Bradley

Bradley Arant Boult Cummings LLP

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CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Healthcare Projects: The Importance of Fundamentals

Bradley regularly represents general contractors (and other contracting parties) on large hospital projects – whether it be during project development, construction, or in the dispute stage. In one recent case, Bradley represented a general contractor in a dispute with a hospital owner who purported to terminate the contractor for cause. After a month-long arbitration, the termination was proven to be wrongful, entitling the contractor to its termination-related damages. Although many issues were at play, the central issue in the case was delay to the project. Specifically, the delay related to the precipitating impact of the owner's refusal to provide timely directives or change orders to the contractor's ability to progress the work. This indecisiveness was compounded by the fact that the project design (specifically, the electrical design) was never completed during the contractor's performance. As a result, the project architect continued to issue – up through and even after the termination – supplemental instructions (ASIs) that significantly changed the electrical design and hindered the contractor's ability to order long lead-time equipment or timely progress the work.

This case highlights three important points for contracting parties to remember on all projects—especially on new construction healthcare projects. Healthcare construction projects face challenges that, although not entirely unique to the industry, warrant particular attention.

First, whether contracting under a design-bid-build or a design-build framework, the project design must be sufficiently complete and accurate in a timely manner. And, importantly, it must be in line with the project budget. If not, deficiencies will no doubt be exposed during construction and the result may be significant additional costs and time to complete the project. In new construction healthcare projects, the procurement of long lead-time medical equipment is common. Although healthcare owners like to defer selection of this equipment as long as possible during the construction so the most state-of-the-art equipment is installed, it is critically important that the owner's designer establish at least the baseline performance specifications for that equipment as early as possible. For instance, while there is inevitable variation among equipment manufacturers, a design needs to account for minimum performance requirements (like voltage and amperage in the case of electrical designs), and the impact that the final selection of equipment may have on the space, structural requirements, and location of the various components that feed those systems. Moreover, the parties must ensure that the project design can actually be built in accordance with the project budget. Whether constructing a hospital, a new water treatment plant, or a new power generation facility, the designer must have the necessary experience and qualifications required for that project to minimize the potential for costly impacts.

Second, it is imperative that project owners provide their own competent personnel to fulfill owner obligations under

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the contract. The primary responsibilities of a project owner on any project always includethe timely review of project documents, timely decision-making, and timely transmission of payments and information. An unreasonable lag may not only amount to a breach of contract, but it may also create cascading delay impacts that prolong the project and increase costs. Successful projects require a close working relationship between all parties and owners should not underestimate the importance of staffing projects with their own competent, experienced, and dedicated staff to ensure timely performance of their obligations.

Third, healthcare projects include many life-critical systems and require close coordination among a number of complex systems, such as electrical and mechanical. As one example, hospitals require medical gas systems that must meet stringent installation and certification requirements. Both the owner and the contractor must be mindful of the importance of these certifications, how to ensure proper installation and certification, and the impact these certification requirements have on the project and planned sequence of work. The same is true with respect to warranties. When, for one reason or another, multiple contractors have had a hand in installing some aspect of a project—whether medical gas piping, fuel systems, concrete foundations, or any other scope—issues may arise that lead to finger pointing between those parties as to responsibility. While the party to whom the warranties are made may have recourse through legal proceedings, the immediate and practical effect can be additional delay, expense, and frustration.

When it comes to healthcare projects (as with most large or complex projects), contracting parties must employ good contracting fundamentals to achieve a successful project. Due diligence, competent and dedicated resources, and close coordination between the parties go a long way toward achieving that goal.

By: Alex Thrasher and Carly Miller

Construction Dust is Pollution?

A recent insurance coverage decision from the United States District Court for the Northern District of Georgia highlights the difficulties of court interpretation of insurance policies and serves as a warning for contractors regarding application of the Absolute Pollution Exclusion in a General Liability Policy. The case involves injuries sustained by Joel Edgar Love Jr. arising out of construction dust. *Love Lang v. FCCI Insurance Company*, 530 F.Supp.3d 1299 (N.D. Ga 2021). The procedural history of this case is complicated by the fact that there were several different actions filed with the ultimate insurance coverage issue determination being made in an action where Mr. Love's Estate was pursuing coverage from a general contractor's insurer following an agreed order against the contractor. For purposes of the instant analysis, we will not focus on the intricacies of the procedural history of the various cases but will focus on the facts of the underlying injury, the policy language at issue, and the ultimate coverage decision by the Court.

In August 2013, a construction crew removed bricks from the façade of an apartment building apartment unit by drilling a row of holes in the grout between the bricks, and then cutting the holes together to remove the brick. The work caused clouds of dust to enter the apartments. It was undisputed that the dust "did not contain any toxic or particularly harmful material, the dust did not contain within it any particular known irritants, contaminants, toxins or poisons, and the dust did not contain any lead or asbestos." It was also undisputed that exposure to the dust "would not necessarily be dangerous and would not automatically result in injury to an individual with healthy lungs." Mr. Love, however, did not have healthy lungs; he had end-stage emphysema, and Mr. Love was hospitalized after the construction work outside his apartment produced clouds of dust that accumulated in his unit.

Mr. Love complained to the workers about the dust and its effect on his health, and Mr. Love sued the building owner and the construction company, in state court. The construction company was insured by Defendant FCCI Insurance Company ("FCCI") but FCCI denied coverage based on the Policy's "Total Pollution Exclusion," which provided: "This insurance does not apply to: (1) 'Bodily injury' or 'property damage' which would not have occurred in whole or part but for the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of 'pollutants' at any time." The Policy defines "pollutant" as "any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste."

The issue before the Court in the coverage litigation was whether the construction dust at issue constitutes a "pollutant" within the meaning of the Policy, and thus, whether the construction dust was a "solid, liquid, gaseous or thermal irritant or contaminant." In construing an insurance policy under Georgia law, a court will first determine whether the policy language is clear and

unambiguous. If a policy is ambiguous, any ambiguities are strictly construed in favor of the insured and any exclusions, such as the Absolution Pollution Exclusion, should be construed strictly in favor of coverage. Finally, ambiguous policies should be interpreted in accordance with the reasonable expectations of the insured.

The *Love Lange* court considered decisions from the Georgia Supreme Court and the Georgia Court of Appeals to construe the language of the Absolution Pollution Exclusion at issue. In the relevant Supreme Court cases, carbon monoxide gas and lead paint were held to be "pollutants" under identical policy language. In the Court of Appeals cases, however, natural gas and nitrogen were held *not* to be pollutants. Specifically, the Court of Appeals held that natural gas was not an irritant or a contaminant because "exposure to natural gas is not necessarily dangerous and does not automatically result in injury" and it would "violate public policy to allow the insurer to sell a liability policy to cover a company whose main product is natural gas when that policy contains an exclusion for damages resulting from such natural gas." Similarly, another Georgia Court of Appeals case held that nitrogen was not "unambiguously a 'pollutant'" because "nitrogen is present in large quantities in the ambient air" and the insured, which "was in the business of storing tissue at low temperature using liquid nitrogen, reasonably expected that liability related to a nitrogen leak would be insured."

Applying those Georgia Supreme Court and Court of Appeals cases to the construction dust at issue in *Love Lange* could have resulted in a determination that the bodily injury caused by construction dust was a covered claim – because the dust, like natural gas and nitrogen, did not contain any toxic or particularly harmful material, unlike carbon monoxide and lead paint. Instead, the *Love Lange* court held, "'a cloud of dust, even absent toxicity or other impurities, is a substance that was an 'irritant' and a 'contaminant' ***to Mr. Love and his respiratory system***." (emphasis added). In short, the *Love Lange* court did not interpret the policy based on application of the policy language and whether construction dust itself was an irritant or a contaminant but focused on whether the construction dust was annoying or irritating to a particular plaintiff. In so doing, the *Love Lange* court's broad interpretation of the Absolute Pollution Exclusion might abrogate coverage for any byproduct of construction, which could always be interpreted as an irritant or contaminant to any particular plaintiff.

The *Love Lange* court entered its order at summary judgment; no notice of appeal was filed, and the underlying lawsuit has been dismissed by the parties. It is not clear whether any other courts will follow the *Love Lange* analysis, but it is likely that insurers will cite the *Love Lange* decision to support future denials of coverage for claims of bodily injury or property damage arising from dust which is a frequent product of the construction process. To guard against a potential gap in coverage created by the Absolute Pollution Exclusion in general liability policies, a contractor could consider procuring an Environmetal Liability policy which may bridge that gap.

By: Heather Wright

The Debate: Arbitration or Court: Know the Pros and Cons

Many construction contracts used in the industry include clauses mandating that any disputes be decided by binding arbitration rather than a jury or bench trial. The standard AIA forms provide the parties with the option of court or arbitration. Trial courts, overwhelmed by a flood of cases and supported with strong caselaw and statutory precedent, regularly enforce arbitration clauses. Yet the decision to choosearbitration over litigation is a major business decision when drafting and negotiating contracts that should not be made lightly.

Many construction lawyers vehemently disagree on the merits of arbitration versus litigation for construction disputes, and this debate will likely continue. When evaluating this choice, lawyers, and business decisionmakers must know in advance what a party will likely get—and not get—by choosing to arbitrate or litigate a construction dispute to best make this decision.

<u>Problems with Courtroom Litigation</u>

The primary reason for the preference of arbitration is often the perception of the legal system's defects. Few companies that have been through a lawsuit, even one resolved in its favor, would wish to endure it again. Why? Some common problems are inherent to litigation:

Cost. Litigation is time-consuming and expensive. More to the point, while approximately 95% of civil cases settle before trial, settlement often takes place on the courthouse steps *after* the parties have incurred most of their expenses. Construction disputes in particular can take longer and be more expensive to resolve than other commercial disputes as they are highly fact intensive and deal with large amounts of information. Out-of-pocket costs for attorneys, expert

witnesses, depositions, electronic-discovery consultants (those tasked with gathering every pertinent email) and other discovery expenses are considerable.

In most U.S. jurisdictions, unless the contract contains a provision for attorneys' fees, such costs are not recoverable even by the victorious party. A company may "win" its case only to realize that after subtracting lawyer fees and other items, its bottom line is a net-zero "recovery." Even when a party wins, it faces the question of whether the judgment is collectible. A judgment against a bankrupt or marginally solvent defendant might not be worth the paper on which it's printed. While the same is true of a bankrupt party after arbitration, it remains that litigation generally is more expensive than arbitration such that the overall out of pocket costs are lower and the result is usually obtained more quickly in arbitration.

Litigation also produces substantial *soft* costs. Time is money. In any suit, management and other key employees must devote considerable time to the dispute even if a project has been completed for many years; forced attention paid to a past job detracts from one's focus on current jobs and new clients. Key employees may have moved on and may be uncooperative. It also affects the morale of any staffers who feel "tainted" by the whole process.

Publicity and public filings. Lawsuits can damage reputations and boost one's competitors. Court filings are public records. Even if frivolous, the mere filing of a lawsuit may make the front page of the local news or be featured in a trade journal, a prominent email chain or an industry blog—whereas the successful defense or dismissal of the claim, sometimes years later, might not get reported at all.

Court filings and trial testimony, meanwhile, are generally open to any competitor. In a case involving a claim for lost profits, for instance, the business making the claim may be required to open its tax records to prevail. The parties can agree on protective orders, but even if they do, once such documents are produced, they're out there for any interested outside party to potentially discover.

Time. Lawsuits can take *years* just to get to trial. After which, of course, the losing party has an automatic right to appeal . . . which might consume years more (and will be expensive). The right to appeal an *adverse* ruling is a point in favor of litigation—and that right, while time-consuming, can make litigation more predictable in the long run at least in terms of legal issues. But a competent lawyer can delay payments of a judgment with those same rights to appeal. And an otherwise solvent defendant might be able to delay a final judgment, and by the time that judgment is rendered, that company's assets are gone, or it has filed for bankruptcy.

Less predictable initial results. In any courtroom, there is no way to guarantee what an elected judge (yes, the phenomenon of "home cooking" does exist) or the jury might do. If the case involves complicated facts, expert testimony, or industry-specific issues, it's quite possible that the jury—or even the judge—will get confused and fail to focus on the topics of primary importance, leading to an incorrect, inexplicable result. As stated above, while choosing to litigate provides more pathways to appeal which helps with the predictability issues, the need for such appellant rights is arguably lower in arbitration.

Pros and Cons of Binding Arbitration

Predictability. Most arbitrations are heard and decided by a neutral third party (or panel of them), generally experienced construction lawyers. Arbitrators do not have to be lawyers but can be (for example) engineers, bankers, or developers trained in arbitration. This can minimize some of the concerns above and reduce the time required to educate a judge or jury about the nuances of a dispute. Properly selected arbitrators are more likely to understand and focus on the key material issues and are typically not as easily swayed by lawyers' emotional arguments or "expert" witnesses that might lose people in technical minutia.

Time. Because there's no crowded court docket competing for attention, arbitration hearings can often be scheduled within months, not years. Even when millions of dollars are at stake, hearings can commence more quickly than in court, where criminal trials take priority over civil ones, especially in federal court. In general, one day of an arbitration hearing equals two or three days of trial. Grounds for appealing an arbitration award usually are also circumscribed as discussed above, so finality is the rule rather than the exception. In many arbitration fora, the arbitrator(s) is (are) required to issue a ruling within 30 days, unlike state or federal court without no such definitive deadlines.

Arbitration is also less formal; the applicable rules of evidence and procedure might not be as strictly followed. This fact cuts both ways. While it often makes the proceeding smoother with less time spent fighting over, for example, the admissibility of a fact or document or opinion, it also means more information is likely to get in front of the arbitrator (whether that information is considered or not may be a different story).

Costs. Arbitration is generally less expensive than litigation, which is often criticized for the time and expense of pretrial discovery. As such, it's significant that with a few exceptions, arbitration limits discovery. The lack of multiple pre-hearing motions and limited pre-hearing depositions, as well as the finality of the award, substantially reduce attorneys' fees and overall costs. But of course, without knowing at the time of entering a construction contract, you may ultimately wish you had the ability to take those extra depositions, which an arbitrator may not allow to occur. Parties often in arbitration are stuck to some extent rolling the dice with what a witness may say in arbitration. A risk much less common in trial.

One additional caveat: Unlike in court, the parties must pay for arbitration. There are initial filing fees based on the amount of the claim, and arbitrators typically charge hourly rates that must be paid in full prior to any hearing. This adds up: Do the math on $550 an hour for three arbitrators over 10 days of hearings.

Privacy. Unlike courtroom litigation, arbitration is private and confidential. The proceedings are not public records; arbitrators maintain the privacy of the hearings unless some statute mandates to the contrary.

Conclusion

Arbitrating construction disputes is not a panacea, nor is it always the right choice. All its "pros" come paired with "cons." And while this author thinks there is good reason for the predominance of arbitration agreements in this industry, if a loss in a dispute might put the business under, sticking to litigation (with the right to conduct full-blown discovery and the right to appeal) may be the better choice.

The bottom line: If the dispute can be resolved through arbitration in most instances the proceedings will be faster, more predictable, confidential, and less expensive than a trip to court. But parties opting to arbitrate are in most circumstances giving up their right to appeal, and while saving money on discovery, they may ultimately wish they had the ability to spend that money. Reasonable minds can differ on the best choice, but it is one that should not be entered blindly.

By: David Taylor and Kyle Doiron

When a General Release and Waiver is not a General Release and Waiver

As common practice, general contractors require a subcontractor to sign a release of claims for each progress payment as a condition for receiving that payment. Nearly every general contractor requires a subcontractor to sign a final release and waiver of all claims prior to receiving a final payment on the contract. Sophisticated construction parties must understand and appreciate the significance of these waivers and ensure that they have no outstanding claims prior to signing. However, depending on the jurisdiction and the language in the release, not all waivers are "equal" and may not apply to all claims between the parties. Like most legal principles, there are exceptions. A sophisticated contractor or owner (especially when working in a "new" jurisdiction) must be aware of these exceptions so that they can understand the effect of waiver language both upstream and down, including what claims a general waiver might not apply to.

On May 5, 2022, through *APCO Construction, Inc. v. Helix Electric of Nevada, LLC*, the Supreme Court of Nevada provided a good reminder for parties that, just because a party signed a waiver, does not mean a Court will enforce thewaiver against all claims between the parties. In the case, APCO Construction, the General Contractor, and Helix Electric, the Subcontractor, executed a subcontract for a job that was scheduled to be complete on January 9, 2013. However, for reasons beyond Helix's control, APCO was delayed, and substantial completion was not achieved until October 25, 2013. Helix then sought $102,000 in delay damages.

In October 2014, approximately a year after substantial completion, APCO sent Helix a check for its final retainage payment with a conditional release and waiver which stated that, by signing the waiver, Helix is confirming that the retainage payment is the final payment for all of Helix's Work and no outstanding claims remained. The general release and waiver indicated that the disputed-claim amount was "zero." Helix signed the general release and waiver.

Nevada has a statute which governs releases and waivers of the right to receive payments. NRS § 338.490. The Nevada statute states that, any waiver required to be signed by a contractor to receive a payment must necessarily be "[l]imited to claims related to the invoiced amount."

Helix sued APCO to enforce its delay claim. APCO refused and argued that Helix had waived its rights to the delay claim through signing the final release and waiver, which

confirmed that the retainage was the final payment and that no outstanding claims remained. Helix argued that, under Nevada law, the general waiver was unenforceable as applied to the delay claim and instead, was simply limited to any claims against the retainage payment.

The Nevada Supreme Court ruled in Helix's favor, interpreting NRS § 338.490 as governing the final release and waiver executed by the parties in October 2014 and finding that the final release and waiver only applied to claims associated with the retainage payment. Therefore, Helix had the right to pursue its delay claim despite the October 2014 waiver.

The *APCO Construction* opinion is a good lesson for any party to a construction contract that one needs to be deliberate and precise in terms of what waiver language is required and when. A general statement of waiver may not be sufficient to waive all claims, which can radically change the parties' respective risk and liability on the Project. All parties to a construction contract must be sure to check the applicable state laws to understand the scope and limitations for enforcement of waiver language.

By: John McCool and David Bashford

Nevada Supreme Court holds that pay-if-paid provisions require a case-by-case analysis to determine their enforceability

A "pay-if-paid" provision typically makes payment by an owner to a general contractor a condition precedent to the general contractor's obligation to pay a subcontractor for work the subcontractor has performed.

In the recent decision of *Helix Electric of Nevada, LLC v. APCO Construction, Inc.* (related to the case above), the Nevada Supreme Court was tasked with determining the enforceability of such a clause under Nevada law. In *Helix*, a developer hired a general contractor, APCO Construction, Inc. ("APCO"), to build condominiums, and APCO subcontracted part of the work to Helix Electric of Nevada, LLC ("Helix"). Under the subcontract between APCO and Helix, retention would be released only upon the occurrence of several conditions, including the developer's paying APCO, Helix completing its work on the project, the developer accepting that work, and Helix delivering close-out documents and claim releases to APCO. While working for APCO, Helix was paid the subcontract price, less the retainage.

As a preliminary matter, the Nevada Supreme Court noted that the right to retain funds on a construction project is governed by NRS 624.624(2)(a)(1), which authorizes a "higher-tiered contractor, upon written notice, to withhold from any payment owed to the lower-tiered subcontractor "[a] retention amount... pursuant to the agreement, but the retention amount withheld must not exceed 5 [(formerly 10)] percent of the payment that is [otherwise] required." In addition, NRS 624.628(3) provides that a pay-if-paid provision although not void per se, will still be unenforceable if it (1) "require[s] subcontractors to waive or limit rights provided under NRS 624.624-.630"; (2) "relieve[s] general contractors of their obligations or liabilities" under those same statutes; or (3) "require[s] subcontractors to waive their rights to damages."

In light of these statutes, the Nevada Supreme Court agreed with the trial court that, under NRS 624.628(3)(c), the pay-if-paid clause in the subcontract was void and unenforceable as it "require[d] Helix to waive its right to monies earned if APCO [did] not receive payment, even if Helix [met] its obligations, is not at fault for the events that led to nonpayment, and would otherwise have a claim for that retention."

The key take away is that regardless of how well a pay-if-paid clause is drafted, states vary widely in how they treat such clauses. Certain states disallow pay-if-paid clauses, and hold them to be void and unenforceable. Other states, like Nevada, determine the enforceability of pay-if-paid clauses on a case-by-case basis. As a result, contractors should always pay close attention to how such clauses are treated in the states where they perform work prior to contracting so that they can adequately assess the risks associated with non-payment.

By: Petar Angelov

"Just Pay it Now and We'll Figure it Out Later": Misleading Billing Practices and Consumer Protection Acts

The Iowa Supreme Court recently upheld the district court's finding that a subcontractor violated the Iowa Consumer Protection Act ("ICPA") by engaging in misleading, false, or deceptive billing practices. In *McCarthy v. Stark Investment Group, LLC*, Craig Stark ("Stark") contracted with the McCarthy Corporation ("McCarthy") for site excavation. In 2017, Stark decided to retire in Idaho, and planned to construct an RV and boat storage facility to provide him with retirement income. A dispute quickly arose when McCarthy began submitting duplicate invoices

to Stark for work it had already performed and for work performed by another subcontractor on the site. After several instances, Stark confronted the president of McCarthy, who replied: "just pay it now and we'll figure it out later." McCarthy then sent Stark another invoice and falsely informed Stark that the paving company McCarthy had hired would require half of the paving cost upfront, stating in an email: "[w]ould you mind 50% upfront for asphalt? Asphalt is requesting it." McCarthy further refused to continue work on the project until the invoice, including upfront paving costs, was paid in full. Stark disputed the invoice and ultimately terminated McCarthy's right to proceed under the contract. McCarthy then filed a Claim of Lien on Stark's property. Stark sued for breach of contract and other theories of recovery, including alleging that McCarthy had violated the ICPA.

The ICPA—like most state consumer protection statutes—prohibits unfair business methods and practices, including "engaging in any act or practice which is otherwise misleading, false, or deceptive to the consumer." The Iowa Supreme Court found that McCarthy's double billing and dishonest demand for money upfront fell within the conduct prohibited by the statute. The court explained that the email requesting 50% upfront was *by definition* a false or misleading statement within the meaning of the ICPA because the asphalt provider made no such request and McCarthy refused to continue work until Stark paid. The court concluded that McCarthy's "cavalier" response to "just pay the bill" when Stark raised concerns about the validity of the invoice compounded McCarthy's deceit.

The ICPA allows a consumer to recover "ascertainable losses" as damages. The court found that McCarthy's double billing and misleading directive led to Stark's additional construction loan costs and inspection fees, as well as the defense of the lien on his property. Due to McCarthy's lien, the bank required Stark to place $265,037.55 as collateral into a non-interest-bearing account. The court upheld an award of lost interest on the funds ($26,503.76) deposited into the collateral account as an "ascertainable loss" under the statute, as well as attorney's fees and costs both in the present action and in Stark's separate defense of the lien.

Why does *McCarthy* matter? Consumer protection statutes may provide a new avenue of recovery for alleging false or misleading business practices without the heightened pleading requirement of fraud. Further, the ICPA and other similar statues allow the aggrieved consumer to recover attorneys' fees and costs as well as the possibility of treble damages for willful and wanton disregard. It is critical that contractors take care to abide by consumer protection laws when engaging with property owners, or else they could find themselves facing enforcement actions, a potential loss of license, or a wide array of unexpected damages. When a contractor or developer enters a new state for its work, it should review the consumer protection statutes of that jurisdiction to determine if there are such statutes and how "consumer" is defined in the statutes.

By: Charlotte Watters

Safety Moment for the Construction Industry

Safety programs, like the entire industry, must be re-examined in light of the recent pandemic and its ongoing effects. Construction companies must ensure that their programs are addressing the physical and psychological health of their employees. It is proven that improved mental health can lead to a reduction in safety incidents. The construction industry experiences the second highest rate of suicide among major industries. Almost 60% of construction workers recently reported struggling with mental health, but only a third said they would communicate it to their employer.

We must integrate mindfulness into the workplace and the jobsite. The majority of workplace injuries and accidents occur because of a lack of awareness or focus, or distraction. Mindfulness—the psychological process of bringing one's attention to experiences occurring in the present moment—is essential in construction.

Industry leaders must also show and lead by example. They must have empathy and be educated on how to better understand the impact on behavior of stress, whether caused by overtime, a bullying environment, or by a pandemic.

Bradley Lawyer Activities

Bradley's Construction and Procurement Practice Group received the distinction of "Law Firm of the Year" in the area of Construction Law in the 2022 edition of *U.S. News Best Lawyers*. Only one firm per legal practice receives this designation per year, and this is Bradley's third time to receive this distinction (2018 and 2020). Bradley has held a national Tier 1 ranking in Construction Law since the list's inception and also earned Tier 1 metropolitan rankings in Construction Law in Birmingham, Charlotte, Houston, Jackson, Nashville, and Washington, D.C. Overall, the firm earned four national Tier 1 rankings and 156 metropolitan Tier 1 rankings across all 10 of its offices. This is recognition that we are dedicated to seeing that our clients benefit from hiring Bradley to serve their needs.

Construction Executive ranked Bradley as the Number 3 law firm in the United States in its annual *Top 50 Construction Law Firms* rankings for 2022.

Chambers USA ranked Bradley as one of the top firms in the nation in Construction and in Government Contracts for 2022. The firm was also recognized as a top firm in Construction for the following locations: Alabama, North Carolina, Mississippi, Texas, Tennessee, and Washington, DC.

Chambers USA also ranks lawyers in specific areas of law based on direct feedback received from clients. **Jim Archibald, Ryan Beaver, Ben Dachepalli, Ian Faria, Tim Ford, Ralph Germany, Jon Paul Hoelscher, David Owen**, **Doug Patin, Bill Purdy, Mabry Rogers, Bob Symon,** and **David Taylor** are ranked in Construction. **Aron Beezley** is ranked in the area of Government Contracts.

In *Best Lawyers in America* for 2023, **Jim Archibald**, **Michael Bentley**, **Ralph Germany**, and **Bryan Thomas** were named Lawyer of the Year in Litigation – Construction, Arbitration and Construction Law, and Construction Law in their respective markets.

Jim Archibald, David Bashford, Ryan Beaver, Axel Bolvig, Jared Caplan, 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** have been recognized by *Best Lawyers in America* in the area of Construction Law for 2023.

Jim Archibald, David Bashford, Ryan Beaver, Michael Bentley, Axel Bolvig, 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** were also recognized by *Best Lawyers in America* for Litigation - Construction for 2023.

Keith Covington and **John Hargrove** were recognized by *Best Lawyers in America* in the areas of Employment Law - Management, Labor Law - Management, and Litigation - Labor and Employment.

Kyle Doiron, **Amy Garber**, **Abba Harris**, **Anna-Bryce Hobson, Matt Lilly, Carly Miller**, **Casey Miller, Marc Nardone,** and **Chris Selman** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and Construction Litigation for 2023.

Jim Archibald, Ryan Beaver, Ian Faria, Ralph Germany, Jon Paul Hoelscher, David Owen, Doug Patin, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, and David Taylor were named *Super Lawyers* in the area of Construction Litigation. **Jeff Davis** was named *Super Lawyer* for Civil Litigation. **Philip Morgan** was named Texas *Super Lawyers* "Rising Stars" in Civil Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Kyle Doiron, Abba Harris, Carly Miller, Chris Selman, and Bryan Thomas** were listed as "Rising Stars" in Construction Litigation. **Sarah Osborne** was named *Super Lawyers* "Rising Stars" for Civil Litigation. **Matt Lilly** was named North Carolina *Super Lawyers* "Rising Stars" in Construction Litigation. **Bill Purdy** was ranked as Top 50 in Mississippi *Super Lawyers*.

David Owen was recently accepted as a Fellow in the American College of Construction Lawyers. Other Fellows include **Jim Archibald**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, and **Bob Symon**.

Monica Dozier was recently named by the University of Florida as one of 2022's "40 Under 40."

Jennifer Ersin was recently admitted as a Fellow to the Chartered Institute of Arbitrators.

Carly Miller was recently recognized as an AGC Alabama 40 Under 40 in Construction, recognizing the top 40 individuals demonstrating a high level of leadership, excellence and commitment to the industry. An award celebration was held on September 15, 2022 in Birmingham, AL.

Monica Dozier was recently named by the Charlotte Business Journal as one of 2022's "40 Under 40."

Aron Beezley was named as Law360's 2022 MVP of the Year in Government Contracts. **Aron** was also recently recognized by *JD Supra* in its 2022 Readers' Choice

Awards for being among the top authors and thought leaders in government contracts law during 2021.

Abba Harris was recently named Co-Chair of the National Association of Women in Construction's Professional Development & Education Committee.

Anna-Bryce Hobson was selected to serve as the 2023 Commercial Real Estate for Women ("CREW") Charlotte Communications Committee Chair.

Monica Dozier was elected to a 3-year term on the board of EarthShare North Carolina.

Jared Caplan was recently named the Co-Chair of the Houston Bar Association Civil/Appellate Bench Bar Conference Committee for the 2022-2023 Bar Year. **Jared** was also recently named a Senior Fellow at the American Leadership Forum.

Jennifer Ersin was named to the 2022 Class of Leadership Mississippi. Leadership Mississippi is a leadership training program conducted by the Mississippi Economic Council which seeks to bring together business leaders from around the state. The goal of the program is to bring together and train future leaders who can use their training to improve the quality-of-life in Mississippi.

On December 14, 2022, **Carly Miller** and **Alex Thrasher** will present "Practical Tips and Best Practices for Arbitrating Your Construction Claim" at the 9th Annual Construction Industry Summit for the Alabama State Bar Construction Industry Section in Birmingham, AL.

On November 30, 2022, **Monica Dozier** will moderate the North Carolina regulatory panel at the Southeast Renewable Energy Summit. **Monica** also moderated on October 27, 2022, the "Commodity Prices and Trends" panel at the Tennessee Valley Solar Conference + Storage.

On October 26, 2022**, David Taylor** is speaking at the International Committee of Shopping Center's Annual Legal Conference on Using Arbitration to Resolve Real Estate Disputes.

Jim Archibald spoke at the University of Kentucky College of Law – Construction Law Institute on October 20, 2022 about Practical and Legal Challenges to Terminations for Default.

Carly Miller and **Alex Thrasher** spoke on October 6, 2022 at the AGC's Annual Construction Leadership Conference in Point Clear, Alabama on the topic of "Project Documentation and Legal Disputes."

David Taylor and **Petar Angelov** spoke at Bradley's 20th Annual Commercial Real Estate Seminar on September 21, 2022 on Negotiating a Commercial Construction Contract.

On September 1, 2022, **David Owen** and **Mason Rollins** presented at Alabama AGC RiskCon 2022 on the topic of Post-Covid Blues II – A Legal Perspective on Navigating Material Delays, Price Hikes, & Labor Shortages.

Carly Miller presented as a webinar panelist to the ABA Construction Forum on the topic of "Exploring Mid-Project Adjudication or Arbitration of Claims" on August 17, 2022.

Bryan Thomas was a panelist at the AGC of Tennessee's Legal Roundtable on June 7, 2022, during which he discussed contractual clauses addressing labor and material cost escalation.

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

READER RESPONSES

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.

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We are in the process of developing new seminar topics and would like to get input from you. What seminar topics would you be interested in?

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

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

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