BRADLEY ARANT BOULT CUMMINGS LLP **Third Quarter 2014**

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

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Understanding the Unique Aspects of Condominium Lien Law

The construction industry was among those hit hardest by the recession. One of the sectors that exhibited the greatest downturn was multi-family housing. Now, this sector is showing some of the stronger signs of recovery. As multi-family projects increase, it is worth taking the time to review some of the unique aspects associated with filing a mechanic's lien on a condominium project.

Contractors should always be mindful of a few key facets of mechanic's lien law. A mechanic's lien is an encumbrance against real property which has been improved by the labor performed or materials provided by a contractor. A lien is a means of securing the contractor's claim for payment. Mechanic's lien law is, with few exceptions, statutory. Mechanic's lien law varies from state to state, so each time a contractor performs in a different state, it must be aware of that state's particular mechanic's lien law requirements and follow those requirements carefully.

Most mechanic's lien statutes require that a certain type of notice be given to the owner of the real estate improvement within a certain period of time after the improvement has been performed. Identifying the owner is usually not that difficult if it is a single company or individual. However, the difficulty of identifying and notifying the "owner" increases substantially if the project is a condominium and the contractor or subcontractor performed work on the entirety of the condominium project, as opposed to improving a single unit.

Whether a project is a "condominium" is also typically established by statute and thus varies from state to state. A contractor building a condominium, or a subcontractor working on any part of a condominium's "common areas," must determine who actually owns the common areas when attempting to perfect a mechanic's lien and provide the required notice to the owner. Again, the answer will vary from state to state. Under

Inside:

the Alabama Uniform Condominium Act, the common areas of a condominium are not owned by the condominium association, which may be the entity that entered into the construction contract with the contractor now seeking to file a mechanic's lien. Rather, the common areas are owned in common by all of the unit owners. Each unit owner has an undivided interest in the common areas. So, each unit owner must be notified of the intent to file a lien and the lien must be filed against each unit owner.

To have a mechanic's lien released, the owner must satisfy the contractor's claim. In the case of a condominium, one, some, or all of the unit owners may have a compelling need or desire to have the lien released. For example, an owner of a single unit may have a pending sale that is being held up by the mechanic's lien. The individual unit owner may obtain a release of the lien against his or her unit by paying a proportionate share of the claimed lien. An issue may arise with respect to the proper determination of a unit owner's proportionate share. The condominium documents should provide guidance in this regard. In some instances, each unit owner owns an equal share; other times, when various units are of different sizes and configurations, the proportionate share is determined by the square footage of the particular owner's unit.

Clearly, a contractor must be aware that the procedures for perfecting a mechanic's lien are likely different and probably more burdensome and time consuming on a condominium project than on other types of construction projects. To avoid losing a mechanic's lien right, more time should be allowed for performing the necessary research to determine who the "owners" actually are and getting the statutorily required notice served on each of the owners of the condominium.

By J. David Pugh

Who Bears the Risk of the Owner's Non-payment in Your Contracts?

The Ohio Supreme Court recently announced that, in contracts between contractors and subcontractors, use of the term "condition precedent" in a pay-if-paid provision is sufficient to show the parties' intent to shift the risk of the owner's nonpayment from the contractor to the subcontractor.

In *Transtar Electric, Inc. v. A.E.M. Electric Svcs. Corp*., the contractor contracted with the subcontractor to provide electrical services on a project. The subcontractor fully performed its work under the subcontract. The contractor timely paid the subcontractor's first eleven invoices, but did not pay the final three invoices because it did not receive payment for the subcontractor's work from the project owner. The contractor argued that the payment provision of the subcontract, which stated that the contractor's receipt of payment from the owner was a "condition precedent" to the contractor's payment to the subcontractor, constituted a pay-if-paid provision, thereby shifting the risk of the owner's nonpayment to the subcontractor.

The subcontractor disagreed and sued the contractor for breach of contract and unjust enrichment, but the trial court sided with the contractor, finding that the subcontractor's claims failed as a matter of law. The intermediate appellate court, on the other hand, reversed the trial court's judgment, stating that in order to shift the risk of nonpayment to the subcontractor, a pay-if-paid provision must state "in plain language" that a subcontractor must look to the owner for payment.

The contractor appealed to the Ohio Supreme Court. The court first noted that Ohio courts enforce valid pay-if-paid provisions if the parties clearly demonstrate the intent to transfer the risk of nonpayment. The court found that by stating the contractor's receipt of payment from the owner was a "condition precedent," the parties demonstrated that intent. Because the term "condition precedent" clearly demonstrated the parties' intent, it was not necessary to use additional language to say the same thing.

The ultimate take-away from this case is not that the term "condition precedent" carries some magical power. Rather, it is a reminder that pay-if-paid provisions must be clear and unambiguous about the parties' intent to modify a fundamental custom between a contractor and subcontractor. In Ohio, as in many other states that enforce pay-if-paid provisions, the parties must clearly show that they intend for the risk of the owner's nonpayment to be transferred from the contractor to the subcontractor. Although stating that receipt of payment from the owner is a condition precedent to the contractor's payment to the subcontractor is one way of

achieving that effect, it is one of many. It may, however, be the most efficient means.

This case may also be seen as a warning to subcontractors. Subcontractors should not assume that a valid pay-if-paid provision will take up a full paragraph. Subcontractors should review payment provisions so that they do not inadvertently accept the risk of the owner's nonpayment—for example, its insolvency—where it was not specifically bargained for.

Lastly, keep in mind that not all states enforce pay-if-paid provisions. In fact, in one recent count, fourteen states have refused to enforce them. So be careful to know the law in the state of your project so as to avoid negotiating terms that may not be enforceable.

By Jonathan Cobb

Forum Selection Clauses – Can we Agree to Litigate in our Backyard?

One clause that typically does not receive the attention it deserves during contract negotiations is the forum selection clause. A forum selection clause specifies the **location** in which a dispute will be resolved. The advantages of selecting the location can be immense if a dispute arises. The location can strongly influence negotiating leverage, litigation costs, and may even be outcome determinative, particularly on procedural issues such as the statute of limitations (the length of time in which you can sue or be sued).

Because the location of the dispute can be so important during the litigation process, the question of whether, and to what extent, a forum selection clause is enforceable has been the focus of state legislatures across the country and the subject of recent court opinions, including the United States Supreme Court. At this point, almost half of the states have passed a statute expressly declaring a forum selection clause in construction contracts void and unenforceable if the location selected is not in the state where the project is being constructed. Courts have wrestled with balancing the location agreed between the parties and state policies set forth in those statutes.

That begs the question of whether it is worth spending time to analyze and negotiate forum selection clauses. The answer is an emphatic yes. Forum selection clauses will be enforced the majority of the time despite statutes to the contrary. However, the calculus to reaching that conclusion is complicated and depends on the facts associated with each project and whether the parties are in state court, federal court, or arbitration.

The simplest analysis occurs if the contract also includes an arbitration provision. If it does, a court will likely enforce the forum selection clause even if a state statute declares that such forum selection clause is void and unenforceable. This is true so long as the work involves any "interstate commerce," the movement of goods or services from one state to another. Under the current interpretation of that phase, it is extremely hard to prove that a construction project does not involve some interstate commerce.

Absent an arbitration provision or agreement to arbitrate, a dispute is headed to litigation in court. One would hope that litigation would be filed in the location specified in the forum selection clause. However, life, business, and litigation are never that simple and despite a forum selection clause, many plaintiffs choose to file suit in another location. The critical question in that situation is whether the lawsuit was filed in state court or federal court, and if in state court, whether the lawsuit can be removed to federal court.

If the matter is in federal court, or has been removed to federal court, the United States Supreme Court determined late last year in *Atlantic Marine Constr. Co. v. U.S. District Court*, that forum selection clauses are valid and enforceable unless "extraordinary circumstances unrelated to the convenience of the parties" existed. The party trying to avoid the enforcement of the forum selection clause has the burden of proving the extraordinary public-interest. However, *Atlantic Marine* did not address whether a state statue prohibiting the enforcement of a forum selection clause would impact the result.

At least one federal district court in Pennsylvania has recently addressed that question. In *KNL Construction, Inc. v. Killian Construction Co.*, the district court determined that a state statute does not "represent a compelling public policy interest" and therefore enforced the location set forth in the forum selection clause. That case involved a lawsuit by a subcontractor against a general contractor filed in state court in Pennsylvania concerning a project under construction in Pennsylvania. The subcontract included a forum selection clause mandating that any dispute be brought only in Western Missouri, advantageous to the

general contractor for several reasons. However, a Pennsylvania statute declared that such a forum selection provision in construction contracts was unenforceable. Thus, the general contractor removed the action to a federal district court in Pennsylvania and requested that the federal court enforce the forum selection provision in the subcontract despite the Pennsylvania statute. The court did so, setting a precedent that absent extraordinary circumstances, forum selection clauses will be enforced as long as there is federal court jurisdiction, regardless of state statutes to the contrary. Thus, it appears that state statutes will only control over forum selection clauses when an action is asserted in state court and there is no basis to remove the action to federal court and where the state court ignores the *Atlantic Marine* decision.

While the question of enforcement and legal arguments involving forum selection clauses are complicated, the take away is that a forum selection clause is worth the time and energy to analyze and negotiate at the front end of your contract, as it will be enforced in most instances and will often have a substantial impact on any dispute. In addition to the forum selection provision, related clauses covering the choice of law and arbitration are equally important and should be considered and negotiated in combination with the forum selection provision.

By D. Bryan Thomas

Texas Economic Loss Rule Bars General Contractor Recovery Against Architect

The Texas Supreme Court - in *LAN/STV v. Martin K. Eby Construction Co.* - applied its version of the economic loss rule to prohibit a general contractor from recovering from the architect the increased costs of delayed performance due to alleged errors in the plans and specifications. This case reinforces the importance of a thoroughly reviewed and negotiated prime contract.

The case arose from a project in which the Dallas Area Rapid Transit System ("DART") contracted with an architect, LAN/STV, to design a portion of DART's light rail system in Dallas. DART incorporated LAN/STV's plans, drawings, and specifications into the bid documents for the project.

During construction, Martin K. Eby Construction Company ("Eby"), the prime contractor, suffered numerous delays and resulting costs totaling $14 million, which it attributed to delays caused by errors in the plans and specifications. Eby sued LAN/STV for negligence and negligent misrepresentation, alleging that the plans and specifications contained errors that caused Eby to suffer significant economic damages. (Eby had also sued DART for breach of contract and negligent misrepresentations, but this dispute was resolved via settlement)

At trial, Eby was awarded $2.25 million plus interest. The intermediate court of appeals agreed with the trial court, and each party appealed to the Texas Supreme Court. That court viewed the sole issue on appeal as whether Texas' "economic loss rule" barred Eby's negligent misrepresentation claim. The Texas "economic loss rule" provides that "a plaintiff may not recover for his economic loss resulting from bodily harm to another or from physical damage to property in which he has no proprietary interest." Plaintiffs also may not recover economic losses resulting from their reliance on negligent misrepresentations not made directly to them or to a person acting on their behalf.

With this background, the court initially determined that actions for negligent performance of services are no different than those for negligent misrepresentations - in terms of the economic loss rule's application. Then, the court found that a contractor's negligent misrepresentation claim for purely economic losses based on plans and specifications should not lie against the architect, "a contractual stranger," but was instead only proper against the owner, "with whom the contractor is to reach an agreement." The court focused primarily on this "vertical" contract arrangement in rejecting the contractor's claim against the architect: "the owner contracts with an architect and with a general contractor, the general contractor contracts with subcontractors, a subcontractor may contract with a sub-subcontractor, and so on." As such, the court observed that if, for example, one subcontractor could recover economic losses from another subcontractor due to the other's negligence, "the risk of liability to everyone on the project would be magnified and indeterminate." And in doing so, the court emphasized the available, contractual protections a contractor can insist on including within in its contract with the owner, which

the owner can then include in its contract with the designer.

Not all jurisdictions follow this rule, so the importance of a sound understanding of damages rules in a particular jurisdiction and then a thorough review and negotiation of contract provisions in light of that information, is underscored by the *LAN/STV* court's decision for Texas projects. This case serves as an important reminder that, at least in Texas (as well as other jurisdictions with similar economic loss rules), absent contractual terms to the contrary, a contractor's only remedy for pure economic losses resulting from deficient plans and specifications may lie against the owner, not the designer.

By Slates Veazey

Executive Order Requires Federal Contractors to Report Labor Violations

President Obama recently signed an executive order that requires prospective federal contractors, including federal construction contractors, for covered procurements (*i.e.*, ones where the estimated value exceeds $500,000) to disclose in their proposals certain labor violations. The Executive Order, which is effective as of *July 31, 2014*, states, in relevant part:

> For [covered] procurement contracts for goods and services, *including construction*, [] each agency shall ensure that provisions in solicitations require that the offeror represent, to the best of the offeror's knowledge and belief, whether there has been any administrative merits determination, arbitral award or decision, or civil judgment, as defined in guidance issued by the Department of Labor, rendered against the offeror within the preceding 3-year period for violations of any of the [listed] labor laws and Executive Orders[.]

Among the labor laws listed in the Executive Order, violations which must be reported are: (1) the Davis-Bacon Act; (2) the Service Contract Act; (3) the Fair Labor Standards Act; (4) the Occupational Safety and Health Act of 1970; (5) the Migrant and Seasonal Agricultural Worker Protection Act; and (6) the National Labor Relations Act.

The Executive Order goes on to state that contracting officers will consider labor violations disclosed by offerors "in determining whether an offeror is a responsible source that has a satisfactory record of integrity and business ethics[.]" Additionally, the Executive Order provides that offerors will be given an opportunity to furnish information about any steps they have taken to correct violations of, or improve compliance with, the labor laws set forth in the Executive Order. Of note, the Executive Order also requires that contractors include in any subcontracts that contain an estimated value in excess of $500,000 a requirement that the subcontractor disclose to the contractor violations of enumerated labor laws that occurred within the preceding three-year period.

Although the Executive Order states that it is "effective immediately," it requires the Federal Acquisition Regulation (FAR) Council, in consultation with the Department of Labor, the Office of Management and Budget and "relevant enforcement agencies," to amend the FAR to implement many of the provisions contained in the Executive Order. Presumably, these FAR amendments will include the development of the solicitation and contract provisions necessary to make the rules applicable to contractors. In the meantime, however, there does not appear to be anything that would prohibit agencies from developing interim solicitation and contract provisions that implement the Executive Order.

In light of the reality that this Executive Order has immediate and potentially wide-ranging implications, federal contractors should promptly familiarize themselves with its content.

By Aron Beezley

Georgia Masonry Contractor Fined $288,300 for Form I-9 Violations

The Office of the Chief Administrative Hearing Officer ("OCAHO") recently issued a Final Decision and Order assessing $228,300 in civil penalties against M&D Masonry, Inc. ("M&D"), a Georgia masonry contractor who failed to properly complete Form I-9's for over 300 employees. The Form I-9 is the government form that an employer is required to complete on every new employee as part of the process of verifying that the employee is legally authorized to work in the United States.

This case arose in 2010 after a hiring foreman for M&D was quoted in an *Atlanta Journal Constitution* article as saying that the company was employing unauthorized workers on a project at the Atlanta airport. The Department of Homeland Security, Immigration and Customs Enforcement ("ICE") then commenced a worksite enforcement investigation and, in May 2010 issued a Notice of Inspection seeking the Form I-9's and other employment records for the current and former employees of M&D going back to May 2007.

At the conclusion of its investigation, ICE issued a Notice of Intent to Fine to M&D and then filed a complaint with OCAHO alleging that M&D had committed Form I-9 violations with respect to 364 individual employees. Specifically, ICE claimed that M&D had failed to prepare or present any Form I-9's with respect to 87 employees. ICE also alleged that, in 277 other instances, the Form I-9's were defective, either because M&D had failed to ensure that the employee had properly completed Section 1 of the Form I-9, or because M&D had itself failed to properly complete Section 2. ICE claimed that all of these violations were substantive Form I-9 violations (which, by statute, can result in penalties ranging from $110 to $1100 per individual) rather than technical or procedural infractions. Notably, however, ICE did not allege that M&D had engaged in the more serious violation of knowingly hiring or employing unauthorized workers.

ICE ultimately withdrew its allegations with respect to 25 of the 364 employees because those 25 employees had been terminated by M&D prior to ICE's May 2010 inspection. ICE then moved for summary disposition of its complaint, granted only when there are no "triable issues of material fact", requesting that the OCAHO Administrative Law Judge ("ALJ") impose a civil penalty of $981.75 against M&D for each of the remaining 339 alleged violations, totaling $332,813.25 in fines. M&D vigorously opposed ICE's motion, arguing that there were triable issues of fact both as to the alleged violations and the monetary penalties sought.

On March 11, 2014, the ALJ issued a Final Decision and Order, holding M&D liable for 338 of the 339 violations, including violations for 252 defective Form I-9's and for 86 instances where the Form I-9 was simply missing. The ALJ refused to assess the $332,813.25 in total penalties sought by ICE, but instead fined M&D $650 for each of the 252 defective Form I-9's and $750 for each of the 86 missing Form I-9's, for civil penalties totaling $228,300. M&D filed a request for administrative review, but, by Order dated April 16, 2014, the Chief Administrative Hearing Officer refused to vacate or modify the ALJ's Final Decision and Order.

This case serves as a useful reminder about the importance of complying fully with all Form I-9 requirements – even those that may seem insignificant – during the hiring process. Although some of the violations for which M&D was penalized involved Form I-9's that were unsigned, signed in advance by the employer, or completely missing, others resulted from seemingly less egregious failures in completing the forms. OCHOA made clear that all of these infractions would be considered substantive Form I-9 violations for the purpose of assessing penalties against an offending employer.

This case also makes clear that, in setting the penalties for Form I-9 violations, the government has a significant amount of discretion within the $110 to $1100 range established by the Immigration Reform and Control Act of 1986 ("IRCA"), the governing statute. In assessing the penalties against M&D, the ALJ noted that IRCA requires consideration of only five factors: (1) the size of the business of the employer; (2) the good faith of the employer; (3) the seriousness of the violations; (4) whether any of the individuals involved were unauthorized; and (5) any history of previous violations by the employer. However, both the ALJ and the Chief Administrative Hearing Officer, on M&D's request for review, indicated that other factors, such as the employer's ability to pay and the number of violations committed, might also be taken into consideration.

By F. Keith Covington

Bradley Arant Lawyer Activities

U.S. News recently released its "Best Law Firms" rankings for 2014. **BABC's Construction and Procurement Practice Group** received a Tier One National ranking, the highest awarded, in both Construction Law and Construction Litigation. The Birmingham, Nashville, Jackson, and Washington, D.C. offices received similar recognition in the metropolitan rankings.

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 2014. **Axel Bolvig**, **Ralph Germany**, **David Owen**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers, Wally Sears, Bob Symon**, and **David Taylor** were recognized by *Best Lawyers in America* in the area of Construction Law for 2014.

Mabry Rogers and **David Taylor** were recognized by *Best Lawyers in America* in the area of Arbitration and Mediation for 2014. **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. In addition, **Monica Wilson** and **Tom Lynch** were listed as "Rising Stars" in Construction Litigation and **Aron Beezley** was listed as a "Rising Star" in Government Contracts.

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.

Mabry Rogers was recently recognized as a 2014 BTI Client Service All-Star.

Brian Rowlson was appointed 2014 Secretary of ABC Carolinas' Education Committee in Charlotte.

David Taylor and **Bryan Thomas** recently spoke at the Tennessee Bar Association's Construction Section annual seminar on "The Great Debate: Do you Arbitrate?"

Michael Knapp has been hired as an adjunct faculty member for University of Alabama at Birmingham to teach Construction Liability and Contracts in their Engineering Department's graduate level Construction Management program.

Brian Rowlson became board certified as a specialist in Florida construction law by the Florida Bar.

Monica Wilson was appointed 2014 co-chair of ABC Carolinas' Excellence in Construction Committee for a second term. Monica also serves on ABC Carolinas' Charlotte Council.

David Taylor recently co-authored an article for the March/April edition of the ABA's *Probate and Property* magazine entitled "Arbitration and Other Forms of ADR in Real Estate Deals: The Process, Drafting Considerations, and Making ADR Provisions Work."

David Taylor was named the Chair of the Nashville Bar Association's newly formed Construction Law Section.

Brian Rowlson recently presented on the topic of "Managing Risk on a Construction Project" at the Hispanic Contractors' Association of the Carolinas member luncheon in July.

Luke Martin recently presented on the topic of "Comparing Commercial and Government Claims" to a client's government contracts group in Birmingham.

Eric Frechtel recently authored an article that was selected as the cover story in the June 2014 edition of Contract Management entitled "The Government Must Administer Its Contracts Fairly and Reasonably". The article details the recent U.S. Court of Appeals for the Federal Circuit's decision in Metcalf Construction Co. v United States, a case in which Eric, along with **Bob Symon,** served as counsel for Metcalf Construction Company, Inc. To access the article online, click here.

Mabry Rogers, **Bill Purdy**, and **Doug Patin** were recently named to *The International Who's Who of Business Lawyers 2013*. The list identifies the top legal practitioners in the world in 32 areas of business and commercial law. All three were recognized in the area of Construction Law.

David Taylor was named to the 2014 AGC of Middle Tennessee Legal Advisory Council.

Monica Wilson, **David Owen**, and **Ryan Beaver** attended the 2014 Energy Summit hosted by the Charlotte Chamber of Commerce, focusing on the roles that clean and safe energy, technology, and the government, play in the future of the industry.

Brian Rowlson was recently named co-chair of the newly formed Ethics and Legislative Affairs Committee of the North Carolina Bar's Construction Law Section.

David Taylor recently spoke in Phoenix, Arizona to the National Meeting of the Construction Specifications Institute (CSI) on "Allowances and Owner Contingencies."

David Taylor and **Bryan Thomas** spoke at the Firm's 13th annual Commercial Real Estate seminar in Nashville on Arbitration.

Brian Rowlson was recently named vice chair of the Associated Builders and Contractors of the Carolinas (Charlotte Division) Education Committee for 2015.

David Taylor spoke in San Diego to the ICSC Legal Conference on "Using Arbitration in Commercial Real Estate disputes."

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.

David Taylor's article in the March, 2014 ABA Probate and Property magazine was published—"Using Arbitration and Mediation in Real Estate Disputes".

David Taylor and **Bryan Thomas** spoke at the Tennessee Municipal Attorneys Annual meeting in Chattanooga on June 4th on "Construction Bond and Avoiding Disputes."

In April 2014, **Aron Beezley** authored for Law360's Government Contracts Expert Analysis section an article on the limited remedies that are available to concession-contract bid protesters that bring suit at the U.S. Court of Federal Claims.

On April 23, 2014, **Jerry Regan**, **Tom Lynch**, and **Aron Beezley** gave a presentation to the Associated General Contractors of America's Young Constructors Forum on Understanding the Fundamentals of Joint Ventures in Construction.

David Taylor's article in the "Student Housing" Magazine on "Change Orders" was published in April of 2014.

Arlan Lewis was a Co-Chair of the 2014 Annual Meeting of the ABA Forum on the Construction Industry which was recently held in New Orleans, Louisiana on April 10-12, 2014. The program theme was "Beat the Blues: Counseling the Client during the Course of the Ongoing Construction Project" and focused on the interplay of the legal, business, and relationship issues at stake when trouble arises in the middle of a construction project. Arlan is also currently serving a two-year term as the Chair of the Project Delivery Systems Division (Div. 4) of the Forum. The Forum on the Construction Industry is the largest organization of Construction lawyers in the United States.

David Taylor and **Bryan Thomas** spoke at the National Meeting of the Construction Specification's Institute held in Nashville on "The Nuclear Option: Terminating a Contractor for Cause."

Ryan Beaver and **Monica Wilson** recently co-authored an article in the Charlotte Business Journal entitled "Meeting Our Road Needs," addressing the challenges and opportunities for the construction industry to meet North Carolina's growing infrastructure needs.

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*.

David Pugh recently spoke at a seminar on the topic of "Prompt Pay" hosted by the University of Alabama Facilities Department for architects, contractors and subcontractors working on University of Alabama projects.

David Pugh gave a "Legal Update" on cases of interest to construction industry at the ABC Alabama, Georgia and Mississippi joint state convention in Destin, Florida on Friday, July 11, 2014.

David Pugh will speak at and moderate several panels at the "Alabama Facilities Directors and Constructors Conference" to be held in Montgomery, Alabama on September 24-25, 2014

BABC lost another of its construction lawyers to a strong client, our loss and the client's gain. We will miss **Jonathan Head's** leadership in Birmingham and nationally, but wish him the best of luck in a new role.

The lawyers of Bradley Arant recently completed a complimentary legal seminar on "Managing Risk on a Construction Project" at various locations in May and June. Thanks to all those who attended – we hope that the presentations were informative and helpful.

For more information on any of these activities or speaking engagements, please contact Terri Lawson at 521-8210.

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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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