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Fourth Quarter 2016

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Release Language in Contracts, and Its Importance

The Armed Services Board of Contract Appeals ("ASBCA") recently denied a motion for summary judgment, filed by the U.S. Army Corps of Engineers ("Corps"), in which the Corps argued that the contractor's execution of an earlier bilateral modification containing release language precluded the contractor's subsequent claim for increased costs. Although the ASBCA denied the Corps' motion, *Appeal of Speegle Constr.* nonetheless serves as an important reminder to contractors that release language in contract modifications must not be an afterthought and that, instead, contractors must carefully review and craft release language, or otherwise try to protect themselves in a change order.

The contract at issue was for design-build services in connection with a Corps hurricane repair project in Mississippi. After commencing performance, the contractor discovered changes were required to the fire suppression system. The parties entered into negotiations to implement the changes, and reached an agreement on all terms except the 122% field overhead rate that the contractor proposed on behalf of one of its subcontractors. Accordingly, the Corps issued a unilateral modification, applying a 10% field overhead rate for the subcontractor, but not granting the contractor a time extension.

Subsequently, the parties executed a bilateral modification, which extended the contract completion date, but provided no price adjustment. The bilateral modification included a release, which stated that the contractor "hereby releases the Government from any and all liability under this contract for further equitable adjustments

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attributable to such facts or circumstances giving rise to the proposed adjustment."

Thereafter, the contractor submitted a request for an equitable adjustment ("REA"), seeking $132,248 based upon a revised, 74.19% overhead rate for its subcontractor. The Corps denied the REA, and the dispute eventually ended up before the ASBCA.

Before the ASBCA, the Corps filed a motion for summary judgment, arguing that the bilateral modification included an unambiguous release, and that "[n]o reservation of rights or exclusions were included in the release language." In response, the contractor argued "that the intent of the parties, and thus the scope of the release [] did not include the overhead issues as evidenced by the language of the release and the parties' actions leading to execution of the modification." After considering the parties' arguments, the ASBCA denied the Corps' motion, finding that, a reading of the bilateral modification "reveals the release language to be ambiguous as to the scope of the release language."

Although the contractor ultimately survived the Corps' motion for summary judgment, this case nonetheless serves as an important reminder that contractors must be attentive when reviewing – and precise when drafting – release language contained in contract modifications. As the old saying goes, "an ounce of prevention is worth a pound of cure." In federal government contracts, reservations of rights are frequently agreed to and included within bilateral modifications, so contractors should develop an agreed reservation of rights. This is not necessarily the case with state and local government contracts or with private contracts. One must seek early legal advice about signing change orders on such contracts, where the change order contains broad waiver and release language AND where the parties may have resolved only direct costs and time, but not delay costs or future impacts.

By Aron Beezley

Does Punchlist, Warranty, or Corrective Work Extend the Deadline for Filing a Mechanics Lien?

There is no stock answer to this question. The outcome depends on what transpired, how it was handled, and the requirements of the mechanics lien law governing the contract and project. A recent court decision by an intermediate court in Alabama addresses some of the factors that can influence the result.

In *Massey Asphalt Paving vs. Lee Land Development*, a paving contractor (Massey) entered into a contract with an owner (Lee) to install pavement on two properties known as Lee Gardens and Lee Commercial Park. Lee paid Massey's first invoice in full. Massey sent Lee a second invoice in April, but Lee paid only half of it. Lee questioned the amount of the invoice, which was based on estimated (not actual) quantities. Massey agreed to allow Lee to delay payment of the balance until the quantity of pavement could be measured.

In October, Massey and Lee met at the jobsite and measured the quantity of paving that Massey had installed. The actual quantity was more than estimated in the April invoice. Nevertheless, Lee paid only a portion of the unpaid balance of the April invoice, either because Lee was not satisfied with the quality of the work or Lee simply did not have sufficient funds. Massey testified that Lee promised to pay the balance after the property was sold at auction, but Lee never paid the balance.

Shortly after the October meeting, Massey performed additional work to correct problems that arose after the paving was first installed. Although the cause of the problems was disputed, the court concluded that the problems could have been caused by defects in the original paving work. Although Massey took the position in court that it was entitled to be paid for the additional work, Massey never invoiced Lee for that work. In November, Massey filed a mechanics lien for the remaining balance of the April invoice, but it did not include in the lien an amount for the work performed in October.

Alabama's mechanics lien law requires contractors such as Massey to file their mechanics

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liens within six months after the last item of work has been performed under the contract with the owner. Massey's lien was filed within six months of the October work but more than six months after the work covered by the April invoice. The court determined that Alabama's law was ambiguous as to whether "the last item of work" means the initial completion of the contract scope of work or the completion of corrective work performed at a later date. Under the specific facts of this case, the court decided that allowing the deadline to be extended would defeat the purpose of giving notice of liens to potential purchasers. It refused to extend the deadline and determined that Massey had lost its mechanics lien rights.

Would the outcome have been different if the October work was punchlist work (as opposed to corrective work), or if Massey had invoiced for that work and included it in his mechanics lien? Would it have been different if Massey had argued and shown that the scope of work under the contract had not yet been completed in October? Did Massey think his agreement to defer payment extended the mechanics lien deadline? As might be expected, the court limited its ruling to the proven facts of the case.

The decision to pursue or defend a mechanics lien should not be made too late, taken lightly, or made without reference to surrounding facts and circumstances. Because the issue is so specific to each jurisdiction, it often requires input from various sources, including project managers and superintendents, executives, and legal counsel. In some jurisdictions, lien rights should be considered before one even mobilizes. Had Massey been more attentive to its lien rights, the outcome for Massey might have been different.

By Axel Bolvig

New "Basic Safeguarding" Cybersecurity Requirements for Federal Contractors

Federal contractors and subcontractors – including those in the construction industry – should be aware of the government's final rule, effective June 15, 2016, amending the Federal Acquisition Regulation (FAR) concerning the basic safeguarding of contractor information systems that process, store, or transmit "Federal contract information." The final rule added to the FAR a new subpart (§ 4.19) and a new contract clause (§ 52.204-21), establishing a set of fifteen minimum safeguarding measures or controls prescribed to protect information systems.

Because the new rule contains only a basic set of protections, the federal government intends for the new rule to have a very broad application. The new rule applies to all acquisitions, including commercial items other than commercially available off-the-shelf items (COTS), involving contractor information systems that may contain Federal contract information. (FAR 4.1902) "Federal contract information" is broadly defined to include any "information, not intended for public release, that is provided by or generated for the Government under a contract to develop or deliver a product or service to the Government." Federal contract information excludes any information provided by the government to the public and "simple transactional information, such as that necessary to process payments." (FAR 4.1901)

In line with the intent for the rule to apply broadly, contracting officers are required to include FAR 52.204-21 in any solicitations or contracts when a contractor or subcontractor may have Federal contract information in its system, but the rule does not take effect until the offeror is awarded the contract. Additionally, with the exception of COTS suppliers, contractors must "flow down" this clause to their subcontractors if the subcontractors may have Federal contract information residing in or transiting through their information systems. Although contractors will encounter FAR 52.204-21 mostly in new solicitations, there is also the possibility that it could be added to existing contracts through modification. Once a contractor or subcontractor accepts a contract containing FAR 52.204-21, it must comply with these fifteen safeguarding controls:

1. Limit access to authorized users.
2. Limit information system access to the types of transactions and functions that authorized users are allowed to execute.

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3. Verify and control/limit connections to and use of external information systems.
4. Control information posted or processed on publicly accessible information systems.
5. Identify information system users and processes action on behalf of users or devices.
6. Authenticate (or verify) the identities of users, processes, or devices prior to allowing access to an information system.
7. Sanitize or destroy information system media containing Federal contract information before disposal or release for reuse.
8. Limit physical access to organization information systems, equipment, and operating environments to authorized individuals.
9. Escort visitors and monitor visitor activity; maintain audit logs of physical access; and control and manage physical access devices.
10. Monitor, control, and protect organizational communications at external boundaries and key internal boundaries of the information systems.
11. Implement subnetworks for publicly accessible system components that are physically or logically separated from internal networks.
12. Identify, report, and correct information and information system flaws in a timely manner.
13. Provide protection from malicious code at appropriate locations within organizational information systems.
14. Update malicious code protection mechanisms when new releases are available.
15. Perform periodic scans of the information system and real-time scans of files from external sources as files are downloaded, opened, or executed.

Although not discussed in this article, Department of Defense contractors must meet more stringent security controls imposed by DFARS 252.204-7012; this was also recently amended.

All government contractors and subcontractors – including federal construction contractors and subcontractors – should examine their information systems and consult with their IT experts and legal counsel to make sure they are in compliance with these new safeguards. These changes should also serve as a reminder to examine existing contracts to make sure contractor information systems are in compliance with any existing safeguard obligations as this clause does not relieve the contractor from any other security obligations. These changes to the FAR are consistent with the recent regulatory actions being taken or planned to strengthen the protections of information systems, and contractors should implement these basic requirements now because more stringent requirements are likely coming.

By Chris Selman and Aron Beezley

Contractor Waived its Claim by Failing to Strictly Comply with its Contractual Dispute Resolution Procedures

A recent case by an intermediate court in Ohio, *IPS Electric Services, LLC v. University of Toledo*, reminds parties to read and follow contractual provisions regarding notice of claims.

Throughout the course of a public construction project for the University of Toledo, various issues arose that impacted completion. Between October and December, the general contractor sent two letters to the owner's project manager regarding a variety of project issues, some of which the contractor contended the owner caused, which affected the contractor's productivity and increased its costs. In January of the next year, the contractor sent a third letter to the owner's project manager stating that it had "previously provided ... written notices of impacts and claims with respect to the [project]" and that by way of this letter, it was "provid[ing] additional support for [its] claims as a follow-up to [its] prior submissions." This letter set forth dollar amounts the contractor allegedly incurred as a result of delays and a resultant compressed schedule. The contractor sent a fourth letter in February that provided back-up for other unanticipated costs incurred by the contractor.

In March, the owner sent a letter to the contractor stating that the contractor had waived its claims because it failed to comply with the

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dispute resolution procedures set forth in Article 8 of the Contract.

Article 8 of the Contract stated in pertinent part:

> **8.1 Initiation of a Claim**
>
> **8.1.1** Every claim shall accrue upon the date of occurrence of the event giving rise to the claim.
>
> **8.1.2** … [T]he Contractor shall initiate every claim by giving written notice of the claim ... within 10 days after the occurrence of the event giving rise to the claim.
>
> ***
>
> **8.1.4** The Contractor's failure to initiate a claim as and when required under this paragraph 8.1 shall constitute the Contractor's irrevocable waiver of the claim.
>
> **8.2 Substantiation of Claims**
>
> **8.2.1** Within 30 days after the initiation of a Claim, the Contractor shall submit 4 copies of all information and statements required to substantiate a claim as provided in this Article 8 and all other information which the Contractor believes substantiates the claim.
>
> **8.2.4** The Contractor's failure to comply with the requirements of this paragraph 8.2 shall constitute an irrevocable waiver of any related claim.

The contractor filed suit alleging breach of contract and unjust enrichment. The trial court dismissed the unjust enrichment claim and held that although some of the owner's actions constituted a breach of its contract with the contractor, the owner "*proved by a preponderance of the evidence that [contractor] failed to comply with the contract's dispute resolution procedure, resulting in the irrevocable waiver of any related claim*." In reaching its decision, the trial court rejected the contractor's argument that because it could only know its precise amount of damages once the project was fully completed, it did not need to strictly comply with the dispute resolution procedures in Article 8. The trial court found that the claim initiation process set forth in Article 8 "must be initiated within ten days after the occurrence of the event giving rise to the claim, not once the 'contractor is able to precisely calculate its damages at the conclusion of the project.'" The trial court also found that the owner's repeated refusal to consider the contractor's claim did not negate the contractor's obligation to pursue administrative remedies as required under the contract.

The appellate court agreed, finding that contrary to the contractor's argument, "courts cannot decide cases of contractual interpretation on the basis of what is just or equitable." The contractor was required to follow the Article 8 procedures even if the owner was unlikely to provide the relief sought. The appellate court also agreed that the owner insisted upon strict compliance with Article 8 and had not waived compliance.

Parties should become familiar with the claim procedures set forth in their contract and should seek legal counsel if further explanation is needed. Although not all courts are uniform in the enforcement of contractual notice and claim procedures, the failure to comply with the contract may open up a contractor to the possibility of waiving its claim.

By Jasmine Gardner

Is General Contractor Reliance on Subcontractor's Bid Appropriate?

During the "chaotic conditions" of bid day, general contractors often call several subcontractors to obtain prices for certain scopes of work. General contractors must be able to enforce and rely upon the subcontractors' bid price; otherwise, a general contractor could be responsible for significant price gaps if it is awarded the prime contract and the lowest subcontract bidder reneges on its price quote. The law recognizes this reality and industry custom through a legal concept called promissory estoppel, which allows the general contractor to rely upon and enforce the subcontractor's bid.

General contractors have for decades used promissory estoppel to maintain the integrity of the bidding process. Generally, to prevail on a

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promissory estoppel claim, a general contractor must establish that (i) the subcontractor made a clear and unambiguous promise and (ii) the general contractor's reliance upon that promise is reasonable and foreseeable.

Two recent cases illustrate the type of situations where courts may not enforce, and the general contractor cannot rely upon, the subcontractor's bid. In the first case, *Flintco Pacific, Inc. v. TEC Management Consultants, Inc.*, a decision by an intermediate California court, the subcontractor attached certain terms and conditions to its bid. In the second case, *C.G. Schmidt v. Permasteelisa*, a case by a federal appeals court, the general contractor engaged in negotiations with the subcontractor, thereby undercutting its ability to claim it relied upon the subcontractor's bid.

In *Flintco*, the subcontractor submitted a proposal to the general contractor with its bid-price and a few material conditions, such as: "**A DEPOSIT OF 35% IS REQUIRED FOR THIS WORK**," an exclusion for bonds, and withdrawal of the bid if not accepted within 15 days. About 45 days later, the general contractor notified the subcontractor that it was the winning bidder. Shortly thereafter, the general contractor sent its standard form subcontract to the subcontractor that was in direct conflict with many terms in the subcontractor's proposal, including the bonding requirements, liquidated damages, the scope of work, and the subcontractor's deposit requirement. The parties had a few discussions and negotiations regarding these terms. Ultimately, the subcontractor refused to enter into a subcontract and terminated its discussions with the general contractor. The general contractor sued the subcontractor to enforce its bid under the theory of promissory estoppel.

During litigation, the subcontractor admitted that it anticipated that the general contractor would use its price in its bid to the owner and the general contractor acted reasonably by relying upon its bid. In addition, the general contractor also argued that, as a matter of construction industry custom and practice, conditions in a bid are irrelevant. The *Flintco* Court, however, disagreed. According to the Court, "it was unreasonable for [the general contractor] to rely solely on the price in the bid while ignoring terms and conditions stated therein, which were material to the bid's price itself. Custom and practice cannot alter that result." Because these conflicting terms and conditions affected the price, the general contractor having sent a contract form that "varied materially" from the subcontractor's proposal amounted to a rejection of the subcontractor's bid and a counteroffer, which was never accepted by the subcontractor. There was therefore no enforceable contract between the parties.

The subcontractor in *C.G. Schmidt* submitted a bid price and, unlike the subcontractor in *Flintco*, accepted the general contractor's initial standard form contract. However, over a year passed between the date that the subcontractor submitted its bid and the date that the general contractor entered into the prime contract with the owner. In the meantime, the subcontractor repeatedly requested to review the final prime contract before entering into a formal subcontract, and the parties continually refined and updated the subcontract terms, price, and schedule. Even after the general contractor entered into the prime contract, the parties continued to negotiate terms of the subcontract, including liquidated damages and other delay provisions. Eventually, negotiations broke down and the subcontractor refused to honor its original bid.

During the eventual litigation, the general contractor sought to enforce the subcontractor's bid through promissory estoppel. The *C.G. Schmidt* Court, however, held that it was not reasonable for the general contractor to rely upon the subcontractor's bid because it continually negotiated with the subcontractor both before and after the general contractor entered into the prime contract. The Court called this "bid chiseling," which is a practice whereby a general contractor attempts to renegotiate the subcontractor's bid. "When a general contractor reopens bidding with the subcontractor, promissory estoppel may be denied for a number of reasons, including that the general contractor did not 'in fact rely on the subcontractor's bid, or failed to accept it within a reasonable time, or rejected it by a counter-offer..." "This limit to the application of promissory estoppel exists because of the inequity in allowing the general contractor to shop for lower bids or

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negotiate with the subcontractor while holding the subcontractor to its bid. Without such a rule, the general contractor, already in a position of power because it can select among subcontractor bids, would be given even more bargaining power over the subcontractor." Accordingly, the *C.G. Schmidt* Court ruled in favor of the subcontractor and refused to require the subcontractor to honor its bid based upon promissory estoppel.

As illustrated by both cases, a general contractor can lose its ability to rely upon a subcontractor's bid where it accepts a bid containing contrary material terms or attempts to negotiate with the subcontractor after the bid has already been submitted.

To be safe, the general contractor should not accept any bids that contain any contrary material terms or conditions. Or, even better, the general contractor should send its standard-form subcontract to the subcontractor and require the subcontractor to accept its standard-form as a condition of submitting the bid. In light of *C.G. Schmidt*, the general contractor should also, if possible, refrain from negotiating with the subcontractor after it receives the bid, or else it will risk losing the original bid price. Conditions upon bid and negotiations are sometimes unavoidable, but regardless, the general contractor should be aware of the consequences.

By Daniel Murdock

Proving Loss of Productivity Damages

In a recent decision by a federal trial court in Washington state, the court offered contractors a roadmap on how to best recover, or oppose recovery of, damages based on claims of interference and loss of productivity. *United States ex rel. Salinas Constr., Inc. v. Western Sur. Co.* involved a dispute between a general contractor, CJW Construction, Inc. ("CJW"), and a concrete subcontractor, Salinas Construction, Inc. ("Salinas"), related to work performed at a project at Joint Base Lewis-McChord in Washington. Although both CJW and Salinas asserted breach of contract claims against each other, the central issue involved Salinas' claim against CJW that "CJW interfered with and hindered Salinas' performance of its work at the project." Salinas sought damages for the inefficiencies it suffered based on CJW's alleged interference with Salinas' work. Salinas, however, did not designate or provide any expert testimony to support its damages claim. Instead, Salinas presented evidence of its inefficiency damages through only one lay witness. After trial, the jury awarded Salinas approximately half of its claimed inefficiency damages. CJW and the surety asked the district court to vacate the jury's damages award, primarily because they believed Salinas' damages evidence, lacking expert testimony, failed to support the award. The court agreed and vacated the award.

Salinas' lone damages witness purported to employ the "measured mile" method to calculate Salinas' alleged lost-productivity damages. Put simply, the measured mile method compares an unimpacted period, area, or activity of construction work with another area or activity of work that was disrupted, and determines the contractor's loss based on the difference between the contractor's productivity and performance during the unimpacted period(s) with the contractor's productivity and performance during the disrupted period(s). Courts have awarded loss of productivity and inefficiency damages based on other methods of calculation, such as the total cost or modified total cost method, but the measured mile method is often stated to be "preferred."

While the court acknowledged that this witness's "position at Salinas qualified him to testify from personal knowledge and give lay opinion testimony based on basic measurements and simple math," it ruled that he was not qualified to provide expert testimony. Specifically, Salinas' witness purported to calculate Salinas' loss of productivity by using actual production costs, but the witness then "subjectively decided which costs to consider impacted versus unimpacted and constructed a hypothetical world in which Salinas' work on every day of the project went unimpacted by CJW's breach of contract." Because this methodology accounted for Salinas' productivity on days that proceeded exactly how Salinas "believed [the project] ***should have gone***" but did not adjust to consider impacts unrelated to CJW's interference, the court concluded that the "methodological flaws" inherent in the witness'

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testimony revealed why a claimant must support inefficiency damages with expert testimony. The court stated that Salinas' witness "calculated the measured mile by choosing comparators that 'magically' proceeded how [the witness] 'believed [the project] should have gone,' rather than attempting to control for variables that did not relate to CJW's breach." Stated differently, Salinas' witness compared the disrupted project to a fictional, problem-free project and based on that comparison, arrived at a figure representative of its alleged inefficiency damages.

This decision demonstrates that proving inefficiency and loss of productivity damages due to interference with a contractor's work requires careful thought, adequate documentation, and may require an opinion from a qualified expert witness. Adequate records must be maintained to support the calculation of a measured mile, but this documentation must then be analyzed in a credible and supportable manner. Failure to provide a supportable and repeatable analysis may leave the impacted contractor in the position of Salinas: the impact is proven but the resulting damages are not.

By Slates Veazey

Announcing our new Texas offices:

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 **Ian Faria**, **James Collura**, **Jared Caplan**, **Jon Paul Hoelscher**, **Nathan Graham**, **Christian Dewhurst**, **Ryan Kinder**, **Justin Scott**, and **Andrew Stubblefield** to our firm

Safety Moments for the Construction Industry

Always use caution when operating on slopes. Sure, you might make it up the slope with a load, but coming down is an entirely different story! Know the limits of your machine, allow for surface conditions, and don't push it.

Bradley Arant Lawyer Activities

A press release and announcement with further details about our expansion into Texas can be found here:

http://www.bradley.com/insights/news/2016/10/bradley

We will also be hosting an **Open House** to welcome **our Houston office** and introduce our clients to the Houston team. The **Open House** will be on January 12 at 5:30pm in our Houston 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.

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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. In addition, **Monica Wilson** was listed as a “Rising Star” in Construction Litigation, **Amy Garber** was listed as a “Rising Star” in Construction Law, and **Tom Lynch** was listed as a “Rising Star” in both Construction Litigation and Construction Law. **Bryan Thomas** was selected as a 2016 Mid-South Rising Star in the area of Construction Law and Construction Litigation.

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

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 who are selected through a peer review survey of approximately 4,000 local attorneys registered with the Birmingham Bar Association.

On February 24, 2017, **Bryan Thomas** and **Kevin Michael** will be presenting “Public Private Partnerships (PPP): What a Municipal Lawyer Needs to Know” at the Tennessee Municipal Attorneys Association’s Winter Summit.

Bryan Thomas will be speaking about Warranty Claims at the TBA’s Annual Construction Law Seminar on January 27, 2017.

Axel Bolvig will be speaking at the Construction CPM Conference in Orlando, FL on January 12, 2017 in a program titled “Box-Out Schedules – Regain Contractor Focus.” He will be presenting with two client representatives.

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.

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

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

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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)."

Bryan Thomas and **Heather Wright** spoke in Austin, TX on September 7, 2016 at *Construct* 2016 on the topic of "Understanding and Mitigating your Long-Term Liability."

On September 2, 2016, **David Taylor** presented a client seminar on the drafting of construction contracts in Dallas, TX.

On August 19, 2016, **Aron Beezley** published in the *Bloomberg BNA Federal Contracts Report* an article titled "Universal Heath's Immediate Impact on FCA Litigation."

Jim Archibald moderated a panel and spoke at the ALFA International 2016 Construction Law Seminar, in Palos Verdes, California, on July 29, 2016. The panel's topic was "Building Overseas: The Unique Challenges of International Construction." The 3-day Seminar was attended by lawyers and companies from all over the world, and addressed the "State of the Construction Industry." ALFA International is a global network of international law firms comprised of 150 independent member firms, including 70 firms from Canada, Mexico, Latin America, Europe, Asia, Australia, and Africa.

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 during its Annual meeting in April in Boca Raton, Florida.

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*.

Our Group is excited to welcome three new lawyers to the Birmingham office of our construction and government contract team: **Daniel Murdock**, **Abigail Harris**, and **Jackson Hill**. We look forward to their work with our clients, learning from their prior experiences, and introducing them to our construction practice.

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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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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.

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Your Name:

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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?

____

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:

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