors providing labor and materials to financed projects should take steps prior to commencing work to ensure that they understand the liens or mortgages in line ahead of them. To maximize their priority potential, contractors and subcontractors should also be sure to timely record any liens if payment is not made timely or in accordance with the project requirements.

*By: Carly Miller*

## *Safety Moments for the Construction Industry*

Construction workers who face possible foot or leg injuries from falling or rolling objects or from crushing or penetrating materials should wear protective footwear. Also, workers whose work involves exposure to hot substances or corrosive or poisonous materials should wear protective gear to cover exposed body parts, including legs and feet. If a construction worker's feet may be exposed to electrical hazards, non-conductive footwear should be worn. On the other hand, workplace exposure to static electricity may necessitate the use of conductive footwear.

Examples of situations in which a construction worker should wear foot and/or leg protection include:

- When heavy objects such as barrels or tools or beams might roll onto or fall on the worker's feet
- Working with sharp objects such as nails or spikes that could pierce the soles or uppers of ordinary shoes
- Exposure to molten metal that might splash on feet or legs
- Working on or around hot, wet, or slippery surfaces; and
- Working when electrical hazards are present.

As with all protective equipment, safety footwear should be inspected prior to each use. Shoes should be checked for wear and tear. This includes looking for cracks or holes, separation of materials, broken buckles or laces, or other damage. The soles of shoes should be

checked for pieces of metal or other embedded items that could present electrical or tripping hazards. A moment of prevention could save you a world of hurt.

## *Bradley Arant Lawyer Activities*

In U.S. News' 2019 "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,** 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 a 2019 North Carolina *Super Lawyers* "Rising Star" 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.

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

**Mabry Rogers** was recently named as a "Thought Leader" in *Who's Who Legal* for 2019. **Jim Archibald, Ian P. Faria, Douglas L. Patin, J. David Pugh, William R. Purdy, E. Mabry Rogers** and **Robert J. 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.

**Axel Bolvig**, **Stanley Bynum**, and **Keith Covington** 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.

**Sarah Osborne** was recently elected as Secretary and Treasurer of the Construction Section of the Alabama State Bar.

**Abba Harris** was recently elected as Vice President of the Birmingham Chapter of the National Association of Women In Construction. She has been serving on the Board of Directors and was recently installed as Vice President.

**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** is board certified in Florida 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.

**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.

**Jon Paul Hoelscher** recently concluded his service as Chair of the Houston Bar Association Construction Law Section after serving on the council for seven years.

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

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

**Bradley** is a gold sponsor at the 2019 Southeast Renewable Energy Summit October 28-30 in Atlanta, GA.

**Monica Dozier** will moderate the State Energy Regulatory Panel at the Carolinas Federal and State Energy Policy Summit on October 4 in Charlotte, NC.

On September 13-14, 2019, **Mabry Rogers, CLSA President for 2018-19,** presided over the annual meeting of the Construction Lawyers Society of America (CLSA) in Colorado Springs, CO. At the annual meeting, Bryan Thomas and Michael Knaap were inducted as new Fellows. Other CLSA Fellows include **Jim Archibald, Axel Bolvig, Ian Faria, Eric Frechtel, Bob Symon,** and **David Taylor**. Associate Fellows include **Aman Kahlon** and **Carly Miller**.

**Katie Blankenship** attended the ICC International Arbitration Conference, which focused on disputes in the construction and energy sectors in Latin America, in September 2019 in Colombia.

On September 6, 2019, **Jared Caplan** presented at the annual meeting for the Texas Society of Anesthesiologists.

**Matt Lilly** spoke at the CFO and Industry Expert Roundtable for the Charlotte Chapter of the Construction Financial Management Association on August 22, 2019.

On July 29, 2019, **Slates Veazey** spoke on insurance coverage and indemnity issues at a Construction Law Bootcamp seminar for the *National Business Institute*.

On June 17, 2019, **Bryan Thomas** and **David Taylor** presented to a client on "Primer on Tennessee Lien and Retainage Laws."

**David Taylor** presented to a developer client on "Primer on Tennessee Lien and Retainage Laws" on June 3, 2019 in Nashville TN.

**Jim Archibald**, **Alex Thrasher**, and **Jackson Hill** recently edited and updated the "Contractor Rights and Remedies When the Owner Breaches" chapter of the *Construction Law Handbook*.

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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

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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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If the seminars were available on-line, would you be interested in participating? ☐ Yes ☐ No

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