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Fourth Quarter 2023

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Employee Stock Ownership Plans for Construction Companies

In recent years, a growing number of construction companies have established employee stock ownership plans (ESOPs). The interest in an ESOP is often generated by the need for an exit strategy for one or more of the owners of a closely held business, a common scenario in the construction industry. In fact, the construction industry, more than most industries, seems particularly drawn to ESOPs. A few reasons for this are that private equity buyers are rarely interested in construction companies and construction companies seem less likely to sell to competitors than companies in other industries. In circumstances where the business is not easily sold to a third party and/or the owners desire to provide for continuity, an ESOP can be a great solution for the owners and the company; they can obtain liquidity, and the company can operate with improved cash flow.

There are some unique issues that construction companies need to address in implementing an ESOP, particularly with regards to sureties and any new debt that is incurred by the company to complete the ESOP transaction. This article provides general background on ESOPs and addresses certain issues and considerations for construction companies that want to establish an ESOP.

Brief Background on ESOPs

An ESOP is a type of tax-qualified retirement plan that primarily invests in employer stock. Like other retirement plans, the ESOP is governed by the terms of formal plan and trust documents. The ESOP buys shares from selling shareholders, the company, or some combination of both. In a leveraged transaction, the shareholders typically sell their stock to the ESOP. The ESOP will usually purchase the stock through a combination of seller notes and cash borrowed from the company, which in turn will borrow money from a bank.

There are several tax advantages to an ESOP. One such advantage is that repayments of the principal amount of an ESOP loan can be tax deductible. To elaborate, contributions by the company to the ESOP to enable the ESOP to repay the ESOP's promissory note are tax deductible (up to certain limits); thus, a loan used to finance an ESOP transaction can be repaid with pre-tax dollars. Another advantage is that a selling shareholder of a C-corporation may be able to elect Code Section 1042 tax deferral treatment and defer the capital gains associated with the sale of his or her shares, subject to certain requirements. Finally, the most important tax advantage is that, for companies that elect S-corporation status, the ESOP's share of recognized earnings is ordinarily exempt from income taxes. The goal for most ESOP-owned companies is to eventually become a 100% ESOP-owned S-corporation, thereby achieving the best possible tax status.

To start the ESOP process, companies will usually obtain a feasibility study that will consider valuation, transaction size, financing, surety program impact, and the expected benefits delivered to employees over time. The

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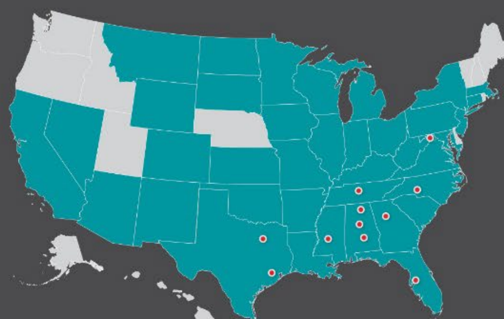

ESOP process will also ordinarily consider the long-term goals and related incentives for management, including any management transition issues.

Satisfying Surety Bond Requirements

Construction companies are typically required to obtain surety bonds to guarantee a project owner that the contractor will comply with the terms and conditions of the contract. Surety companies will ordinarily conduct an extensive underwriting review of the contractor and continue to do so periodically while the bond is in place. The underwriting review will consider the contractor's financial condition, structure, experience, and capacity to meet the requirements of the contract. The surety company will typically focus on the maintenance of a certain amount of working capital and sufficient net worth to support the construction company's business. Sureties may require financial statements from a construction-oriented CPA firm on a reviewed or audited basis. They will be interested in work in progress and the status on projects. A construction company will usually be required to execute an indemnity agreement, which may include a personal indemnity/guaranty by one or more of the company's owners that obligates the indemnitors to protect the surety from losses. Existing surety bonds likely limit the ability of the company to incur debt and therefore almost definitely will require the consent of the surety for a leveraged ESOP transaction.

Construction companies considering an ESOP should begin discussions with their surety in the early stages of the transaction. Depending on the surety's familiarity with ESOPs, this education process can take time and is best done with the help of professionals who specialize in ESOPs and can adequately communicate the ESOP deal structure and the benefits of ESOPs.

Maintaining Continuity

Many construction companies are closely held companies that do not have a business continuity plan. They may be owned by the founder or a small number of shareholders who are not working for the company. An ESOP can provide continuity by establishing a market for the purchase of shares from the controlling shareholders.

Incentivizing Employees

An ESOP is designed to provide employees with "skin in the game," thereby hopefully incentivizing them to increase the value of the company stock and their beneficial ownership interest. Given labor shortages in the construction industry, an ESOP can provide an important retention tool and incentive for employees to remain employed with the company and pursue long-term growth. An ESOP may also reduce employee interest in unionization.

Increasing Cash Flow

In certain settings, an ESOP can be an effective tool for increasing a company's cash flow. A contractor can reduce its corporate income taxes and increase its cash flow and thereby its net worth through an ESOP structure. If the contribution to the ESOP is made in lieu of contributions to a 401(k) plan, the cash flow savings are even greater. The additional cash can be used to finance projects and the growth of the business.

Other Considerations

If a company borrows money and then lends this money to the ESOP to purchase company stock, the loan will be a liability that will reduce the company's net worth. As discussed above, this could affect the requirements for the surety bond. However, ESOP transactions are often structured such that the sellers loan funds to the company and then subordinate their loan to the surety. Such subordinated debt will not have the same impact on net worth. Also, companies with ESOPs have repurchase liability, but this can be addressed to a large degree with a repurchase liability plan and careful drafting, monitoring, and updating of the ESOP distribution policy. Lastly, ESOPs and ESOP transactions require an understanding of business valuation, transaction dynamics, tax law, and regulatory compliance under ERISA, and there is time and expense involved in the process.

Conclusion

ESOPs can be the right solution for construction companies, particularly closely held businesses where the selling shareholders have a need for liquidity and a desire to continue the business legacy to benefit employees. If you have any questions about ESOPs, contact David Joffe or Emily Horn at Bradley Arant Boult Cummings LLP.

By: B. David Joffe

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llinois Joins the Majority of States on Coverage for Defective Work

In a significant decision by the Supreme Court of Illinois in *Acuity v. M/I Homes of Chicago, LLC*, Illinois joins the majority of jurisdictions recognizing that defective work in construction can constitute "property damage" caused by an "occurrence" and trigger a general liability insurer's coverage obligations under standard commercial general liability (CGL) insurance policies. In so holding, the Court reversed prior rulings that only damage to third-party property could trigger the insuring clause of the standard CGL.

The underlying litigation arose from claims of alleged construction defects in a residential townhome development against M/I Homes. The townhome owner's association (HOA) filed an action against M/I Homes for breach of contract and breach of the implied warranty of habitability. The HOA alleged that M/I Homes' subcontractors caused construction defects by using defective materials, conducting faulty workmanship, and failing to comply with applicable building codes, which allegedly caused water intrusion and damage to the townhomes and other property.

M/I Homes tendered the underlying case to Acuity as an additional insured on a CGL policy that Acuity issued to H&R Exteriors, Inc., one of M/I's subcontractors. Acuity denied defense to M/I Homes and filed a declaratory judgment action seeking a declaration that it had no duty to defend. On cross-motions for summary judgment in the declaratory judgment litigation, Acuity argued the damages sought by the HOA related solely to the defective construction of the townhomes and did not allege damage to any property beyond the buildings. Illinois appellate courts had previously held defective construction did not constitute an "occurrence" because a construction defect was a "natural and ordinary consequence" of the construction process and, therefore, not an accident.

M/I Homes argued the HOA's complaint in the underlying situation sufficiently alleged "property damage" caused by an "occurrence" to trigger Acuity's duty to defend. The circuit court granted Acuity's motion for summary judgment on the basis that the faulty work was not an "occurrence" because it was not an "accident." On appeal, the appellate court found that the underlying complaint sufficiently alleged damage to "other property." The appellate court broadly construed the complaint and found the allegations were sufficient to trigger Acuity's duty to defend.

On further appeal, the Supreme Court noted that Illinois case law on the issue was "in flux" and had developed from "cases that have approached the coverage question based on a myriad of rationales and factors" where "much of the analysis has not been directly tied to the principles of contract interpretation but instead on various policy considerations." The Court sought to bring "clarity to these issues" and "return to first principles and apply a disciplined legal framework from which we can arrive at the correct legal analysis and the correct result."

First, the Court addressed the insuring agreement of the CGL and explained the "initial grant of coverage depends on whether there has been an allegation of 'property damage' that is caused by an 'occurrence' within the meaning of the CGL policy language." The complaint in the underlying HOA case alleged "water damage to the interior of units" caused by faulty exterior work and defective materials, which the Court found sufficiently alleged "property damage" as defined in the CGL policy. The Court explicitly rejected the principle posited by Acuity "that there could be no 'property damage' caused by an 'occurrence' under the policy unless the underlying complaint alleged property damage to something beyond the townhome." The Court described this principle as "erroneous" and "not grounded in the language of the initial grant of coverage in the insuring agreement."

As to the "occurrence" element, which the CGL policy defines as an "accident," the Court held, "that the term "accident" in the policies at issue reasonably encompasses the unintended and unexpected harm caused by negligent conduct." The Court noted the HOA's complaint alleged "that inadvertent construction defects accidently caused property damage to the completed townhomes" and that "[n]either the cause of the harm . . . nor the harm . . . was intended, anticipated, or expected." The Court rejected Acuity's assertion that "damage to any portion of the completed project caused by faulty workmanship can never be an accident because it is the natural and probable consequence of doing business." The Court held that property damage that results from inadvertent faulty work can be caused by an "accident" and therefore constitute an "occurrence" for purposes of the initial grant of coverage under the insuring agreement. The Court remanded the case to the trial court to consider any potentially applicable exclusions and to resolve whether Acuity has a duty to defend.

The *Acuity* ruling is a significant development for the construction industry. Trial and appellate courts in Illinois had long held there was no coverage under a CGL

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for property damage to the project itself arising out of defective construction and found coverage only in isolated instances where there was damage to other real property or to personal property. Under *Acuity*, Illinois now joins the majority of jurisdictions recognizing CGL coverage for unexpected and unintended property damage arising from faulty workmanship in construction projects.

By: Heather Howell Wright and Andy Tao

Liquidated Damages Provisions: The "Musts" and "Must Nots"

Recently, Georgia's Court of Appeals issued an opinion that emphasizes the importance of reviewing liquidated damages provisions on a project-by-project and contract-by-contract basis for enforceability and applicability. In *City of Brookhaven v. Multiplex, LLC*, the City let a project for the improvement of a public park and elementary school area. Multiplex was the low bidder, won the work, and signed a contract with the City on June 15, 2017.

The parties' contract contained the following provision related to project duration: "The services to be performed under this Contract shall commence on the date hereof. The initial term of this Contract shall be through December 31, 2017. Time is of the essence for this Contract. All work must be completed by December 31, 2018[sic]." Further, the Project's Scope of Work stated: "[Multiplex] shall have 180 days from the notice to proceed to complete the project. *Failure to complete the required construction as specified will result in the assessment of Liquidated Damages at the rate of $1,000.00 per calendar day*."

The City never issued a notice to proceed for Multiplex's work. Nonetheless, Multiplex commenced work in July of 2017 and completed its work on September 28, 2018. The City sued Multiplex for not completing its work by December 31, 2017 and sought to recover liquidated damages in the amount of $271,000 (271 days of delay). After hearing cross motions for summary judgment, the trial court held that the liquidated damages provision in the Contract was a penalty and unenforceable. On appeal, the Georgia Court of Appeals agreed. It cited a three-part analysis for determining if a liquidated damages clause is enforceable. The questions the Court asked, and which a Contractor should likewise ask, were as follows:

1. Is the injury for which the liquidated damages will serve as a form of compensation otherwise difficult to measure?

In the first part of its analysis, the *Brookhaven* Court briefly touched on the original reason liquidated damages provisions exist in the first place: an inability to otherwise calculate the losses tied to a particular delay. The Court highlighted that public works projects often impact the lives of the public in a variety of ways in addition to the more discernable construction and material impacts caused by a contractor's delays. This makes it difficult to quantify total impact. Where actual damages are hard to discern, liquidated damages make sense. In *Brookhaven*, this prong of the analysis swayed in the City's direction.

2. Did the parties intend to provide damages in the event of a delay?

Yes, practically speaking any assessment of liquidated damages against a company will necessarily serve as a deterrent when a schedule is starting to slip on a job. However, the question from the Court was one of intent – did the parties intend to remit payment to the other if key milestones were missed or was the sole purpose of the provision to deter breach? Court's will look at the contract language to try to determine intent, or if none exists, the actions, documents, and statements of the contract parties. In *Brookhaven*, the City's representative testified that the liquidated damages were meant to be a "disincentive" and this equated, in the Court's eyes, to a penalty. Notably, language in the parties' contract about intent would have likely circumvented the need to look to witness testimony. This point favored Multiplex.

3. Is the sum of the liquidated damages (all told) a reasonable estimate of the probable loss the counterparty stands to suffer as a result of the delay?

According to the *Brookhaven* Court, a party to a contract should not arbitrarily assign a daily liquidated damages amount to a project, regardless of a project's size, complexity, scope, and/or location. Liquidated damages provisions must be unique to the situation at hand and be a *reasonable* pre-estimate of the probable loss. As the Court explained, "the touchstone question is whether the parties employed a reasonable method under the circumstances to arrive at a sum that reasonably approximates the probable loss." If not, and there is "no reasonable relation to any probable actual damage which may follow a breach, the

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contractual provision will be construed as an unenforceable penalty." On this point, Multiplex won the appeal.

Thus, there are a few key items for a contractor to prioritize when seeking to enforce or challenge a liquidated damages provision:

Musts:

- Make sure that any liquidated damages provision is proportionate to the work at issue
- Confirm the date on which the liquidated damages start to accrue in writing
- Ensure that the LDs provision is being used because actual damages resulting from delays would be difficult to calculate
- Look to see if the provision explicitly states the intent behind its inclusion

Must Nots:

- Do not use blanket, cookie-cutter liquidated damages provisions and values in your standard contract. Ensure that the daily LD's rate is proportionate to the potential damage. It is a good practice to have an estimate on which the LD amount is based, listing the various factors of why the exact amount is difficult to estimate at the time of the calculation.
- Don't forget to document the "starting point" for the delay calculation

Regardless of whether a contractor is on a public or private job, liquidated damages provisions *can* usually be enforced. Likewise, even if a standard liquidated damages provision has been enforced on one project, it does not mean that provision will pass muster the next time around. The party's safest bet is to always review a liquidated damages clause for necessity, applicability, and reasonableness on a project-by-project basis. The onus is on the claiming partyr to do its due diligence. When in doubt, progress a job as though the clause is enforceable.

By: Anna-Bryce Hobson

Navigating Mechanic's Liens: A Guide to 'Bonding off a Lien'

Mechanic's liens are a powerful tool for contractors, subcontractors, and suppliers to secure payment for their services on a construction project. Once a mechanic's lien is filed, the lien claim creates a cloud on the property's title, making it challenging for property owners to sell or refinance the property until the claim is resolved.

In Alabama, and in many other states, one effective strategy for addressing mechanic's liens is bonding. Bonding off a lien allows property owners to regain control of their property and proceed with construction activities or real estate transactions without the threat of foreclosure or the lien clouding the title. Bonding off a mechanic's lien involves obtaining a lien release (or transfer) bond to secure payment for the lien on the property. After the mechanic's lien is transferred to the bond, the claimant has a bond claim against the lien release bond instead of a lien claim against the property. In other words, any proceeds recovered from the claim will come from the bond rather than the sale or foreclosure of the property.

Bonding off a lien can be advantageous for all parties on the project. For the property owner, the benefits are obvious—removing the mechanic's lien maintains project continuity, protects property ownership, satifies any lender for the project, and can avoid lengthy and costly legal battles. Because of these benefits, in many instances contractors and subcontractors are contractually obligated to keep the property free and clear of liens. For example, the upstream party in a prime contract or subcontract may require the downstream party to ensure that the property remains free and clear of liens and encumbrances. Similar terms can be found in landlord-tenant lease agreements, where the landlord requires the tenant to keep the property free and clear of liens if the tenant performs buildout work.

For the claimant, bonding off a lien is not a threat to the claim for non-payment. Instead of navigating the lien foreclosure process, which can be lengthy and expensive, a successful bond claim will simply result in asserting the claim for payment from the surety rather than from the owner.

However, bonding off a mechanic's lien can be a difficult and expensive process. In many states, the party bonding off the lien will be required to pay a premium to obtain the bond, and the surety will usually bill annually for the premium. For example, in Alabama, the statutory amount required to bond off the lien is (i) the amount of the lien, plus (ii) interest at 8 percent for 3 years, plus (iii) $100 for court costs that may be taxed in any proceeding to enforce the lien.

The Key Takeaway: Bonding off mechanic's liens offers a practical and efficient solution to the challenges posed by payment disputes in the construction industry.

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Owners, contractors, and subcontractors should be aware of this process in a particular jurisdiction in order to comply with contractual obligations and protect their rights.

By: Hunter Webb

No, You May Not Agree to Waive Your Right to Attorneys' Fees and a Penalty Fee in a Construction Dispute in Pennsylvania

A Pennsylvania appellate court, in *E. Allen Reeves, Inc. v. Old York, LLC,* has confirmed that arbitrators in a prompt pay act dispute must award attorneys' fees and a penalty fee to the prevailing party even when the parties' agreement expressly forecloses such awards. The court also held that challenges to the enforcement of an arbitration award must be made in the petition to vacate the award or else they are waived.

By way of background, prime contractor E. Allen Reeves ("Reeves") entered into a contract with Old York, Inc. in which Reeves would serve as general contractor to construct a building. The contract mandated that disputes be arbitrated and that: "no arbitrator(s) shall have the authority to enter an award of punitive damages or attorneys' fees to either of the parties."

Reeves completed its work on the project, but Old York refused to make a final payment. Reeves prevailed at arbitration. The arbitrator awarded Reeves not just the amount due plus interest but also its attorneys' fees and a penalty fee.

Old York was unsuccessful in its challenge to the attorneys' fee award and penalty fee. With respect to attorneys' fees, Old York argued that the arbitrator had no authority to award them because the parties' contract precluded them. But Section 512(b) of Pennslyvania's Contractor and Subcontractor Payment Act ("CASPA") provides that "*[n]otwithstanding any agreement to the contrary*, the substantially prevailing party in any proceeding to recover any payment under this act *shall* be awarded a reasonable attorney fee in an amount to be determined by the court or arbitrator, together with expenses." And in Pennsylvania, "attorneys' fees under CASPA cannot be waived by contract." "Thus, the trial court did not err in finding the arbitrator had the authority to award Reeves attorneys' fees notwithstanding the language in the parties' contract."

Old York challenged the penalty fee on similar grounds, arguing that the parties' contract foreclosed the penalty fee by precluding an award of punitive damages. The court rejected this argument for two reasons. First, by "provid[ing] mandatory penalties that 'shall' be imposed in arbitration against a party who has failed to comply with CASPA's payment terms" and "not contain[ing] any language allowing the parties to waive CASPA's penalties," "CASPA does not allow parties to contractually waive the[se] penalties." Second, and in any event, the parties' agreement to waive punitive damages was irrelevant to Reeves's penalty fee award because CASPA's penalty fees are not punitive damages. The parties waived their entitlement to punitive damages—not to a penalty fee. While CASPA "provides for a penalty equal to 1% per month of the amount that was wrongfully withheld pursuant to CASPA's terms," punitive damages "are penal in nature and are proper only in cases where the defendant's actions are so outrageous as to demonstrate willful, wanton or reckless conduct." "Accordingly, we conclude that the trial court did not abuse its discretion or commit an error of law in upholding the arbitrator' award of attorneys' fees and penalties pursuant to CASPA."

Old York's argument that Reeves lacked standing to enforce the contract also failed. Although Reeves filed a petition to vacate the arbitration award, that petition did not challenge Reeves' standing to enforce the contract. Old York instead made this argument only in its opposition to Reeves' petition to enforce the arbitration award. The court held Old York waived its challenge to Reeves' standing because "a challenge to the validity of an arbitration award asserted for the first time in opposition to a petition to confirm is procedurally inadequate to preserve claims for judicial review." For this reason, "Old York's challenges to Reeves's standing, raised in response to Reeves's petition to confirm the arbitration award, are untimely and waived."

Reeves confirms that parties cannot contractually waive remedies that arbitrators are statutorily required to award, at least in Pennsylvania. It is important to have a lawyer familiar with the remedies to which you may be entitled. *Reeves* also demonstrates the importance of timely raising objections to an arbitration award and doing so in the correct format. It is critical to have a lawyer who understands how and when to raise issues pertinent to your claims and defenses.

By: Connor Blair

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A New Definition of Construction and More!
Changes to Federal Large-Scale Construction Projects

Contractors engaged in federal construction projects are accustomed to navigating the Federal Acquisition Regulation (FAR), particularly Subpart 22.5, which governs the utilization of Project Labor Agreements. Notably, the previously permissive language within Subpart 22.5 has undergone revision, now mandating the inclusion of project labor agreements as a prerequisite for specific federal construction contracts.

On August 19, 2022 the Department of Defense (“DoD”), General Services Administration (“GSA”), and National Aeronautics and Space Administration (“NASA”) published a proposed rule to amend the FAR to implement President Biden’s Executive Order (E.O.) 14063. The public comment period on the proposed rule closed on October 18, 2022. On December 22, 2023, DoD, GSA, and NASA issued their final rule amending the FAR and implementing Executive Order 14063 as it pertains to project labor agreements in federal construction projects. The new rule takes effect January 22, 2024, so what do you need to know?

First and foremost, the new rule alters the definitions outlined in 48 C.F.R. 22.502 to enhance clarity, including a more expansive definition of "construction" which encompasses "reconstruction" and "modernization." At first glance this appears to be a distinction without a difference. However, this undoubtedly arose, as these changes often due, from disputes over the scope of Subpart 22.5. Similarly, the definition of large-scale construction projects has been refined to expressly pertain to federal projects within the United States. Therefore, contractors performing construction work outside of the US will not be subject to the labor agreement requirements. The definition also increases the monetary threshold of a large-scale project from $25 million or more, to $35 million or more.

While agencies were previously encouraged to consider project labor agreements for large-scale construction projects, they are now required to mandate them.. Agencies are also now encouraged to consider project labor agreements on projects with costs below $35 million, if appropriate.

Contractors are not required to unionize. Instead, contractors and subcontractors will enter pre-hire collective bargaining agreements with one or more labor organizations to establish the terms and conditions for employment on the federal project. Such terms and conditions must include a guarantee against strikes, lockouts, and similar job disruptions; provide alternative dispute resolution procedures for labor disputes; and establish mechanisms for labor-management including productivity, quality of work, and health and safety.

The overarching objectives of this rule are to facilitate contractors in predicting labor costs during the bidding process, ensure a consistent labor supply, and mitigate labor disputes that could impede project progress.

By: Chris Odgers

Safety Moment for the Construction Industry

Moving forward, OSHA personnel will now wear safety helmets instead of traditional hard hats while on inspection sites. According to OSHA, traditional hard hats without chin straps have minimal side-impact protection and can leave workers unprotected. The safety helmets also have the potential added features of faceshields and goggles to protect the face and eyes, in addition to ear protection systems. OSHA recommends that construction workers wear such helmets at all times while on site.

Bradley Lawyer Activities and News

Six Bradley Partners Named To 2023 Who's Who Legal: Construction

Bradley is pleased to announce that six of the firm’s partners have been named to the 2023 edition of *Who’s Who Legal (WWL): Construction* as among the world’s leading construction lawyers.

Jim Archibald, Jon Paul Hoelscher, Doug Patin, Bill Purdy, Mabry Rogers and **Bob Symon** are all recognized in the 2023 edition as “Recommended,” a designation for international leaders in their field. Mr. Hoelscher is also recognized in the “Future Leaders – Partners” category, which highlights practitioners aged 45 and under.

Anna-Bryce Hobson Named To 2023 Icons and Phenoms List by *North Carolina Lawyers Weekly*

Bradley is pleased to announce that associate Anna-Bryce Hobson has been selected to the 2023 list of *North Carolina Lawyers Weekly* “Icons and Phenoms of Law.”

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The “Icons and Phenoms of Law” awards celebrate the achievements and contributions of the region’s most accomplished and promising legal professionals. The Phenoms category is dedicated to rising stars who have already established themselves as standouts in their first 10 years of practice, demonstrating their promise as future leaders through their ambition and accomplishments, as well as their dedication to the practice of law.

350 Bradley Attorneys Listed in 2024 *The Best Lawyers In America®* and *Best Lawyers: Ones To Watch In America*

Bradley is pleased to announce that 350 of the firm’s attorneys are recognized in the 2024 *Best Lawyers* lists. The following individuals have been recognized by *Best Lawyers in America* in the area of Construction Law for 2024: **Jim Archibald (Lawyer of the Year), Ryan Beaver, Axel Bolvig, Jared Caplan, Debbie Cazan, Jim Collura, Ben Dachepalli, Monica Wilson Dozier, Ian Faria, Tim Ford, Eric Frechtel, Ralph Germany, John Mark Goodman, Jon Paul Hoelscher, Mike Koplan, David Owen, Doug Patin, David Pugh, Bill Purdy, Mabry Rogers, Wally Sears, Avery Simmons, Bob Symon, David Taylor,** and **Bryan Thomas.**

The following individuals have been recognized by *Best Lawyers in America* in the area of Litigation - Construction for 2024: **Jim Archibald, Ryan Beaver, Michael Bentley, Axel Bolvig, Debbie Cazan, Jim Collura, Ben Dachepalli, Hallman Eady, Ian Faria, Tim Ford, Jon Paul Hoelscher, Bailey King, Russell Morgan, David Owen, Doug Patin, David Pugh, Mabry Rogers,** and **Bob Symon**.

Andy Bell, Kyle Doiron, **Abba Harris**, **Anna-Bryce Hobson, Carly Miller, Sarah Osborne, Sabah Petrov, Mason Rollins** and **Chris Selman** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and Construction Litigation for 2024.

Lee-Ann Brown, Ron Espinal, and **Marc Nardone** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and **Matt Lilly** has been recognized as *Best Lawyers: Ones to Watch* in the area of Litigation – Construction.

Jim Collua, Jeff Davis, Ian Faria, Steve Fernelius, Jon Paul Hoelscher, and **Peter Scaff** have been named to the 2023 edition of *Texas Super Lawyers*.

On December 5, 2023, **Monica Dozier** moderated the “Emerging Opportunities in MISO South” panel at the Southeast Renewable Energy Summit in Charlotte, NC.

Jim Archibald and **Carly Miller** presented at the Construction Super Conference on December 1, 2023 in Hollywood, FL on the topic “Gaining the Upper Hand in Proposal-Related Disputes between Designers and Contractors in Design-Build Contracts.”

On November 3, 2023, **Carly Miller** and **Aman Kahlon** presented at the annual meeting of the Construction Lawyers Society of America in Palmetto Bluff, SC on the topic “Trends in Renewable Energy: Industry Developments and Our Observations from Recent Renewable Disputes Renewable Energy Disputes.”

Jennifer Morrison Ersin participated on a panel at the South Eastern Europe Arbitration Conference in Vienna, Austria on October 12, 2023 entitled “Transformation of Disputes in the Region.”

Moniza Dozier and **Aman Kahlon** presented a Renewable Energy Webinar Series entitled “A New Era of Compliance: Forced Labor Prevention in the Global Supply Chain” on October 11, 2023.

Carly Miller presented on a panel on the topic “Recent Developments in Arbitration Award Enforcement” at the Atlanta International Arbitration Society Annual Conference on October 2, 2023 in Altanta, GA.

Aron Beezley and **Sarah Osborne** were the featured speakers on the Deep Dive Bid Protest Lunch and Learn series on October 4, 2023. Their presentation discussed practical tips for both protesters and intervenors, as well as hot topics in bid protest law.

Bradley hosted the Energy Law Seminar on September 14, 2023 in Houston, TX with in-depth discussion and expert panels on unique challenges and winning strategies for oil and gas companies in the courtroom, new battlefields in energy litigation, and the latest cyber threat trends for energy companies and strategies to minimize risk.

On September 8, 2023, **Charlotte Watters** and **Cortlin Bond** presented to the ABC Alabama Chapter Safety Committee. Their presentation was entitled “Keeping it Cool: Hot Tips to Avoid OSHA and Other Liability on Site.”

Heather Wright recently co-chaired a fundraiser for the Nashville Conflict Resolution Center which provides mediation services to low income individuals.

Aman Kahlon was recently named to the AGC’s Climate Change Working Group.

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Kevin Mattingly was recently elected as an at-large member of the Maryland State Bar Association's Construction Law Section Council for the 2023-2025 term.

In June, **Monica Dozier** and **Matthew Flynn** published a whitepaper entitled "Bonus Points: Evaluating Pre-Regulatory Guidance for the Domestic Content ITC Bonus Qualification," analyzing the current state of compliance with the domestic content tax credit bonus pursuant to the Inflation Reduction Act of 2022.

Bradley is pleased to announce that 12 of the firm's Dallas and Houston attorneys have been named to the 2023 *Lawdragon 500 X – Next Generation* list, including these four members of the Construction and Procurement Practice Group:

- **Melissa Broussard Carroll,** Construction, Oil & Gas and Litigation
- **Eve L. Pferdehirt**, Construction and Litigation
- **Saira S. Siddiqui**, Construction, Energy, Commercial Litigation and Personal Injury
- **Sydney M. Warren**, Construction and Commercial Litigation

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