Bradley
Bradley Arant Boult Cummings LLP

First Quarter 2017

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

New FAR Rule Impacts Prime Contractors' Payment Obligations to Small Business Subs

General contractors and subcontractors doing federal work should be mindful of recent changes to the Federal Acquisition Regulation ("FAR"). These changes impose mandatory reporting requirements on federal prime contractors who fail to make full and timely payments to their small business subcontractors.

Congress and the regulatory agencies have implemented numerous requirements over the years in an effort to protect subcontractors against non-payment. Along these lines, the FAR Council recently issued a final rule to implement a section of the Small Business Jobs Act of 2010. The new rule, codified at FAR 52.242-5 and effective January 19, 2017, requires certain prime contractors to "self-report" to the relevant contracting officer all reduced or untimely payments to their small business subcontractors within 14 days of when the payment was due, and to provide the reason for the reduced or untimely payment.

The new rule only applies to federal prime contractors who are required to develop and implement a Small Business Subcontracting Plan (currently contracts valued over $700,000 and public facility construction contracts over $1.5 million). It requires a prime to notify the contracting officer within 14 days after (1) a small business subcontractor was entitled to payment under its subcontract, and (2) the prime made a reduced or untimely payment to the subcontractor. FAR 52.242-5 defines "reduced payment" as a payment for less than the amount agreed upon, and "untimely payment" as a payment that is more than 90 days past due under the terms and

Inside:

www.bradley.com

Birmingham Office
One Federal Place
1819 5th Avenue North
Birmingham, AL 35203
(205) 521-8000

Nashville Office
Roundabout Plaza
1600 Division Street
Suite 700
Nashville, TN 37203
(615) 244-2582

Washington, D.C. Office
1615 L Street N.W.
Suite 1350
Washington, D.C. 20036
(202) 393-7150

Charlotte Office
Heart Tower
214 North Tryon Street
Suite 3700
Charlotte, NC 28202
(704) 338-6000

Houston Office
600 Travis Street
Suite 4800
Houston, TX 77002

Jackson Office
One Jackson Place
188 East Capitol Street
Suite 400
Jackson, MS 39201
(601) 948-8000

Huntsville Office
200 Clinton Ave. West
Suite 900
Huntsville, AL 35801
(256) 517-5100

Montgomery Office
RSA Dexter Avenue Building
445 Dexter Avenue
Suite 9075
Montgomery, AL 36104
(334) 956-7700

Tampa Office
100 South Ashley Drive
Suite 1300
Tampa, FL 33602
(813) 229-3333

conditions of the contract, "for supplies and services for which the Government has paid the prime contractor."

FAR 19.704 and FAR 52.219-9 also were amended to require federal prime contractors to include in their Small Business Subcontracting Plans "[a]ssurances that [the contractor] will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying contract, and [the obligation to] notify the contracting officer when the prime contractor makes a reduced or untimely payment to a small business subcontractor." Reports of habitual and unjustified late or otherwise deficient payments will be included in an agency's evaluation of the prime contractor's past performance. There are justifiable reasons for non-payments. Nonpayment is considered "justified" if there is a contract dispute regarding performance, a partial payment is made for amounts not in dispute, a payment is reduced due to past overpayments, there is an "administrative mistake," or late performance of the subcontractor leads to later payment by the prime. *See* FAR 42.1502.

In light of these new requirements, federal prime contractors should ensure consistency in their procedures for making payments to small business subcontractors, as a negative past performance rating may adversely affect the prime contractor's ability to obtain new federal contracts.

By Emily A. Unnasch

Recent Revisions to ConsensusDocs® Design-Bid-Build Agreements

At the beginning of every construction project, there is a contract (written, preferably). These contracts often vary in size and scope depending on the nature and complexity of a project. Many construction industry participants have developed their own contracts, and others rely on industry associations to author standard contract forms such as the American Institute of Architects ("AIA") and the ConsensusDocs contract standard forms. ConsensusDocs evolved from the prior AGC forms.

Recently, the ConsensusDocs Coalition published revisions to its prime and subcontractor Design-Bid-Build standard contracts. Many of the changes are attempts to clarify provisions, create consistency across forms, and are generally editorial in nature. However, several of the revisions have a substantive impact and should be reviewed in detail prior to using the new forms. This article offers a high-level overview of *some* of the substantive changes:

- **Termination for Convenience**: Improper terminations for default/cause are no longer automatically converted into terminations for convenience. Accordingly, an improper default termination may result in substantial damages.
- **Schedule of Work**: The schedule provision incorporates Critical Path Method Scheduling concepts and specifically requires the identification of critical dates and a graphic representation of all activities including float values that will affect the critical path.
- **Indemnification:** The indemnity provision is expanded to include "intentionally wrongful" acts or omissions. The revision also provides some clarity to the definition of "Others" who or which are indemnified.
- **Insurance**: The contractor, rather than the owner, is now the default party responsible for obtaining the builder's risk insurance policy. Additionally, the party who procures the builder's risk insurance policy bears the risk of loss from damage to the work until Final Completion. A pollution liability insurance provision was added, but this coverage is not required by default.
- **Bonds**: The revisions delete a provision requiring that the bond penal sum increase automatically in accordance with the contract price when the price increase exceeds 10%.
- **Changes and Directives**: The revisions clarify and account for changes with no time or cost impact and expand changes to encompass "Interim Directives."
- **Payment**: The revisions add an additional category of "losses, expenses, or damages … not compensated by insurance" and "cost of corrective work" as recoverable costs on a cost reimbursable basis.

- **Dispute Resolution**: The revisions add a "check-the-box" option as to the mediation procedures and administrator. If no box is selected, the mediation will be conducted by and pursuant to the American Arbitration Association ("AAA") rules.
- **Fiduciary Relationship**: Language was removed from the ConsensusDocs 240 Design Professional Standard Agreement that may imply that a fiduciary duty existed between the owner and its design professional.

These revisions affect numerous ConsensusDocs standard agreements, including: ConsensusDocs 200 Owner & Constructor Agreement, ConsensusDocs 205 Owner & Constructor Short Form Agreement, ConsensusDocs 240 Owner & Design Professional Agreement, ConsensusDocs 750 Constructor & Subcontractor Agreement, and ConsensusDocs 751 Constructor & Subcontractor Short Form Agreement. Additional revisions to other ConsensusDocs forms are scheduled for later in 2017.

Although not all owners, contractors and design professionals use standard form agreements, all parties should carefully review their contracts prior to execution. Disputes often arise because a party is unfamiliar with its contract. This article should serve as a reminder to revise and update your contracts, and to consult with legal counsel, to ensure that the project is governed according to your company's expectations.

By Chris Selman

Contract Disputes Act Claims: Sweat the Small Stuff

A recent Armed Services Board of Contract Appeals ("ASBCA") decision highlights the importance of sweating the small stuff, particularly when it comes to preparing and submitting certified claims to the government under the Contract Disputes Act ("CDA").

Appeal of ABS Dev. Corp., involved a U.S. Army Corps of Engineers ("Corps") construction services contract that was awarded to ABS Development Corporation ("Contractor") and performed at a shipyard in Israel. After commencing performance, the Contractor submitted to the Corps a series of claims, certified pursuant to the CDA, seeking to recover costs incurred in connection with the Contractor's performance of additional work. After the Contracting Officer failed to issue a final decision on the claims within the required time, the Contractor filed with the ASBCA a "deemed denial" appeal.

The Corps filed a motion to dismiss, arguing that the claims – which contained a "signature" typewritten in Lucida Handwriting font – did not contain a properly signed CDA certification and that the ASBCA, therefore, did not possess jurisdiction over the claims. The Contractor opposed this motion and argued that regardless of whether or not the typewritten signature is valid, the Contractor subsequently provided "wet ink" certifications that should cure any perceived defect.

After considering the parties' arguments, the ASBCA sided with the Corps. The ASBCA explained that "[a] signature is a discrete, verifiable symbol that is sufficiently distinguishable to authenticate that the certification was issued with the purported author's knowledge and consent or to establish his intent to certify, and, therefore, cannot be easily disavowed." The ASBCA explained further:

> Here we are not confronted with an issue of "electronic signatures"; rather, we are confronted with several typewritings of a name (presumably typewritten by electronic means), purporting to be signatures. However, a typewritten name, even one typewritten in Lucida Handwriting font, cannot be authenticated, and, therefore, is not a signature. Similary, a typewritten "//signed//" is not a signature because it cannot be authenticated. That is, anyone can type a person's name; there is no way to tell who did so from the typewriting itself.

Furthermore, the ASBCA held that, because the certifications "are unsigned," and because "that is not a correctable defect," the ASBCA need not

consider the "wet ink" certifications that the Contractor provided in response to the Corps' motion to dismiss.

As noted above, this case underscores the importance of sweating the small stuff, especially when preparing and submitting certified claims pursuant to the CDA. When in doubt, it is always better to check with legal counsel before proceeding – even when it comes to the smallest of details.

By Aron Beezley

Watch Out for Retainage Laws: What You Don't Know Can Help or Hurt You

One of most widely implemented "end of the project" leverage tools used by owners and general contractors is retainage. Almost all commercial construction contracts set out the conditions under which retainage will be withheld and released, and give the owner and general contractor the right to withhold retainage in the event of a dispute with their lower tier contracting party. In an industry as competitive as the construction industry, even 5% retainage is a significant sum, as it may equal or exceed the contractor's entire expected profit margin on a job. Getting retainage timely paid at the end of the job is therefore essential for general contractors and subcontractors.

After the 2008 financial crisis, when foreclosures devalued mechanic's liens and retainage was lost because of unfunded (and defaulted) construction loans, many states put additional teeth into their prompt pay and retainage laws. Each state has its own version of these laws. It is therefore essential, before beginning a construction project in a new state (even before contract execution), to know and understand that state's retainage laws.

An example of a state with a very pro-contractor and pro-subcontractor retainage statute is Tennessee. The Tennessee prompt payment statute requires: (1) for any public or private project, retainage cannot exceed 5%; (2) if the prime construction contract exceeds $500,000, it is mandatory that the owner place the retainage into a separate, interest bearing escrow account with a third party; (3) the prime contractor is responsible to its subcontractors, regardless of the subcontract amount, to ensure that a project retainage account is created; and (4) when deposited, retainage becomes the "property" of the contractor/subcontractor. These laws are mandatory and cannot be "waived" in the contract. The failure of an owner (or prime contractor) to comply is a criminal violation (a Class C misdemeanor); plus, if the escrow mandate is ignored, the owner has to pay the contractor a daily penalty of $300 from the very first day that retainage was withheld and not escrowed. To be clear, this escrow rule also exposes the prime contractor to a $300 a day penalty to each subcontractor. In a recent dispute of which we are aware, an owner who did not escrow $50,000 in retainage for 1000 days ultimately paid the contractor a $300,000 penalty for its violation.

The most recent Tennessee court development on *when* retainage must be released will drive owners (and their lenders) crazy. Owners generally contend that the purpose of retainage is to protect the project so that if there is a dispute with the contractor, the owner may withhold retainage or other amounts due as a set off against any potential claim. However, Tennessee retainage laws contain a provision that requires an owner to release all retainage to a prime contractor within 90 days from the earlier of: (1) when an owner begins to use the project; (2) when the local codes department issues a certificate of occupancy; or (3) when the project architect signs a typical "certificate of substantial completion." In *Beacon4, LLC v. I&L Investments, LLC*, a case issued by the Tennessee court of appeals, the court held that, regardless of what the contract says about the ability of an owner to withhold retainage, the retainage must be released to the contractor within this 90-day period.

To make this even clearer, assume there is $100,000 in properly escrowed retainage, but, after the architect issues a certificate of substantial completion, the owner discovers that the roof is defective, needs replacing, and will cost $500,000 to repair. Assume further that the owner and lender did not require a performance bond. Under this scenario, the normal strategy of the owner (and lender) would be to use any remaining retainage to help pay for the repairs or, at a minimum, hold on to the retainage until the

dispute is resolved. However, under this new Tennessee case, even if the contractor is financially unstable, or out of business, the owner would be required to pay the $100,000 even when there is no guaranty that this money will be around when the dispute is finally resolved.

The bottom-line: whether developer, architect, lender, prime contractor or subcontractor, it pays to know in advance, especially in a new state, what that state's laws require on an issue as vital as retainage.

By David Taylor

Contractor's Risk When Owner Fails to Pay: "Pay-When-Paid" vs. "Pay-if-Paid" Clauses

A recent Illinois case sheds light on the importance of clear, unambiguous provisions regarding payment terms in a construction contract. In *Beal Bank Nevada v. Northshore Center THC, LLC*, an Illinois state appeals court reversed the trial court's judgment in favor of the contractor, holding that in order for a contract clause to result in payment forfeiture by a subcontractor, the clause must include (1) specific language that plainly and unambiguously establishes that payment by the owner is a condition precedent to the contractor's obligation to pay downstream contractors, and (2) clear language indicating that the subcontractor intended to assume the risk of non-payment.

In so holding, the Court distinguished between "pay-when-paid" and "pay-if-paid" clauses. The Court noted that "pay-when-paid" clauses govern the timing of a contractor's payment obligation to a subcontractor—not the underlying obligation to pay. By contrast, "pay-if-paid" clauses establish a true condition precedent, shifting the risk of owner non-payment to the subcontractor.

The contract at issue in *Beal Bank Nevada* did not include either "if" or "when" in the relevant provisions. Nonetheless, the Court interpreted the contract as setting forth a "pay-when-paid" requirement. The Court reasoned that the contract included "two separate obligations of the Contractor: to pay an amount to the Subcontractor for 'full, faithful and complete performance' of the subcontract *and* to make partial and final payments on account thereof solely in accordance with the subcontract documents." With regard to the second obligation, the relevant contract language stated that "[f]inal payment will be made within thirty (30) days after the work called for hereunder has been completed by the Subcontractor to the satisfaction of the Owner and the Contractor and the Contractor has received from the Owner written acceptance thereof *together with payment in full for this portion of the work*."

The Court held that this language failed to clearly and unambiguously establish a condition precedent to payment and was, in effect, a "pay-when-paid" clause setting forth the *timing* of the contractor's obligation to make payment, but not implicating the contractor's payment obligation itself. In so holding, the Court distinguished other Illinois case law involving "pay-if-paid" provisions, and clarified that with regard to "pay-when-paid" clauses, the risk of the owner defaulting is not assumed by the subcontractor. Thus, the contractor is obligated to pay the sub despite the owner's failure to pay the contractor.

This Illinois appellate court decision highlights one of the many dangers associated with unclear contract provisions. Contractors and subcontractors should review their contracts carefully to determine their potential risks, and should be aware of how courts in a given jurisdiction may interpret and enforce those contracts.

By Emily A. Unnasch

ICC's New Expedited Rules for Arbitration

On March 1, 2017, the International Court of Arbitration of the International Chamber of Commerce ("ICC Court") made effective amendments to the ICC Rules of Arbitration ("ICC Rules") that were announced in November 2016. Among other changes, the new ICC Rules introduce expedited procedures that are applicable to all disputes where the amount in dispute does not exceed two million U.S. Dollars or, in larger cases, when the parties agree to their application. According to the ICC Court, the intent of these

rules is to improve the transparency and efficiency of ICC arbitral proceedings.

One significant change in the new expedited procedures is Article 2(1), which provides that "[t]he Court may, notwithstanding any contrary provision of the arbitration agreement, appoint a single arbitrator." Interestingly, this rule appears to override the parties' agreement to three arbitrators often seen in agreements subject to international arbitration.

Other significant changes in the ICC's new expedited rules include:

- No Terms of Reference is required (this is a document traditionally required at the outset of an ICC arbitration which sets forth key details regarding the parties, the arbitrator, the scope of the arbitration, the issues in dispute, and other procedural issues)
- Once the sole arbitrator has been appointed, the parties may no longer introduce new claims unless expressly authorized
- A Case Management Conference must be held within 15 days of the ICC Court's transfer of the file to the sole arbitrator
- No requests for document production are allowed unless authorized by the sole arbitrator in conjunction with discussions with the parties
- The dispute may be decided on documents alone without live witness examination or a live hearing before the arbitrator
- The final award must be rendered within six months of the date of the Case Management Conference, unless this deadline is extended by the ICC Court, and the arbitrator or the ICC Court may face reduction in compensation for failure to meet this deadline
- Reduced arbitrator fees.

There are many arbitral bodies set up to govern disputes between and among parties on international projects, including, for example, the above-mentioned ICC Court, the International Centre for Dispute Resolution of the American Arbitration Association ("ICDR"), the Singapore International Arbitration Centre ("SIAC"), the Hong Kong International Arbitration Centre ("HKIAC"), the London Court of International Arbitration ("LCIA"), the Swiss Chamber's Arbitration Institute ("SCIA"), and JAMS International, among others. Each body has its own rules and procedures. The lawyers in our firm's international arbitration group can help you understand and evaluate which rules are appropriate for your contracts, and can also help you navigate these procedures after an international arbitration has commenced.

By Luke D. Martin

Safety Moments for the Construction Industry

When driving 55 miles per hour, it takes only 5 seconds for your vehicle to travel the length of a football field. Drivers who take their eyes off the road put themselves, passengers, pedestrians, and other drivers in danger.

Never read or compose a text message while driving. Pull safely away from moving traffic and stop before sending or receiving a text message.

Bradley Arant Lawyer Activities

On October 4, 2016, our firm opened an office in **Houston, Texas**, with a small office in Dallas, bringing with it a host of dynamic, experienced and committed construction lawyers. We are delighted to welcome these lawyers.

Jacquelyn Rex and **Sabrina Jiwani** have since joined our Houston office. We look forward to the Houston lawyers' work with our clients and to learning from their prior experiences.

David Bashford, who was a partner in our Charlotte, NC office before joining a client as General Counsel (EPC), rejoined the firm on January 1 2017, in our Birmingham office.

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

Doug Patin, **Bill Purdy**, **Mabry Rogers**, **David Pugh**, **Bob Symon**, and **Arlan Lewis** were recently listed in the *Who's Who Legal: Construction 2016* legal referral guide. **Mabry Rogers** has been listed in Who's Who for 21 consecutive years.

Jim Archibald, Axel Bolvig, Rick Humbracht, Russ Morgan, David Pugh, and **Mabry Rogers** were recognized by *Best Lawyers in America* in the category of Litigation - Construction for 2016.

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

Mabry Rogers and **David Taylor** were recognized by *Best Lawyers in America* in the areas of Arbitration and Mediation for 2017. **Keith Covington** and **John Hargrove** were recognized in the area of Employment Law – Management. **Frederic Smith** was recognized in the area of Corporate Law.

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

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

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

Jon Paul Hoelscher was named a 2017 Texas *Super Lawyers* "Rising Star" in Construction Litigation.

Ryan Kinder and Justin Scott were named 2017 Texas *Super Lawyers* "Rising Stars" in Business Litigation.

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

David Taylor was recently named Nashville's *Best Lawyers* 2016 Lawyer of the Year in the area of Arbitration.

Bill Purdy was recently named Jackson's *Best Lawyers* 2016 Lawyer of the Year in the area of Construction Law.

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

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

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

Keith Covington was honored by *Birmingham Magazine* as a 2016 Top Attorney for Immigration. The magazine's annual Top Attorneys list recognizes attorneys in 35 practice areas and is selected through a peer review survey of approximately 4,000 local attorneys registered with the Birmingham Bar Association.

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

Carly Miller was selected to participate in the 2017 class of Future Leaders in Construction with the Alabama Chapter of the Associated Builders & Contractors.

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

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

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

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

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

On March 4, 2017 **Chris Selman, Carly Miller,** and **Jackson Hill** were part of our firm's entry into The Exceptional Foundation's annual Chili Cook-off in Birmingham, Alabama, taking home Grand Prize for best chili as part of Team Bradley. The Exceptional Foundation is a non-profit organization established to serve mentally and physically challenged individuals in the Greater Birmingham, Alabama area by targeting social and recreational objectives not met by educational institutions or the community at large.

On February 24, 2017, **Bryan Thomas** presented "Public Private Partnerships (PPP); What a Municipal Lawyer Needs to Know" at the Tennessee Municipal Attorneys Association's Winter Summit.

Aron Beezley and **Emily Unnasch** published a *Law360* Expert Analysis article on February 23, 2017 titled "New FAR Rule Requires Self-Reporting of Reduced or Untimely Payments to Subcontractors."

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

On February 15, 2017, **Beth Ferrell** spoke about Performance Issues at the Government Contracts Year In Review Conference in Washington, DC.

Beth Ferrell and **Aron Beezley** published an article titled "The Most Important Government Contract Disputes Cases of 2016" on February 8, 2017 in *The Government Contractor*.

Our new Houston lawyers hosted our annual Learning Day at our offices in Houston, TX on January 13, 2017, and we were joined for a luncheon presentation by Rhonda Caviedes, of CBI.

Arlan Lewis was the Governing Committee Liaison for the ABA Forum on Construction Law Midwinter meeting entitled *"Earth, Wind, Fire & Water: Sustainable Construction in a Changing Environment"* held February 2-3, 2017 in Palm Desert, CA.

Bryan Thomas presented the topic of "Warranty Claims" at the TBA's Annual Construction Law Seminar on January 27, 2017. **David Taylor** was also a speaker and coordinator of the event.

Axel Bolvig spoke at the Construction CPM Conference in Orlando, FL on January 12, 2017 in a program titled "Box-Out Schedules – Regain Contractor Focus." He presented with two client representatives.

Daniel Murdock, **Jim Archibald**, and **David Owen** spoke on January 11, 2017 on the topic of "Defining Subsurface Risk Allocation among Project Participants" at the 4th Annual EPC Contract & Risk Management Conference in Houston, TX.

Arlan Lewis served as an Adjunct Instructor for Cumberland Law School's "Negotiation Workshop" held on January 5-6, 2017.

On January 4, 2017, *PubKLaw* published a feature interview with **Aron Beezley** about significant 2016 legal developments regarding bid protests.

Aron Beezley was quoted on January 2, 2017 in *Law360* on Government Contract Cases to Watch in 2017.

Bob Symon, **Beth Ferrell**, **Kyle Hankey**, **Aron Beezley**, **George Smith**, **Kim Martin**, **Harold Stephens**, **David Lucas**, **Warne Heath** and **Jennifer Brinkley** conducted a Government Contracts Seminar in Huntsville, AL on November 2, 2016.

Bryan Thomas spoke on the panel at the Tennessee AGC membership luncheon on

November 1, 2016 in a presentation entitled "Call Your Attorney."

On October 26, 2016, **David Taylor** spoke in Miami, FL to the International Council of Shopping Center's Legal Conference on "Creative Ways to Resolve Construction Disputes."

David Pugh served as the Chair of the Hospital and Health Care Construction Track at the Associated Builders & Contractors' Fourth Annual User's Summit in New Orleans on October 12-13, 2016. The Summit was intended to bring owners, developers and contractors together to share "best practices" and to discuss candidly and openly ways to improve safety, efficiency, productivity, and quality in the design and construction process.

Luke Martin provided a seminar on construction subcontract management for a client in Massachusetts on October 3, 2016.

Law360 published an "Expert Analysis" article by **Aron Beezley** titled "GAO Extends Reach of OCI Protest Timeliness Rules" on September 21, 2016.

On September 16, 2016, **David Taylor** and **Bryan Thomas** presented to the Tennessee Engineers' Conference in Nashville on "Terminating a Contractor: The Nuclear Option." **Kevin Michael** spoke at the same Conference on "Public-Private Partnerships (P3)."

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

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

Arlan Lewis was elected to the 12-member Governing Committee of the American Bar Association's Forum on Construction Law.

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

NOTES

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

Construction and Procurement Practice Group Contact Information:

J. Mark Adams, Jr. (Birmingham), Attorney (205) 521-8550 madams@ bradley.com
Timothy A. Andreu (Tampa), Attorney (813) 559-5537 tandreu@ bradley.com
James F. Archibald, III (Birmingham), Attorney (205) 521-8520 jarchibald@ bradley.com
David Hill Bashford (Birmingham), Attorney (205) 521-8217 dbashford@bradley.com
Ryan Beaver (Charlotte), Attorney (704) 338-6038 rbeaver@ bradley.com
Aron Beezley (Washington, D.C.), Attorney (202) 719-8254 abeezley@ bradley.com
Axel Bolvig, III (Birmingham) Attorney (205) 521-8337 abolvig@ bradley.com
Lee-Ann C. Brown (Washington, D.C.), Attorney (202) 719-8212 labrown@bradley.com
Lindy D. Brown (Jackson), Attorney (601) 592-9905 lbrown@ bradley.com
Stanley D. Bynum (Birmingham), Attorney (205) 521-8000 sbynum@ bradley.com
Jared B. Caplan (Houston), Attorney (281) 755-3777 jcaplan@bradley.com
James A. Collura (Houston), Attorney (281) 755-3775 jcollura@bradley.com
F. Keith Covington (Birmingham), Attorney (205) 521-8148 kcovington@ bradley.com
Jeff Dalton (Birmingham), Legal Assistant (205) 521-8804 jdalton@ bradley.com
Christian S. Dewhurst (Houston), Attorney (713) 972-5926 cdewhurst@bradley.com
Joel Eckert (Nashville), Attorney (615) 252 4640 jeckert@ bradley.com
Ian P. Faria (Houston), Attorney (281) 755-3781 ifaria@bradley.com
Elizabeth A. Ferrell (Washington, D.C.), Attorney (202) 719-8260 bferrell@ bradley.com
Eric A. Frechtel (Washington, D.C.), Attorney (202) 719-8249 efrechtel@ bradley.com
Amy Garber (Washington, D.C.), Attorney (202) 719-8237 agarber@ bradley.com
Jasmine Gardner (Charlotte), Attorney (704) 338-6117 jkelly@ bradley.com
Ralph Germany (Jackson), Attorney (601) 592-9963 rgermany@ bradley.com
John Mark Goodman (Birmingham), Attorney (205) 521-8231 jmgoodman@ bradley.com
Nathan V. Graham (Houston), Attorney (307) 690-0275 ngraham@bradley.com
John W. Hargrove (Birmingham), Attorney (205) 521-8343 jhargrove@ bradley.com
Abigail B. Harris (Birmingham), Attorney (205) 521-8679 aharris@bradley.com
J. Jackson Hill IV (Birmingham), Attorney (205) 521-8679 jhill@ bradley.com
Jon Paul Hoelscher (Houston), Attorney (713) 398-1626 jhoelscher@bradley.com
Sabrina N. Jiwani (Houston), Attorney (346) 310-6025 sjuwani@bradley.com
Aman S. Kahlon (Birmingham), Attorney (205) 521-8134 akahlon@ bradley.com
Ryan T. Kinder (Houston), Attorney (713) 632-5985 rkinder@bradley.com
Michael W. Knapp (Charlotte), Attorney (704) 338-6004 mknapp@ bradley.com
Michael S. Koplan (Washington, D.C.), Attorney (202) 719-8251 mkoplan@ bradley.com
Arlan D. Lewis (Birmingham), Attorney (205) 521-8131 alewis@ bradley.com
Matthew K. Lilly (Charlotte), Attorney (704) 338-6048 mlilly@bradley.com
Cheryl Lister (Tampa), Attorney (813) 559-5510 clister@ bradley.com
Tom Lynch (Washington, D.C.), Attorney (202) 719-8216 tlynch@ bradley.com
Lisa Markman (Washington, D.C), Attorney (202) 719-8215 lmarkman@ bradley.com
Luke D. Martin (Birmingham), Attorney (205) 521-8570 lumartin@ bradley.com
Chuck Mataya (Nashville), Attorney (615) 252-2324 cmataya@bradley.com
Carly E. Miller (Birmingham), Attorney (205) 521-8350 camiller@ bradley.com
Russell B. Morgan (Nashville), Attorney (615) 252-2311 rmorgan@bradley.com
Daniel Murdock (Birmingham), Attorney (205) 521-8124 dmurdock@bradley.com
Alicia N. Netterville (Nashville), Attorney (601) 592-9968 anetterville@bradley.com
Sarah Sutton Osborne (Montgomery), Attorney (334) 956-7609 sosborne@bradley.com
David W. Owen (Birmingham), Attorney (205) 521-8333 dowen@ bradley.com
Emily Oyama (Birmingham), Construction Researcher (205) 521-8504 eoyama@ bradley.com
Bridget Broadbeck Parkes (Nashville), Attorney (615) 252-3829 bparkes@ bradley.com
Douglas L. Patin (Washington, D.C.), Attorney (202) 719-8241 dpatin@ bradley.com
J. David Pugh (Birmingham), Attorney (205) 521-8314 dpugh@ bradley.com
Bill Purdy (Jackson), Attorney (601) 592-9962 bpurdy@ bradley.com
Alex Purvis (Jackson), Attorney (601) 592-9940 apurvis@ bradley.com
Jacqueline R. Rex (Houston), Attorney (346) 310-6018 jrex@bradley.com
E. Mabry Rogers (Birmingham), Attorney (205) 521-8225 mrogers@ bradley.com
Brian Rowlson (Charlotte), Attorney (704) 338-6008 browlson@ bradley.com
Justin T. Scott (Houston), Attorney (903) 316-7300 jtscott@bradley.com
Walter J. Sears III (Birmingham), Attorney (205) 521-8202 wsears@ bradley.com
J. Christopher Selman (Birmingham), Attorney (205) 521-8181 cselman@ bradley.com
Frederic L. Smith (Birmingham), Attorney (205) 521-8486 fsmith@ bradley.com
H. Harold Stephens (Huntsville), Attorney (256) 517-5130 hstephens@ bradley.com
Andrew R. Stubblefield (Houston), Attorney (214) 949-7307 astubblefield@bradley.com
Robert J. Symon (Washington, D.C.), Attorney (202) 719-8294 rsymon@ bradley.com
David K. Taylor (Nashville), Attorney (615) 252-2396 dtaylor@ bradley.com
D. Bryan Thomas (Nashville), Attorney (615) 252-2318 dbthomas@ bradley.com
Emily A. Unnasch (Washington, D.C.), Attorney (202) 719-8258 eunnasch@ bradley.com
Slates S. Veazey (Jackson), Attorney (601) 592-9925 sveazey@ bradley.com
Loletha Washington (Birmingham), Legal Assistant (205) 521-8716 lwashington@ bradley.com
Monica L. Wilson (Charlotte), Attorney (704) 338-6030 mwilson@ bradley.com
Heather Howell Wright (Nashville), Attorney (615) 252-2565 hwright@ bradley.com

READER RESPONSES

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

Your Name:

☐ I would like to see articles on the following topics covered in future issues of the Bradley *Construction & Procurement Law News*:

_____

_____

_____

☐ Please add the following to your mailing list:

_____

_____

_____

☐ Correct my name and mailing address to:

_____

_____

_____

☐ My e-mail address:_____

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?

_____

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

If you did not participate on-line would you want to receive the seminar in another format? ☐ Video Tape ☐ CD ROM

Comments:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Bradley Arant Boult Cummings LLP
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104

Terri Lawson
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104