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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:

Change Order Releases May Doom a Government Contractor's Claim. but the Facts May Rescue It

In *Meridian Engineering Company v. United States*, the U.S. Court of Federal Claims (the "CFC") considered whether two change order releases prevented the contractor from recovering additional costs arising from flood events.

During the construction of a flood control project in Arizona for the U.S. Army Corps of Engineers (the "Government"), Meridian Engineering Company (the "Contractor") experienced various delays for which it sought compensation. The parties executed certain bilateral modifications, including modifications R8 and R17, which dealt with delays associated with a new access ramp and pertaining to survey issues, respectively. Both modifications included the following release language:

> [T]his adjustment constitutes compensation in full on behalf of the Contractor … for all costs and markups directly or indirectly attributable for [sic] the change ordered, for all delays related thereto, for all extended overhead costs, and for performance of the change within the time frame stated.

The parties subsequently litigated various claims pursued by the Contractor, including a delay claim relating to flood events.

After trial, the CFC denied the flood claim based on the Government's "accord and satisfaction" defense that the release language in modifications R8 and R17 barred the claim. The Contractor appealed the decision, and the U.S. Court of Appeals for the Federal Circuit (the "Federal Circuit") vacated and remanded the trial court's decision. The appellate court instructed the CFC to consider whether there was a meeting of the minds between the parties concerning the resolution of the flood claim and whether the subject

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matter of modifications R8 and R17 covered the flood claim.

On remand, the CFC first identified the four elements of an accord and satisfaction defense: (1) proper subject matter; (2) competent parties; (3) a meeting of the minds of the parties; and (4) consideration. The CFC then analyzed the two elements in dispute.

As to subject matter, the CFC determined that "flood-event damage claims arising in the future are simply too attenuated from the access ramp and survey delays to be within the subject matter of [the] releases." Regarding the second issue, the CFC concluded that "there was no meeting of the minds … because the flood-event damages claim continued to be negotiated after the releases were issued, as evidenced by a draft modification R33, the government's request for and Meridian's subsequent submission of an REA including a claim for flood events, and the government's subsequent consideration of that REA."

The CFC's reliance on draft modification R33 is particularly noteworthy. During the initial trial, the CFC dismissed the draft modification as irrelevant because the Contractor had been unaware of it. The Contractor did not learn of its existence until receiving the document during discovery in the litigation. But the Federal Circuit rejected that fact as immaterial. It instructed the CFC on remand "to consider whether the parties reached a meeting of the minds on the flood event claims *in light of all of the evidence*." (emphasis added). The CFC described the Federal Circuit's instructions further as follows:

> [A]n accord and satisfaction defense does not require evidence of proposed modifications negotiated between the parties. Instead, as the court noted, "Our precedent on the meeting of the minds inquiry accepts a wide range of evidence in its fact-specific consideration" of meeting of the minds, and particularly that it was necessary to take into account "additional evidence on record showing that the [g]overnment directed Meridian to submit revised estimates for the flood claim on multiple occasions after the execution of the bilateral modifications [that contained the releases].

Based on that guidance, the CFC found that even though the Contractor had not been aware of its existence, the fact that the Government had drafted a modification for the flood claim served as evidence that the parties had *not* reached a meeting of the minds regarding that claim through the earlier modifications.

There is an important lesson here. When the Government identifies earlier change order (or progress payment) releases in an effort to bar claims, the contractor should examine the facts, including the subject matter of the earlier modifications and whether the parties reached a meeting of the minds concerning the pursued claims. The contractor may actually discover confirmatory critical evidence in a FOIA request or in litigation. Perhaps, unknown to the contractor, the Government continued to consider the merits of the contractor's claims, notwithstanding the earlier modifications and releases that form its legal defense. Such evidence may help rescue a contractor's claim. Generally, the same principle holds true between private parties (owner-contractor or contractor-subcontractor) as to whether an "accord and satisfaction" as to a particular claim arises from release language in other change orders.

By: Eric Frechtel

Insufficient Disclosure: The Ninth Circuit Provides Additional Guidance Regarding What an Arbitrator Needs to Disclose Related to Potential Bias

Parties that agree to arbitrate want the ability to make informed decisions regarding any potential bias that a particular arbitrator might have before agreeing to that arbitrator. In a recent decision, the United States Court of Appeals for the Ninth Circuit provided additional guidance regarding the type of information related to potential bias that arbitrators must disclose to parties at the inception of the arbitration.

City Beverages, LLC d/b/a Olympic Eagle Distributing ("Olympic Eagle") and Monster Energy Co. ("Monster Energy") signed an agreement for Olympic Eagle to serve as the exclusive seller of Monster Energy products within a specified region. Following Monster Energy's termination of that distribution and sales agreement, the parties proceeded to arbitration to determine whether Olympic Eagle was

entitled to any protection from Monster Energy's termination of the agreement under Washington law.

At the outset of the arbitration process, the parties selected an arbitrator from JAMS, the arbitration organization specified in the parties' agreement. That arbitrator provided a multi-page disclosure statement, which provided, in part, that: (1) the arbitrator practiced with JAMS, (2) the arbitrator, as a JAMS neutral, had an economic interest in the overall financial success of JAMS, and (3) the parties should assume that one or more of the neutrals who practice with JAMS has participated in an arbitration, mediation, or dispute resolution proceeding with one of the parties to the proceeding before or would do so in the future. The arbitrator also disclosed his previous arbitration activities that directly involved Monster Energy, including an arbitration where the arbitrator issued an award requiring Monster Energy to pay $400,000. The arbitrator did not disclose, however, that he was a JAMS co-owner or that JAMS had administered 97 arbitrations for Monster Energy over the preceding five (5) year period due to the fact that Monster Energy's form contract contained a dispute resolution provision calling for arbitration with JAMS.

Following the arbitration hearing, the arbitrator issued an award finding that Olympic Eagle was not entitled to protection under Washington law and awarded Monster Energy its attorneys' fees. When Monster Energy filed a petition in federal court to confirm the award, Olympic Eagle, who had by then become aware of the information regarding the arbitrator's JAMS ownership interest and Monster Energy's frequent use of JAMS, cross-petitioned seeking to vacate the award based on the arbitrator's failure to disclose that information. When the district court confirmed the award and denied Olympic Eagle's cross-petition to vacate the award, Olympic Eagle appealed to the Ninth Circuit.

The Ninth Circuit analyzed Olympic Eagle's appeal under the Federal Arbitration Act, which allows a court to vacate an arbitration award where there was evident partiality in the arbitrator(s). Before addressing whether the arbitrator's ownership interest in JAMS presented evident partiality, the Court first considered whether Olympic Eagle had waived its evident partiality claim when Olympic Eagle did not object based on the arbitrator's initial disclosure that the arbitrator had an economic interest in JAMS' success and that Olympic Eagle or Monster Energy may have used JAMS in the past or would do so in the future. The Ninth Circuit stated that the key question is whether Olympic Eagle had "constructive knowledge" of the arbitrator's potential non-neutrality. The Court found that Olympic Eagle lacked "constructive knowledge" of the "key fact" (the arbitrator's JAMS ownership interest) because such information was not available through public sources, and it was not evident that Olympic Eagle could have discovered such information prior to the arbitration.

Moving to the question of whether the arbitrator's JAMS' ownership interest created "evident partiality" sufficient to support vacating the arbitration award, the Court relied on the U.S. Supreme Court's decision in *Commonwealth Coatings Corp*., in which Justice White noted that "when an arbitrator had a substantial interest in a firm which has done more than trivial business with a party, that fact must be disclosed." Therefore, the Court had a two-point inquiry: (1) whether the arbitrator's ownership interest was sufficiently substantial; and (2) whether JAMS and Monster Energy were engaged in non-trivial business dealings. The Ninth Circuit found that the arbitrator's position as a co-owner of JAMS, which entitled him to a share of JAMS' profits from all arbitrations the organization conducts, was sufficiently substantial and different from that of other JAMS arbitrators who merely received compensation from the arbitrations those arbitrators personally conducted. The Ninth Circuit also found that JAMS' administration of 97 arbitrations for Monster Energy over the preceding five (5) years created an impression of bias, should have been disclosed by the arbitrator, and supported Olympic Eagle's argument that the arbitrator's award should be vacated.

In closing its opinion, the Ninth Circuit was careful to note that its ruling does not require automatic disqualification or recusal by the disclosing arbitrator – only disclosure prior to conducting an arbitration concerning (1) the arbitrator's ownership interest, if any, in the entity conducting the arbitration, and (2) whether the entity conducting the arbitration and one of the parties to the arbitration have engaged in non-trivial business dealings. Once the arbitrator has disclosed such information, the parties can then make

their own informed decision about whether a particular arbitrator is likely to be neutral.

One is left to wonder whether the arbitrator would have been more specific if Olympic Eagle had inquired of him as to what his "economic interest" was, specifically, and whether in fact JAMS had other arbitrations (say within the last 5 years) where either Monster Energy or Olympic Eagle had been parties. You and your attorney should consider, when viewing a potential arbitrator's disclosures, whether they are unclear or too general with respect to what you deem a "non-trivial" relationship or matter.

By: Justin T. Scott

Mutual Mistake May Support Equitable Adjustment

In a recent decision from the Armed Services Board of Contract Appeals (the "Board"), the Board held that the Air Force (or "the government") would bear the cost associated with a mutual mistake of fact between DynCorp International LLC ("DynCorp") and the Air Force.

The contract between DynCorp and the Air Force required DynCorp to perform aircraft repair and maintenance at a fixed-price for various Naval Air Stations. During the bid stage the government asked offerors to rely on historical data provided by the Air Force to establish a Cost Per Flight Hour ("CPFH") rate for each Naval Air Station. The CPFH rate was a significant factor in the offerors' bids because it determined how many air plane parts would be purchased for each air station. The historical data that offerors relied on was contained within "Usage Reports." The Air Force relied on a subcontractor to generate the data in the Usage Reports, which did not contain a disclaimer as to their accuracy. The Request for Proposal that DynCorp relied on did not allocate the risk of inaccurate data to the offeror.

DynCorp was awarded the contract. However, during performance, DynCorp experienced significant and unanticipated cost growth associated with work at one of the Naval Air Stations. The contractor investigated why it was experiencing cost growth and discovered that one of the Usage Reports it had relied on to calculate its CPFH had significant errors. These errors caused DynCorp to significantly underestimate the CPFH and in turn underestimate the amount of airplane parts needed for one of the Air Stations. It was not possible for DynCorp to have discovered the Usage Report's error while preparing its proposal, because even the government conceded that finding the data error was like finding a "needle in a hay field." DynCorp submitted a certified claim to the Air Force reflecting increased parts costs at one of the Air Stations, and the reason behind the increase. However, the Air Force denied that claim. DynCorp appealed the denial to the Board.

The Board determined that the Air Force's subcontractor had made the error in the historical data set DynCorp used to prepare its proposal, and that the parties had made a mutual mistake of fact based on that mistaken information. The Board stated that a mutual mistake occurs when (1) the parties to the contract were mistaken in their belief regarding a fact; (2) that mistaken belief constituted a basic assumption underlying the contract; (3) the mistake had a material effect upon the bargain; and (4) the contract did not put the risk of the mistake on the party seeking reformation. The Board determined that DynCorp satisfied each of these elements by clear and convincing evidence entitling it to reformation of its contract.

For the first element, the Board relied on testimony from the government's Contractor Operated and Maintained Base Supply program manager, DynCorp's director of supply chain, and a representative of the subcontractor who created the Usage Reports. All three individuals testified that the Usage Reports contained significant errors. Therefore, the Board determined that both parties held mutual mistaken beliefs regarding the validity of the Usage Report data at the time of contracting.

Regarding the second element, the Board relied on the fact that to comply with the Request for Proposal and bid effectively, DynCorp had to rely on the Usage Reports to create a CPFH rate. Moreover, "DynCorp expressly stated in its proposal that its pricing for contract was 'based on usage data provided in the Bidder's Library,' and that DynCorp 'assume[d] the data provided is correct.'" The Board found that the validity of the Usage Report data was a mistaken belief which constituted a basic assumption underlying the contract because of how important the data was to DynCorp to produce its bid proposal.

The Board made clear that a mutual mistake is material only "if the resulting imbalance in the agreed exchange is so severe that the contractor cannot fairly be required to carry it out." Because the mistake affected the CPFH, which in turn severely and negatively affected DynCorp's proposal pricing for airplane parts, the Board determined that the resulting price imbalance between expectation and reality was so severe that it would be unfair to require DynCorp to carry out its obligations under the original contract.

For the final element, the Board found DynCorp did not assume any risk of inaccuracy in the Usage Reports, and the government did not expressly allocate any risk of errors in its solicitation documents. Because neither DynCorp nor the Air Force knew of the error, the Board determined that it was appropriate to allocate that risk to the "relatively more culpable party best placed to mitigate the risk." The Board found the Air Force to be the more culpable party because ultimately it was the Air Force who controlled the data set that DynCorp relied on to create its bid proposal.

This decision serves as a reminder as to a legal theory that can be utilized under the appropriate circumstances. Contractors and owners alike should take care when negotiating their contracts to ensure that they are resting on the same, accurate set of facts. If there is ambiguity or uncertainty as to certain facts, it could give rise to a reformation of the contract if the "mutual mistake" legal theory can be established. Of course, construction participants at all levels should be alert for clauses that place the risk of mistakes in the proposal or bid documents on the proposing party, and, in the face of such language, either forego the proposal/bid, add a contingency to address it, or raise the issue in a pre-proposal/bid question to the awarding entity.

By: Connor Rose

Owner not Barred from Recovering Damages After Terminating Architect for Convenience

A recent California decision provides a somewhat surprising conclusion: when terminating for convenience, an owner may still recover damages. In *Chinese Hospital Association v. Jacobs Engineering Group, Inc.*, the U.S. District Court for the Northern District of California denied an architect's motion for summary judgment to dispose of an owner's claims, finding that the owner was not barred from recovering damages even though it had terminated the architect's contract for convenience.

The design contract had a termination "for cause" provision and a termination for "convenience and without cause" provision. The for cause provision specifically reserved the owner's right to recovery remedies, stating in pertinent part "Owner may without prejudice to any other remedy terminate the employment of Architect." Unlike the for cause provision, the convenience termination provision was silent as to such a termination's effect on the availability of remedies to the owner.

The architect argued that the silence in the convenience provision meant that a termination for convenience negated the owner's ability to pursue "any other remedy;" arguing that otherwise, that part of the for cause termination provision would be meaningless. The court rejected that argument. The court reasoned that even if the "without prejudice to any other remedy" language in the for cause provision expressly provided a remedy, under California law a contract provision that expressly provides a remedy for breach must clearly indicate an intent to make that remedy exclusive. The court found that the architect had not identified anything in the contract indicating an intent to make the for cause termination provision the exclusive method of termination for obtaining a separate remedy. The court also found that the architect did not establish that the for cause termination provision actually contained a remedy, because stating that the termination was "without prejudice" as to remedy is not the same as providing a remedy.

The court also found that the owner was not precluded from recovery for a second reason: the parties entered into a termination agreement, in which the owner reserved its right to recover damages arising out of the contract. The architect argued that this provision of the termination agreement only reserved the owner's remedies that existed under the contract. The court did not find the architect's arguments sufficiently convincing, noting that, at best, the no waiver provisions in the termination agreement created ambiguity, which did not need to be resolved in favor

of finding that the owner had waived its right to damages.

All parties to a contract—whether owner, prime contractor, designer, or subcontractor—should pay careful attention to the termination provisions in their contracts. This recent decision also reflects the importance of protecting one's rights under a termination agreement should a termination (of any kind) occur. Parties to a termination agreement should not assume that they are free and clear of liability under the contract unless the termination agreement expressly provides for such release.

By: Lee-Ann Brown

GAO Issues Rare Advisory Opinions

Recently, the Government Accountability Office ("GAO") issued two advisory opinions relating to protests currently before the U.S. Court of Federal Claims ("COFC"): AECOM Mgmt. Servs., Inc.–Advisory Opinion, B-417506.12 and PAE-Parsons Global Logistics Servs., LLC–Advisory Opinion, B-417506.13. The decisions themselves do not involve unique issues, but their procedural postures are noteworthy because the GAO does not often issue advisory opinions.

What is a GAO "Advisory Opinion?"

The GAO's Bid Protest Regulations specifically permit the GAO to issue advisory opinions at the request of a court under its "Effect of Judicial Proceedings" rule: GAO will dismiss any case where the matter involved is the subject of litigation before, or has been decided on the merits by, a court of competent jurisdiction. However, GAO may, at the request of a court, issue an advisory opinion on a bid protest issue that is before the court.

Generally, advisory opinions are not necessary, because most bid protests that are adjudicated by both the GAO and the COFC do not go to the COFC unless and until the GAO has issued a written decision. There are, however, exceptions, particularly in large, multi-party protests, where the decision by only one of several protesters to go to COFC can force all the other parties—other protesters, intervenors, and the government—to switch protest forum in mid-stream because of the GAO's "Effect of Judicial Proceedings" rule.

The reason for the GAO rule allowing advisory opinions is, thus, one of simple efficiency. As a matter of long-standing practice, the GAO will not consider a protest where "the matter involved is the subject of litigation before a court of competent jurisdiction" because the court's decision could render the GAO's decision academic. That rule traces its roots at least as far back as the GAO's 1971 Interim Bid Protest Procedures and Standards, which stated, "The Comptroller General may refuse to rule on any protest where the matter involved is the subject of litigation before a court of competent jurisdiction."

In 1975, however, the GAO amended its Bid Protest Procedures to clarify that it did not need to dismiss a protest that was also the subject of court litigation "where the court requests, expects, or otherwise expresses interest in the Comptroller General's decision." In 1995, when updating its rules to implement the Federal Acquisition and Streamlining Act of 1994, the GAO named the process of giving its opinion to a court an "advisory opinion."

What happened in AECOM and PAE-Parsons to make these advisory opinions noteworthy?

Both the AECOM and PAE-Parsons court cases involved multi-party protests at the GAO challenging U.S. Army awards of indefinite delivery/indefinite quantity ("IDIQ") contracts and task orders under the LOGCAP V solicitation for multiple geographical combatant commands, Army service component commands, and Afghanistan. DynCorp filed the first of the protests but the GAO denied it. Shortly thereafter DynCorp filed a complaint at the COFC.

DynCorp filed its complaint four days before the GAO was due to issue decisions in the other pending protests involving this same solicitation, which had been filed by AECOM, PAE-Parsons, and Fluor International, Inc. There is no reason to think that, in filing a complaint at the COFC, DynCorp intended to put other protesters at a disadvantage. Nevertheless, the practical effect of its decision to go to COFC was that, on August 7, two days before the GAO's decisions would have been due, the GAO dismissed the pending protests of AECOM, PAE-Parsons, and Fluor under the "Effect of Judicial Proceedings" rule.

The GAO's advisory opinion option, thus, softens the otherwise harsh effect of the dismissal rule by

giving a court the option of asking the GAO to finish the job it had almost completed, i.e., writing opinions for the pending protests. COFC, of course, is not bound by the GAO's opinions, but may nevertheless find its analysis persuasive.

Since the dismissal of their GAO protests, AECOM, PAE-Parsons, and Fluor have all filed protests at the COFC. Rather than lose the benefit of the GAO's analysis, the judge who is presiding over all the cases has requested advisory opinions in each company's prior GAO protest, two of which the GAO has now issued, as noted above.

Why does GAO's advisory opinion process matter?

Large, multiple-award IDIQ contracts are a fact of life now in federal procurement. As a result, a single disappointed offeror in a large, multi-party procurement dispute can force—either intentionally or not—all other parties to change venue at any time before the GAO has issued a final decision. To the degree that the GAO's advisory opinion is persuasive, it can help the court and the parties avoid re-inventing the wheel entirely by re-arguing everything from scratch at significant additional expense and time.

For these reasons, any protester or intervenor forced by another party to litigate a nearly resolved GAO protest at the COFC should consider filing a motion to request the court seek an advisory opinion from the GAO for the unfinished protest. In addition, any protester hoping to avoid an unfavorable GAO decision by going to COFC before the GAO finishes its review should bear in mind that the other parties might ask COFC to request that the GAO finish the job.

By: Patrick R. Quigley

Safety Moments for the Construction Industry

Many construction workers perform work on and around scaffolding. Workers performing work on and around scaffolding are exposed to falls, electrocutions, and falling object hazards, among other hazards.

Workers should wear hard hats when working on, under, or around a scaffold. Workers should also wear sturdy, non-skid work boots and use tool lanyards when working on scaffolds to prevent slips and falls and to protect workers below. Workers should not work on scaffolding covered in ice, water or mud.

Workers should not exceed the maximum load when working on scaffolds. Nor should they leave tools, equipment, or materials on the scaffold at the end of a shift. Workers should only climb scaffolding from access points designed for reaching the working platform. Tools and materials should be hoisted to the working platform once the worker has climbed the scaffold.

If personal fall arrest systems are required for the scaffold you will be working on, thoroughly inspect the equipment for damage and wear. Workers should anchor the system to a safe point that won't allow them to free fall more than six feet before stopping.

Bradley Arant Lawyer Activities

Ranked the Top Law Firm in the U.S.
for **Construction Law** 2018 & 2020

In U.S. News' 2020 "Best Law Firms" rankings, **Bradley** was named "Law Firm of the Year" for Construction Law for the second time in three years.

U.S. News and World Report 2020 Best Law Firms ranked **Bradley's Construction and Procurement Practice Group** a Tier One National in Construction Law and in Construction Litigation. Birmingham, Charlotte, Houston, Nashville, Jackson, and Washington,

D.C. offices received Tier One Metropolitan recognition for Construction Law.

Chambers USA ranks lawyers in specific areas of law based on direct feedback received from clients. **Bill Purdy, Mabry Rogers** and **Ralph Germany** are ranked in *Litigation: Construction*. **Ryan Beaver**, **Doug Patin, Bob Symon** and **Ian Faria** are ranked in *Construction*. The firm's Washington D.C. office is recognized as a "Leading Firm" for Construction Law.

Jim Archibald, Ryan Beaver, Axel Bolvig, David Owen, David Pugh, Mabry Rogers, Walter Sears, Monica Wilson Dozier, Jim Collura, Ian Faria, Jared Caplan, Ralph Germany, Jon Paul Hoelscher, Bill Purdy, David Taylor, Eric Frechtel, Douglas Patin, Mike Koplan, and Bob Symon have been recognized by *Best Lawyers in America* in the area of Construction Law for 2020. **Jeff Davis** was recognized for Product Liability-Defendant.

Jim Archibald, **Michael Bentley**, **Axel Bolvig**, **Ian Faria**, **David Pugh, David Owen, Mabry Rogers,** and **Bob Symon** were recognized by *Best Lawyers in America* for Litigation - Construction in 2020. **Keith Covington** was recognized by *Best Lawyers in America* in the areas of Employment Law - Management, Labor Law - Management, and Litigation - Labor and Employment. **John Hargrove** was recognized in the area of Litigation - Labor and Employment. **Frederic Smith** was recognized in the area of Corporate Law.

Mabry Rogers, Doug Patin and **David Taylor** were also recognized by *Best Lawyers in America* for Arbitration for 2020.

In *Best Lawyers in America* for 2020, **David Taylor** was named Lawyer of the Year in Construction for Nashville, TN, **Mabry Rogers** was named Lawyer of the Year in Construction for Birmingham, AL, and **Ralph Germany** was named Lawyer of the Year in Construction for Jackson, MS.

Jim Archibald, Axel Bolvig, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, Ian Faria, Doug Patin, Ralph Germany, David Taylor, and **David Owen** were named *Super Lawyers* in the area of Construction Litigation. **Jeff Davis** was named Super Lawyer for Civil Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Luke Martin**, **Carly Miller**, **Chris Selman**, **Katie Blankenship**, **Bryan Thomas**, **Andrew Stubblefield**, **Aman Kahlon**, **Amy Garber,** and **Jackson Hill** were listed as "Rising Stars" in Construction Litigation. **Ryan Kinder**, **Justin Scott**, and **Mary Frazier** were recognized as "Rising Stars" in Business Litigation.

Jim Archibald, **Axel Bolvig**, **Jim Collura**, **Keith Covington**, **Ian Faria**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, **Bob Symon**, and **David Taylor** have been rated AV Preeminent attorneys in Martindale-Hubbell.

Jim Archibald, Axel Bolvig, Ian Faria, Eric Frechtel, Mabry Rogers, Bob Symon, David Taylor, **Bryan Thomas** and **Michael Knapp**, have been selected as Fellows of the Construction Lawyers Society of America (CLSA), and **Carly Miller** and **Aman Kahlon** were selected as Associate Fellows of the CLSA. **Mabry Rogers** was elected as the 2019 President (CLSA). **David Taylor** received the CLSA Community Service Award.

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

Mabry Rogers was recently named as a "Thought Leader" in *Who's Who Legal* for 2019. **Jim Archibald, Ian Faria, Doug Patin, David Pugh, Bill Purdy, Mabry Rogers and Bob Symon** were also recently listed in the *Who's Who Legal: Construction 2019* legal referral guide. **Mabry Rogers** has been listed in *Who's Who* for 21 consecutive years.

Axel Bolvig, **Stanley Bynum**, and **Keith Covington** 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.

Sarah Osborne was recently elected as Secretary and Treasurer of the Construction Section of the Alabama State Bar.

Abba Harris was recently elected as Vice President of the Birmingham Chapter of the National Association of Women in Construction. She had been serving on the Board of Directors prior to her election.

Ian Faria, **Jon Paul Hoelscher** and **Andrew Stubblefield** became board certified by the Texas Board of Legal Specialization in Construction Law. Only about 100 or so attorneys out of more than 100,000 licensed Texas attorneys hold the certification. **Brian Rowlson** is board certified in Florida in the field of Construction Law.

David Taylor was named to the Board of Directors of the Nashville Conflict Resolution Center.

Michael Knapp was appointed to the Board of Trustees for the Patriot Military Family Foundation, a group that raises money and awareness to benefit wounded veterans and their families.

David Taylor was reappointed to the Executive Committee of the Tennessee Bar Association's Construction Law Committee. He was also recently reappointed to the Legal Advisory Counsel of the Associated General Contractors of Middle Tennessee.

Lee-Ann Brown recently joined the Legislative Committee of the Associated Builders & Contractors of Washington, DC.

Chris Selman serves on the Board and **Carly Miller** and **Aman Kahlon** are currently serving as Members of the Young Professionals of the Alabama Chapter of the Associated Builders & Contractors.

Abba Harris recently participated in the 2019 class of Future Leaders in Construction with the Alabama Chapter of the Associated Builders & Contractors.

Kyle Doiron was named as a member of the Associated General Contractors' Construction Leadership Council for Nashville.

Jon Paul Hoelscher recently concluded his service as Chair of the Houston Bar Association Construction Law Section after serving on the council for seven years.

On December 5, 2019, **David Taylor** spoke on "Innovative Ways to Recover Legal Fees in Construction Disputes" in New York at the Construction Lawyers Society of America's Mid-Winter Symposium.

Eric Frechtel presented on November 13, 2019 on "Construction Contracts and Contracting Issues" to representatives from the Children's Hospital in Colorado.

On November 8, 2019, **Kyle Doiron** presented the yearly Caselaw Update at the Annual Fall Meeting of the Tennessee Association of Construction Counsel in Nashville, TN.

As past chair of the Excellence in Construction Committee with Associated Builders and Contractors of the Carolinas, **Monica Dozier** served as a 2019 committee member and judge for ABC Carolinas' Excellence in Construction Competition. Award winners were announced at the Carolinas Excellence in Construction Gala on November 7, 2019, in Charlotte, which was attended by **Michael Knapp** and **Anna-Bryce Flowe**.

Monica Dozier moderated a panel regarding corporate entities as drivers of renewable energy policies and procurements at the Southeast Renewable Energy Summit in Atlanta, GA on October 29, 2019. **Aman Kahlon** also attended the Southeast Renewable Energy Summit.

David Taylor and **Kyle Doiron** presented an update on Tennessee Lien Law and Retainage to the American Subcontractors Association in Nashville, TN on October 17, 2019.

Bob Symon and **Amy Garber** conducted a multi-session training entitled "Ethical Business Practices and Compliance with the FAR" for a client on October 16 and 22 and November 1 and 6, 2019.

Monica Dozier spoke at the E4 Carolinas Energy Policy Summit in Charlotte, NC on October 4, 2019 regarding recent changes and the evolution of the energy landscape in the Carolinas.

On September 13-14, 2019, **Mabry Rogers** presided over the annual meeting of the Construction Lawyers Society of America (CLSA) in Colorado Springs, CO.

Katie Blankenship attended the ICC International Arbitration Conference, which focused on disputes in the construction and energy sectors in Latin America, in September 2019 in Colombia.

On September 6, 2019, **Jared Caplan** presented at the annual meeting for the Texas Society of Anesthesiologists.

Matt Lilly spoke at the CFO and Industry Expert Roundtable for the Charlotte Chapter of the Construction Financial Management Association on August 22, 2019.

On July 29, 2019, **Slates Veazey** spoke on insurance coverage and indemnity issues at a Construction Law Bootcamp seminar for the *National Business Institute*.

Jim Archibald, **Alex Thrasher**, and **Jackson Hill** recently edited and updated the "Contractor Rights and Remedies When the Owner Breaches" chapter of the *Construction Law Handbook*.

NOTES

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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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