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CONSTRUCTION LAW
2018

Second Quarter 2018

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Failure by Injured Party to Take Reasonable Action May Limit Recovery

There are instances where a party's breach of the construction contract is undisputed. However, the amount of recoverable damages often hinges on the injured party's own conduct both during and following that breach. The recent Florida Fifth District Court of Appeal case of *Penton Business Media Holdings, LLC v. Orange County* succinctly articulates this point.

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In *Penton*, landlord Orange County ("County") leased space in the Orange County Convention Center to tenant Penton Business Media Holdings, LLC ("Penton") for the purpose of hosting a trade show. The parties' lease agreement provided that Penton would be liable to the County for any damage to the center caused by Penton or its "employees, agents, or guests." One of Penton's exhibitors was required to conduct a pre-show test of a flame effect device before the potentially dangerous demonstration could be shown to the general public. During the pre-show demonstration, the County's fire safety sprinkler system was activated, causing significant water damage to the leased premises. The County sued Penton in Florida state court seeking to recover all damages incurred by the extensive water damage as permitted by the lease. While there was no dispute that Penton's exhibitor triggered the sprinkler system, Penton sought to limit or bar the County's damages by asserting the affirmative defense that these damages were "created or enhanced" by the County's

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own failure to shut down the sprinkler system as soon as reasonably possible. The trial court sided with the County and awarded summary judgment on the issues of both liability and damages.

On appeal, the Florida Fifth District affirmed the trial court's award of summary judgment on the issue of Penton's breach of the lease, but found that the trial court improperly overlooked the "avoidable consequences" doctrine in awarding judgment to the County on the issue of damages. The court noted that under the "avoidable consequences" doctrine, a party is prevented "from recovering those damages inflicted by a wrongdoer that the injured party *could have* reasonably avoided." However, the doctrine does not require a "Herculean effort" by the injured party, and the plaintiff's recovery should only be reduced by the damages that "it could have avoided had it exercised ordinary and reasonable care." Because the record below did not conclusively establish that the County exercised ordinary and reasonable care in disconnecting the sprinkler system, the court reasoned that Penton's affirmative defense that the County's own conduct created or enhanced the damages sought was not conclusively refuted. As such, the Fifth District reversed and remanded the case back to the trial court for further findings of fact on whether the damages sought by the County could reasonably have been avoided. If the trial court ultimately finds on remand that the County could have (or should have) de-activated the sprinkler system sooner, then the reduction of the recovery sought by the County for the resulting water damage could be significant.

While the *Penton* case involved a landlord-tenant dispute and does not specifically delve into the conduct of the County in de-activating the sprinkler system, construction professionals must be cognizant of the underlying principle articulated in the Court's decision or risk limiting its seemingly clear right to recovery. Specifically, the injured party in a construction dispute is not permitted to simply sit back and do nothing following a breach of the contract and/or misconduct of the other party, but has an affirmative obligation – if possible – to timely and reasonably mitigate the damages arising from this wrongful conduct. While an unreasonable (or "Herculean") effort is not required, the failure to take appropriate and reasonable action in response may limit or completely bar the damages recoverable, even when the other side's breach is undisputed.

By: Brian Rowlson

Notice Periods and Termination Clauses as Limitations on Damages

A recent Supreme Court of North Dakota holding is worth noting for anyone who enters into agreements containing notice periods to terminate the right or obligation to proceed under a contract. *Continental Resources, Inc. v. P&P Industries, LLC*, involved an oil producer and two companies providing transportation, water hauling, and related services and materials to the oil producer. Among other things, the case dealt with the amount of lost profits damages available to one of the service companies after termination for convenience.

The district court held that the service company, if it were to prevail on its breach of contract claim against the oil producer, would be limited to damages only for the net profits it would have earned during a 30-day termination notice period in the parties' contract, along with its expenses to mitigate its damages after the breach and the expenses accrued in preparation for performance. The service company appealed the decision of the district court.

The Supreme Court of North Dakota, applying Oklahoma law, upheld the district court's ruling. The service company argued on appeal that the alleged breach by the oil producer completely destroyed the company and that it was entitled to recover damages sufficient to put it in the position it would have occupied had the contract been fully performed. In other words, the service company claimed that it was entitled to the lost profits expected under the contract and the value of the company at the time of the breach. However, the Court held that the termination for convenience notice provision shielded the oil producer from much of the liability as it limited the collectible lost profits to only those profits that would have been made during the 30-day period from the notice of the termination until the complete termination of the obligation of the producer to proceed with contract. The Court reasoned that the purpose of allowing a party to recover lost profits is

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to protect the injured party's expectations. Where there is a termination for convenience clause in which either party can cancel a contract after giving notice and a specified amount of time after the notice, each party's expectations of business cannot exceed the length of that notice period.

This case serves as a reminder to all members of the construction industry of the potential implications from the inclusion of a termination for convenience clause. This principle is important to recognize even when contractual notice is not required, as this result could have equally occurred in the case of a termination for convenience in which notice is not required. If no notice is required, then there is possibly an argument that one cannot expect any lost profits beyond the date of termination; of course, with no cap, as there **was** in *P&P*, there is at least an equal argument that the right to lost expectancy is valid. Almost all termination for convenience clauses in contemporary sophisticated contracts describe the damages one is entitled to upon a termination for convenience. So if you are negotiating a contract where a notice termination period or any termination for convenience clause is in play, it is crucial to recognize that damages will likely be limited by these clauses, and one should consider the risks inherent in such a situation.

By Kyle Doiron

Catch and Release: the Importance of Analyzing Potential Claims before Signing a Release and Receiving Final Payment

The Army Corps of Engineers (the "Corps") retained Merrick Construction, LLC ("Merrick") to perform work on a hurricane protection levee near New Orleans, Louisiana. The contract between the Corps and Merrick contained Federal Acquisition Regulation ("FAR") 52.243-4(f), which provided that no proposal by Merrick for an equitable adjustment would be allowed if the proposal was asserted after the Corps made its final payment under the contract to Merrick.

During contract performance, the Corps issued a change order related to the installation of a temporary bypass pumping system at the work-site, which was to be paid for on a "unit price per month," and which provided that a formal modification to the contract would later be submitted with an agreed-to price. The Corps later issued the formal modification setting the monthly rental price for the bypass pumping system. The Corps also issued a modification which stated that the modification constituted "compensation in full on behalf of contractor [Merrick] and its subcontractors and suppliers for all costs and markups directly or indirectly attributable to Variations in Estimated Quantities, and for all delays, impacts and extended overhead relative thereto and for performance of the change within the time frame stated." Upon completing its work under the contract, Merrick submitted a final payment request to the Corps. As part of the Corps' final payment, Merrick signed a general release document which provided, in part, that Merrick "releases the United States ... from any and all claims arising under or by virtue of said contract or any modification or change thereof."

Following receipt of final payment from the Corps, Merrick determined that it had made an accounting error, and filed a claim against the Corps for an additional month's rent related to the bypass system. The government contracting officer denied Merrick's claim, finding that Merrick released any potential claims related to the bypass system by virtue of the Corps' modification, which provided that the modification constituted "compensation in full" to Merrick. Merrick appealed that decision to the Armed Services Board of Contract Appeals ("Board").

Before the Board, the Corps argued that Merrick's claim was barred for two reasons: (1) the text of the general release barred Merrick's claim; and (2) Merrick's claim was submitted after it received final payment from the Corps. In response, Merrick asserted that its claim against the Corps was not barred by the general release due to the Corps' superior knowledge regarding certain discrepancies in the rental payments owed on the bypass system, specifically arguing that the Corps knew the duration for the rental of the bypass system, which was longer than the time period for which the Corps had compensated Merrick.

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The Board found Merrick's arguments unpersuasive, particularly noting that there was no evidence that the Corps "knew or should have known" of Merrick's claim related to the rental discrepancies, as Merrick's own evidence demonstrated that Merrick itself only learned of the rental discrepancies after signing the release with the Corps. As an alternative basis for its finding in favor of the Corps, the Board also held that Merrick's claim was barred by FAR 52.243(f), because it was submitted after Merrick received final payment. Where Merrick did not demonstrate it performed any work on the contract after receiving final payment or that the contracting officer "knew or should have known" of Merrick's claim, the Board found that Merrick's claim was barred.

The *Merrick* decision serves as a reminder for contractors and subcontractors to perform a thorough analysis of any existing or potential claims before executing a general release, whether in a change order or in a pay application, and before seeking final payment from any entity, whether public or private. For owners, it reaffirms the enforceability of clear waivers or releases, so long as there is no reservation of rights by the contractor.

By Justin T. Scott

No Rights to the AIA 2007 Documents after October 2018

The American Institute of Architect's ("AIA") release of its 2017 documents has been a recent hot topic within the construction industry. In total, the AIA released approximately twenty-nine new forms and contracts in 2017, including AIA A101, A102, A103, and A201. Bradley's BuildSmart Construction blog, found at https://www.buildsmartbradley.com/, contains a few articles discussing some significant changes in those documents.

In accordance with the AIA's customary practice, the older version of the contract documents (*e.g.*, the 2007 version) will expire within approximately 18 months after the release of the new version of the 2017 contract documents. Once an AIA document expires, the user will no longer have the ability, using the handy AIA software, to create a new document from the expired version, edit the expired version, or even finalize an expired version. The 2017 version of the AIA A101, A102, A103, A201, A401, and B101 contract documents were released in April 2017, so the 2007 version of these documents are set to expire on October 31, 2018. The AIA will not allow parties to finalize, using the AIA software and license, an expired 2007 document after October 31, 2018; instead, the parties will need to use the 2017 version of those documents or find alternate means of finalizing their contract. In other words, the AIA will force parties that desire to use the AIA software and license for an AIA document as their contract form to begin using the AIA's new family of documents.

It is worth noting that AIA released some lesser used contracts and form documents in October 2017, including the AIA B201 (Design and Construction Contract Administration), B207 (Architect's Services: On-Site Project Representation) and G704 (Certificate of Substantial Completion). These documents are not set to expire until May 31, 2019.

Regardless of whether a document being used is set to expire at the end of October 2018 or May 2019, contracting parties desiring to use an AIA document on the AIA platform are strongly encouraged to use the 2017 version of the AIA documents now or risk being precluded from finalizing their contract document if negotiations occur beyond the retirement date for the relevant 2007 document. If you have any questions about the recent AIA revisions or drafting a contract for your particular project, please do not hesitate to contact your lawyer or the AIA directly.

By: Daniel Murdock

Subcontractor Pass-Through Claims Are Vulnerable to the Severin Doctrine

Two recent decisions – one from the U.S. Civilian Board of Contract Appeals and the other from the U.S. Court of Federal Claims – provide opposing holdings on whether the government can raise a "*Severin* doctrine" defense to subcontractor "pass-through" claims based on broad language in subcontractor progress payment releases. In light of these different perspectives, contractors should take steps to ensure that such releases do not doom legitimate subcontractor pass-through claims.

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Subcontractors cannot directly sue the government because they do not contract with the government, *i.e.*, they are not in "privity" of contract. A pass-through claim is a subcontractor claim against the government that a prime contractor (who is in privity of contract with the government) brings on behalf of a subcontractor. The *Severin* doctrine holds generally that a prime contractor presenting a pass-through claim can recover damages from the government only if the prime contractor remains liable to the subcontractor for those damages.

In *Turner Construction Co. v. Smithsonian Institution*, a case before the Civilian Board of Contract Appeals (the "Board"), the prime contractor passed approximately $7 million in subcontractor delay and disruption claims through to the government in a dispute involving the renovation of the National Museum of American History. Each progress payment release stated, in relevant part, that the subcontractor:

> represents and warrants that there are no outstanding claims by the [subcontractor]… through the date of Application for Payment No. __ except for any retention, pending modifications and changes, or disputed claims for extra work as stated herein[;]
>
> and
>
> does hereby forever release, waive, and discharge … any and all … claims and demands … by reason of delivery or material and/or performance of work relating to the project through Application for Payment No. __, except for those items listed under No. 1 above.

The relevant progress payment releases did not list the pass-through delay and disruption claims under No. 1. The Board held that even though the progress payment releases did not carve out the pass-through claims, the *Severin* doctrine did not bar them, mainly because the releases were "clearly tied" to each progress payment. Their main purpose was to ensure that subcontractors had paid lower tier contractors and that the project site remained unencumbered, not to relieve Smithsonian, vis-à-vis releasing Turner, from any liability for overall project delay.

The U.S. Court of Federal Claims in *MW Builders, Inc. v. United States*, on the other hand, broadly applied subcontractor progress payment releases to bar pass-through claims. MW Builders, the prime contractor, passed through approximately $1 million in subcontractor delay claims in a dispute involving the construction of an Army Reserve Center in Sloan, Nevada. The progress payment releases in question were from one subcontractor, Bergelectric, which stated in relevant part: "[Bergelectric] irrevocably and unconditionally releases and waives … any other claims whatsoever in connection with this Contract … through the end of the period covered by this Application …." These releases covered the entire period of Bergelectric's delay claim.

In contrast with the *Smithsonian* disposition, the court held that the *Severin* doctrine barred the Bergelectric pass-through claim. Unlike the board's narrow interpretation of the progress payment releases in *Smithsonian*, the court declined to consider evidence of the limited intent of the releases. Instead, based on the broad language in the releases and the fact that the releases did not expressly reserve Bergelectric's delay claim, the court determined that the releases barred *all* claims by the subcontractor.

These two recent decisions involved similar language in progress payment releases but had opposite results. In the Board case, the subcontractor claims survived under a narrow interpretation of the progress payment releases, while in the court case, the subcontractor claims fell victim to the government's *Severin* doctrine defense based upon a broad interpretation of the release language. Together, these cases demonstrate the unpredictability of whether a court or board will construe broad language in progress payment releases as a bar to subcontractor pass-through claims. In anticipation of the government's defense, contractors may want to try, after the fact, to carve out subcontractor pass-through claims in a "liquidation agreement" to define and preserve subcontractor pass-through claims and, possibly, affirm the contractor's liability to the subcontractor for the pass-through claims, to the extent of payment by the owner, in whole or in part, for the subcontractor pass-through claims. Without such vigilance, otherwise meritorious claims could be

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vulnerable to the government's *Severin* doctrine defense.

By Eric A. Frechtel & Amy E. Garber

The New Partnership Audit Rules Are Here to Stay: It's Time to Act

The January 1, 2018 effective date of the new federal partnership audit rules quietly came and went, with many of our partnership and LLC clients and their advisers hoping that the rules were just a bad dream or would at least be postponed a year. According to comments from Treasury Department officials earlier this month during the annual American Bar Association Tax Section meeting in Washington, these rules aren't going away, and "all" existing partnership and LLC agreements should be amended. Also, language adopting the new rules should be included in any new agreements. They also warned us not to expect more substantive guidance any time soon, so there is no good reason to delay. We encourage all entities taxed as partnerships (as well as multi-member LLCs) to address the issues posed by these new rules as soon as possible—certainly before year-end. For those who are unfamiliar with the new rules, here are some FAQ's.

1. Why should we be concerned about the new rules? Our company has been around for years.

The Bipartisan Budget Act of 2015 created a radically new and comprehensive partnership audit regime ("CPAR"), and the Consolidated Appropriations Act of 2018 provided some helpful technical corrections – for both existing and new partnerships. The "old" rules were repealed effective for tax years beginning after December 31, 2017. For 2018 and beyond, there is no such thing as a "tax matters partner," nor the historical principle that partnerships aren't taxpayers for income tax purposes. The partnership audit will now 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. There are options to shift the liability for the assessment to those who were partners in the reviewed (audited) years.

Traditional partnerships and multi-member LLCs are clearly 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. Treasury officials have stated publicly that they want these new rules to apply to as many business arrangements as possible.

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

Many owners are surprised to learn that their partnership or JV is covered by the new rules. That could result from having too many partners, or even one ineligible partner, or if they fail 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 (solely) by some combination of individuals, estates of deceased partners, C corporations, and S corporations; and (c) timely file their Form 1065 and check a new box on the return to opt-out, each year. There are special headcount rules for partners that are S corporations. So far, Treasury regulations and officials tell us that, 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 isn't available. Thus, 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 can make the opt-out election if it's available and, if not, will control the audit and any settlement or appeal. By statute, the PR is the only person empowered to work with the IRS; and Treasury officials reminded us of that fact during their speeches in D.C. last week. We call the PR the new "tax czar."

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 elections, and otherwise restrict the actions of the

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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 the law isn't going away and there's no grandfather rule. What do we do now?

You and your tax advisers should quickly examine your company's ownership structure. If, for example, one of your partners is ineligible (*e.g.*, an LLC or family trust), consider transferring its partnership interest to an eligible partner or buy it back. This must have been done by December 31, 2017 for 2018 purposes, since eligibility is determined as of January 1 of each year and on every day thereafter. Thus, if changing ownership is required to allow the partnership to opt-out, that option now isn't available for 2018 – only for 2019 and beyond.

Each partnership agreement should be amended to address your particular facts, but here is one common theme: every partnership (big or small) should have a PR, who must be officially appointed and in place before the 2018 tax return is due since he or she (or it) must be listed on the return. So consider now who would be the best, long-term PR.

There are a number of issues, federal and state, that should be addressed in any new or amended partnership agreement, and this column only scratches the surface. Bradley's July 2017 *Federal Tax Alert*, available on our website, provides an abbreviated list of items that should be considered for inclusion in any new or amended agreement. These amendments should be made well before December 31. And, as mentioned, any new partnership agreement should address these issues.

If you have questions about these new rules and how they might impact your business, please contact your lawyer or, if you prefer, 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 P. Ely and William T. Thistle, II

[*Bruce Ely and Will Thistle are tax partners of our firm. Until recently, they served 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

Hearing protection is essential when noise exposure can't be controlled at its source. Both earplugs and earmuffs provide a physical barrier that reduces inner ear noise levels and prevent hearing loss from occurring. Psychological effects of noise sometimes include annoyance and disruption of concentration. Physical effects may include loss of hearing, pain, nausea, and interference with communications when the exposure is severe.

However, people often resist wearing hearing protection or use it incorrectly. One reason is, she or he may not think he or she really needs it. But hearing loss occurs so gradually (even in intense exposures) that by the time one notices it, irreversible damage may have already occurred.

Another reason for not wearing hearing protection is that it can feel uncomfortable. However, properly designed, fitted, and clean ear protectors will cause no more discomfort to most workers than wearing a pair of safety glasses. The best hearing protector is one that fits correctly so that one can wear it properly.

Some signs that you should be wearing hearing protection include:

1. It is necessary to speak in a very loud voice, or shout directly into the ear of a person to be understood;

2. Roaring or ringing noises at the end of the workday that are not usually present; or

3. Speech or music sounds muffled after leaving work, but it sounds clear in the morning upon return to work.

Bradley Arant Lawyer Activities

Bradley's Construction and Procurement Practice Group is hosting its annual *Construction Seminar Series* in several of our offices on the following dates. Several attorneys in our practice group will be presenting the following topics: Understanding Insurance in the Risk Management Structure, Insuring against the Risk of Default, Managing Subsurface Risk, Managing the Risk of Non-Payment, Key Contract Payment Clauses, and a Case Highlight of the Year. Please contact Tay Bailey at tbailey@bradley.com or 205.521.8187 to register and attend. Dates of the seminar are:

June 1: Nashville, TN (1600 Division Street, Suite 700)

June 1: Jackson, MS (One Jackson Place, 188 E. Capitol Street, Suite 400)

June 8: Birmingham, AL (One Federal Place, 1819 Fifth Ave N)

June 15: Charlotte, NC (214 North Tryon St, Suite 3700)

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 2018 by the *U.S. News & World Report* in its "Best Law Firms" rankings. Bradley has held a National Tier 1 ranking in Construction Law every year since the rankings began and has also earned Tier 1 metropolitan rankings in Construction Law for its offices in Birmingham, Alabama; Houston, Texas; Jackson, Miss.; Nashville, Tenn.; and Washington, D.C. We are very proud of this honor and even prouder to have the opportunity to advise our clients on projects locally at home, throughout the country, and around the world.

In U.S. News' 2018 "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.

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, Axel Bolvig, David Owen, David Pugh, Mabry Rogers, Walter Sears, Monica Wilson Dozier, Jim Collura, Ian Faria, Ralph Germany, Bill Purdy, David Taylor, Eric Frechtel, Douglas Patin, and Bob Symon are recognized by *Best Lawyers in America* in the area of Construction Law for 2018.

Jim Archibald, **Axel Bolvig**, **David Pugh** and **Mabry Rogers** were recognized by *Best Lawyers in America* for Litigation - Construction in 2018

Mabry Rogers, Doug Patin and **David Taylor** were also recognized by *Best Lawyers in America* for Arbitration for 2018. **David Taylor** was named 2018 Lawyer of the Year in Nashville in the area of Mediation. **Keith Covington** and **John Hargrove** were recognized in the area of Litigation - Labor and Employment. **Frederic Smith** was recognized in the area of Corporate Law.

Jim Archibald, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, Ian Faria, Doug Patin and **David Taylor** were named *Super Lawyers* in the area of Construction Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Bryan Thomas, Daniel Murdock, Aman Kahlon, Amy Garber, Tom Lynch, Lisa Markman, and Jackson Hill** were listed as "Rising Stars" in Construction Litigation. Additionally, **Monica Wilson Dozier** was named a 2018 North Carolina *Super Lawyers* "Rising Star" in Construction Litigation, and **Matt Lilly** was named a "Rising Star" in Energy and Resources.

In Texas, **Andrew Stubblefield, Jon Paul Hoelscher**, **Ryan Kinder**, and **Justin Scott** were named 2018 Texas *Super Lawyers* "Rising Stars."

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.

Jim Archibald, Ian Faria, Mabry Rogers and **David Taylor**, have been selected as Fellows of the Construction Lawyers Society of America (CLSA).

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

Doug Patin, Bill Purdy, Mabry Rogers, David Pugh, Bob Symon, and **Arlan Lewis** were recently listed in the *Who's Who Legal: Construction 2017* legal referral guide. **Mabry Rogers** has been listed in *Who's Who* for 21 consecutive years.

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.

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

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Abba Harris was recently elected to the Board of Directors for the Birmingham Chapter of the National Association of Women in Construction.

Arlan Lewis was recently 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.

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.

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 named to the Board of Directors of the Nashville Conflict Resolution Center.

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.

David Taylor was recently 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.

Kyle Doiron was recently admitted to the Associated General Contractors' Construction Leadership Program for the Middle Tennessee Branch.

Monica Wilson Dozier was recently selected to join the 2018 class of E4 Carolinas' Emerging Leaders Program, designed to guide participants in mastering personal energy industry leadership skills for future executive-level positions. The program requires participation in 6 multi-day, team-focused events throughout the year in North and South Carolina locations, and graduates become members of the Carolina Leadership Energy Alumni Network.

On June 19, 2018, **Aron Beezley** will be speaking about international government contracting at the Veteran Institute for Procurement in Potomac, MD.

Aron Beezley will be speaking at Bradley's Government Contracting 101 seminar in Huntsville, AL on June 7, 2018.

Kyle Doiron and **David Taylor** spoke at Bradley's 17th Annual Tennessee Commercial Real Estate seminar on the "Top 10 Reasons for Construction Disputes" on May 2, 2018.

On March 21, 2018, **David Taylor** presented a seminar on "Avoiding Construction Lawyers" at the Associated Builders & Contractors monthly luncheon in Knoxville, Tennessee.

Jim Archibald spoke on a panel at the American College of Construction Lawyers' Annual Meeting in Dana Point, California on February 23, 2018 about emergency procurements under federal and state procurement laws. Jim is the Vice Chair of the Public Contracts Committee of the ACCL.

On February 22, 2018, **Keith Covington** presented a seminar on "Employment Visa Options" in Huntsville, Alabama.

Eric Frechtel gave a presentation on February 6, 2018 on "Killer Contract Clauses" to the Service Bureau of the Mechanical Contractors Associated of Metro Washington.

In January 2018, **Lee-Ann Brown** published an article pertaining to the Civilian Board of Contract Appeals' award of a contractor's quantum meruit claim in the Division 13 of the ABA Forum on Construction Law Newsletter.

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The lawyers at Bradley Arant Boult Cummings LLP, including those who practice in the construction and procurement fields of law, monitor the law and regulations and note new developments as part of their practice. This newsletter is part of their attempt to inform their readers about significant current events, recent developments in the law and their implications. *Receipt of this newsletter is not intended to, and does not, create an attorney-client, or any other, relationship, duty or obligation.*

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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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