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Fourth Quarter 2022

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Under Promise, Over Deliver: Sub Found Liable for False Updates

A Connecticut appellate court recently issued a reminder to contractors throughout the US that it is always better to "under promise and over deliver" when it comes to setting schedule expectations for customers on a project. As the court found that a subcontractor's false promises to a general contractor about the status and delivery of materials on a project could constitute more than a breach – the statements were unfair and deceptive trade practices and subjected the subcontractor to significant liability.

The case of *United Concrete Products, Inc. v. NJR Construction, LLC, et al.*, arose out of a bridge replacement project let by the Connecticut DOT in December 2015. The DOT awarded NJR the project. The prime contract included an incentive for reopening the roadway to traffic prior to project completion. NJR hired United as a subcontractor to provide some of the concrete elements for the project including ten prestressed deck beams for the bridge. NJR put United on notice of the bridge opening incentives (and disincentives) in NJR's contract with the DOT.

In March 2016, NJR contacted United for input on the delivery schedule of the beams as well as the overall project schedule. United assured NJR that it stood ready to commence production of the beams. Based on this representation, NJR submitted its baseline schedule to the DOT with an August 31, 2016 completion date. Internally, NJR was confident it could reopen the route across the bridge to traffic in mid-July and take advantage of the incentive bonus.

NJR commenced work on the project in spring 2016. In May, NJR's project manager emailed United's vice-president about the pour schedule for the beams and was advised "[t]he prestress will be complete by [May 27, 2016] if all strip strengths are met each day." Relying on this statement, NJR scheduled delivery of the beams for June 29, 2016. On June 13, 2016, NJR's PM followed up with a United representative who assured him that the beams were ready for a dry fit test in preparation for the June 29, 2016 delivery. Nonetheless, two days before the scheduled delivery, United notified NJR that, in fact, none of the beams were ready. It later came to light that only three beams were cast as of the scheduled delivery date and all three had failed state inspection; United representatives had overpromised and not delivered at all. Ultimately, United delivered the beams a month late – which meant NJR forewent its entire incentive and incurred additional expenses and disincentive penalties from the DOT. At project closeout, NJR withheld a portion of United's payment because of the delays and its lost incentive, and United filed suit to recover the balance on its invoices.

NJR counterclaimed for, among other things, violations of Connecticut's Unfair and Deceptive Trade Practices statute based on United's false statements about the status of the beams production and the resulting delays and lost incentive

www.bradley.com

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

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

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

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

Houston Office
JPMorgan Chase Tower
600 Travis Street
Suite 4800
Houston, TX 77002
(713) 576-0300

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

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

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

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

Dallas Office
4400 Renaissance Tower
1201 Elm Street
Dallas, TX 75270
(214) 939-8700

payment. The trial court and appellate court sided with NJR. The courts agreed that the deceptive conduct of United's employees instructed NJR decisions on how to build out its schedule, and NJR was justified in relying upon United's "unfounded assurances" and "false declaration[s]." United's employees' statements "were clearly immoral, unethical, and/ or unscrupulous" and impacted NJR's plans, expenditures, and bottom line on the Project. The statements lulled NJR into a false sense of confidence about the likelihood of receiving the incentive and led NJR to make representations to the DOT that ultimately put "NJR's [own] competency in a bad light." This injured NJR and United was liable for the delays.

Connecticut's Unfair and Deceptive Trade Practices statute is nearly identical to similar laws in states throughout the US including Alabama, the Carolinas, Tennessee, and Mississippi. In many of those states, the statutes also allow for punitive damages and attorneys' fees. The risk of potential exposure for these types of casual schedule updates makes it critical that contractors communicate accurate and complete information to their clients.

This is particularly true in today's environment when the bidding process is growing more competitive, there are less projects being built, and many contractors are wrestling with extended material lead times and workforce shortages. Such an environment can tempt contractors to commit to unrealistic milestones and delivery dates in order to win or hold onto work. However, these "false promises" could expose a contractor to significant liability. When in doubt, as a general rule contractors faced with delivering schedule information (good or bad) should: (1) regularly provide status updates about meeting milestones and potential delays; (2) ensure that all employees are delivering the same message about the status of work; and (3) be upfront with customers about any factors (internal or external) that may impact the schedule provided by the contractor. Ultimately, transparency on a project experiencing delays could help a contractor avoid additional liability.

By: Anna-Bryce Hobson

What happens when a "your work" exclusion collides with a "product completed operations" clause in a CGL policy?

A CGL policy typically defines "your work" as the work performed by or on behalf of the insured and the materials, parts, or equipment furnished in connection with such work. "Product-completed operations" coverage usually protects the insured against liability for property damage or bodily injury caused by the insured's product or work after the work is completed.

In *Pavlicek v. American Steel Systems, Inc.*, JRC installed a concrete floor and floor drain. 970 N.W.2d 171 (N.D. 2022). Another subcontractor installed the in-floor heating system for the concrete floor. Throughout the project, JRC maintained a CGL policy. After JRC completed the floor drain, it failed to properly install the concrete floor, and its attempts to repair the concrete damaged the drain. The Owner sued JRC for the defective work and was awarded the full replacement cost of the concrete floor, drain, and in-floor heating system. JRC, in turn, sued its insurer for indemnification.

As part of its decision, the North Dakota Supreme Court was tasked with determining the outcome of a "your work" exclusion colliding with a "product-completed operations" clause in a CGL policy. The CGL policy contained several exclusions to coverage, including for "Damage To Your Work" which stated the insurance does not apply to: "'Property Damage' to 'your work' arising out of it or any part of it and included in the 'products-completed operations hazard.'"

On the other hand, the declarations page of the CGL policy provided coverage for "Products-Completed Operations" in the aggregate limit of $2,000,000. The policy included an endorsement stating: "The most we will pay for ... [a]ll 'bodily injury' or 'property damage' that is included in the 'products-completed operations hazard' arising from all 'occurrences' during the policy period is the amount of the Products-Completed Operations Aggregate limit stated in the Declaration."

Based on those clauses, the Court held that, with respect to the floor drain, the policy can be construed in both ways: it can be construed to provide coverage because the drain was a completed product, and can be construed to exclude from coverage because the drain was JRC's work. Exclusions from coverage in an insurance policy, however, must be clear and explicit and are strictly construed against the insurer. Consequently, the Court concluded that since the CGL policy can be read *both* to include and exclude coverage for the damage to the floor drain, it must be construed to provide coverage for the cost to repair and replace the floor drain.

The key takeaway here is that, although the general rule is that CGL policies will not cover faulty workmanship performed by the contractor itself, if part of the contractor's work has been completed and put to its intended use before

being damaged, then coverage may apply if there is completed operations coverage. This has been a hotly contested issue in various states for years. Any contractor/subcontractor purchasing a CGL policy should pay close attention to the wording of both the "your work" exclusion and the "product completed operations" clause as they can be outcome determinative.

By: Petar Angelov

An Update and Refresher on Retainage

Depending on the state, retainage often provides an owner a security interest in unpaid funds to help cover completion costs or other damages that may later occur by withholding a certain portion (typically 5-10%) of contract funds from downstream contractors. Retainage also incentivizes the downstream contractors to timely complete the project so they can get paid what often amounts to their fee for the project. Retainage laws vary widely across the country and on public and private projects and should be analyzed whenever a party (whether owner, contractor, or subcontractor) is looking to engage in contracting in a new state and should be routinely reviewed even if regularly conducting business in a particular state as retainage laws are amended often.

Georgia recently changed its retainage law on all public projects. Ga. Code § 13-10-80 previously allowed owners on public projects to withhold 10% retainage from each progress payment until a project was 50% complete, but none after that so long as the work progress was satisfactory. After Georgia S.B. 438 was signed into law, public works construction contracts entered into on or after July 1, 2022 may now only withhold 5% retainage throughout the entire project. There are also new requirements surrounding retainage release and the amount that can be withheld for punch list work. Georgia's retainage laws for public projects do not apply to (1) contracts let by the Georgia Department of Transportation for the construction, improvement, or maintenance of roads or highways; or (2) contracts whose value or duration at the time of the award does not exceed $150,000.00 or 45 days in duration remains unchanged. *See* Ga. Code § 13-10-80(c).

In Alabama, retainage on private projects - similar to what Georgia previously required for public projects - is capped at 10% on the first 50% of the project, and no further retainage may be withheld after 50% completion. Ala. Code. § 8-29-3. An over-retaining party on a private project in Alabama must pay interest on the excess amount withheld at a rate of 1% per month. On public projects, 5% may be retained up to 50% completion, but none after that. Ala. Code § 39-2-12.

In Florida, private projects are not regulated by statute. Florida public projects permit up to 5% retainage for the duration of the project, but this statute does not apply to contracts of $200,000 or less. Fla. Stat. Ann. § 255.078.

In Texas, private owners can withhold up to 10% retainage during the course of the entire project and for 30 days after final completion, which are funds reserved for the benefit of lien claimants. Tex. Prop. Code Ann. § 53.101. Texas public projects under $5 million permit up to 10% retainage, but those over $5 million only permit up to 5% retainage. Tex. Gov't Code Ann. § 2252.032. And in Tennessee, whether public or private not more than 5% retainage may be withheld. Tenn. Code Ann. § 66-34-103. And if a private owner fails to deposit that retainage into a separate interest-bearing escrow account when the prime contract is $500,000 or greater, that owner can be on the hook for $300 per day for each day the money is not appropriately escrowed. Tenn. Code Ann. § 66-34-104.

In addition, there are provisions in some jurisdictions governing how an owner must hold retainage (as a separate account, for example) and a choice to the contractor to post security for the retainage in lieu of the withholding by the upstream party.

What is clear: retainage laws vary widely across the country and a one-size-fits-all contract would not work in each of the states mentioned above. Owners, contractors, and subcontractors need to be aware of retainage laws in every state they do business in to protect themselves and to know their rights.

By: Mason Rollins

Zombie Warranties: Courts Resurrecting Disclaimed or Waived Implied Warranties in Home Construction Contracts

Certain home construction contracts include clauses waiving implied warranties, such as the implied warranty of good workmanship and habitability. However, courts at times refuse to enforce such waivers, as the Arizona Supreme Court demonstrated in *Zambrano v. M & RC II LLC. Zambrano* provides a timely reminder that contractors should review local law to determine whether a given

jurisdiction enforces contractual waivers of implied warranties concerning home construction, and if so, in what circumstances.

On September 28, 2022, the Arizona Supreme Court reminded parties that even if a home construction contract expressly disclaims and/or waives implied warranties, the Court may strike such a disclaimer/waiver for violating "public policy." *Zambrano* involved a clash of two public policies recognized by the common law. "On the one hand, parties are generally free to contract on whatever terms they choose…. Thus, unless legislation precludes enforcement of a contract term, [Arizona] courts will uphold it unless 'the term is contrary to an otherwise identifiable public policy that clearly outweighs any interests in the term's enforcement…. On the other hand, Arizona implies a warranty of workmanship and habitability in every contract entered into between a builder-vendor and a homebuyer…. This warranty protects the homebuyer and successive purchasers from financial responsibility for latent defects in the home that the buyer could not have reasonably discovered at the time of purchase and holds the builder accountable for the home's faulty construction." The Court framed the issue in *Zambrano* as "whether a builder-vendor and a homebuyer may agree to disclaim and waive the implied warranty [of workmanship and habitability] if they replace it with an express warranty." Ultimately, the Court held that in this instance "public policy prohibits enforcement of the disclaimer and waiver."

The dispute in *Zambrano* concerned a 2013 purchase agreement between Tina Zambrano and M & RC II, LLC ("MRC") whereby Zambrano agreed to buy a home that MRC's affiliate would build in a new subdivision. The purchase agreement stated in part that MRC would issue a home builder's limited warranty at closing and that the limited warranty was the only warranty applicable to the purchase of the property, with certain implied warranties, including the implied warranty of habitability and workmanship, expressly disclaimed by MRC and waived by Zambrano.

Notwithstanding the disclaimer and waiver, in 2017 Zambrano sued MRC and its affiliate for breach of the implied warranty of workmanship and habitability, alleging design and construction defects. MRC and its affiliate moved for summary judgment, arguing Zambrano had waived the implied warranty per the purchase agreement. The trial court agreed and entered judgment for MRC and its affiliate. However, despite noting that the "freedom to contract has long been considered a 'paramount public policy' under [Arizona's] common law that courts do not lightly infringe," the Arizona Supreme Court reversed, holding that the implied warranty waiver violated public policy and thus was void.

In its reasoning, the Arizona Supreme Court noted that the implied warranty "is limited to latent defects that are undiscoverable by a reasonable pre-purchase inspection." The Court also noted the warranty exists to protect innocent purchasers and to hold builders accountable for their work. Thus, in sum, the Court found that "the public policy underlying the implied warranty of workmanship and habitability is twofold: (1) protecting buyers of newly built homes and successive owners against latent construction defects that were not reasonably discoverable when the home was initially sold and (2) holding builders accountable for their work." And the Court found that the implied warranty of workmanship and habitability trumps the competing public policy interest of the freedom of contract when a contract attempts to disclaim or waive the implied warranty because, among other reasons, the implied warranty "serves to protect homebuyers and the public at large in multiple ways."

As demonstrated, *Zambrano* serves as a reminder that even if two parties expressly agree in a written contract to disclaim/waive home construction implied warranties, a Court may void such an agreement on public policy grounds. As such, to evaluate and mitigate this risk, contractors should timely review the local jurisdiction's law regarding implied warranties and home construction before relying on a contractual provision disclaiming and/or waiving any such implied warranties as they may not be worth the paper they are printed on.

By: Charley Sharman

Damages in Construction Claims: Are "Actual Costs" Actually Required?

The golden standard for the measure of damages in a construction case alleging defective or incomplete work are the actual costs of completion or repair. That is to say, if there is a breach (or multiple breaches) of quality or quantity promises in a construction contract, each dollar spent to correct or complete the work should be linked to the discrete breach. Failure to present reasonable evidence of a link for the money spent to correct or complete work will typically result in reduced recovery and can in some circumstances prohibit recovery altogether. This usually is a simple enough rule for construction defects.

But what happens when there are multiple impacts that contribute to a loss of productivity or inefficiency in

actually delivering the product (a building, a highway, a mechanical system)? In other words, a contractor may not be able to point to a specific action or actions that resulted in a specific increased cost, but the totality of various impacts may have resulted in drastically increased costs. In such circumstances, it is often difficult, or perhaps impossible, to link a discrete impact to a particular set of costs despite clear evidence of an adverse effect on the contractor. In these circumstances, are "actual costs" actually required? The answer is 'yes,' but that does not mean one must draw a bright line from an incident to a specific labor cost overrun.

The difficulty in proving damages for loss of productivity claims in the construction context has given rise to alternative measures of damages to quantify the loss. Some examples of alternative measures of damages for loss of productivity claims include: total cost analysis, modified total cost analysis, factor analysis and measured mile analysis (among others). While each of these damage measures has different respective burdens of proof, the general underpinning of these damage measures is that a contractor shows entitlement to cost overruns due to a loss of productivity. Further, these alternative measures of damages do not require that a contractor show its cost overruns were tied to and caused by a specific impact. Instead, these alternative measures of damages use the general loss in productivity to establish causation and entitlement to damages.

A recent example of a permissable use of one such alternative measure of damages, the measured mile analysis, can be found in *Appeal of Lockheed Martin Aeronautics Co.*, which was a dispute decided before the Armed Services Board of Contract Appeals ("ASBCA"). There, the contractor, Lockheed Martin, had a $23,000,000 contract with the government to upgrade government-owned military aircrafts. The parties made several modifications to the contract resulting in additional upgrades to be completed under the contract. As Lockheed Martin proceeded with the work, the government impacted Lockheed Martin's work by engaging in actions such as, over inspection, overly restrictive flight acceptance criteria, unnecessary flight repairs, and frequent stops and re-starts to the work. These impacts drastically increased Lockheed Martin's costs, who in turn, submitted a claim of $143,529,290 (greater than 600% of the original contract price) for additional costs related to these impacts.

With respect to its damages claim, Lockheed Martin submitted a totality of its cost overruns related to all of the work under the contract and conceded that it could not state the specific quantity of hours spent due to government impacts. Stated another way, Lockheed Martin could not specifically prove how each impact directly translated to additional cost. However, Lockheed Martin instead used a measured mile analysis to provide a comparison of a production period that was impacted by a disruption with a production period that was not impacted, or that was less impacted. Lockheed Martin argued that the delta in the efficiency of impacted work and nonimpacted work was attributable to the government's impacts and recoverable as damages.

On appeal, the government moved for summary judgment based on Lockheed Martin's use of the measured mile analysis. The government argued that summary judgment was appropriate because Lockheed Martin did not put forth specific evidence for the disruptive impacts and what costs were linked to said impacts. Stated another way, because it was not possible for Lockheed Martin to separately track additional hours that resulted from the government's work impacts, Lockheed Martin failed to show actual costs related to the impacts.

The ASBCA denied the government's motion for summary judgment and noted that the measured mile approach compares the productivity of an impacted period with an unimpacted (or less impacted) period and is a well-established method of proving damages. The ASBCA further stated that "It is a rare case where loss of productivity can be proven by books and records; almost always it has to be proven by the opinions of expert witnesses." The ASBCA further rejected the argument that Lockheed Martin was required to track each and every cost, noting that damages do not have to be proven to exact certainty and that there was sufficient evidence of damages to permit Lockheed Martin's claims to move forward to trial.

The fact of damages is not hypothetical and must be shown, as well as persuasive evidence the damages resulted from the factors alleged. But the allocation of those damages to singular events may not be feasible, because of their number or because of the way one event (a change) may then affect a later event (another change).

As this case demonstrates, construction projects can have many impacts that may be hard to quantify but nonetheless result in lack of productivity and significant cost increases. Alternative measures of damages in construction can bridge the gap in these circumstances and provide contractors with meaningful avenues to recovery. However, direct causation remains the preferred standard for damages in the construction context as these alternative measures of damages may not always be available for use and, if they

are, typically have difficult evidentiary hurdles. It is critical for owners, developers, and contractors to understand when and how these alternative measures of damages apply, to properly manage construction projects and to preserve or defend claims for loss of productivity. Failure to do so may result in liability for or waiver of substantial claims.

By: Ronald Espinal

Safety Moment for the Construction Industry

Hazardous Materials: Communication. There are general industry standards that focus on requirements for employers that have hazardous materials in their workplace. These materials include lead, silica, asbestos, and treated word but can also include building materials, such as zinc, cadmium, beryllium, and mercury.

Workers should be able to read and use the Material Safety Data Sheets (MSDS) for any hazardous chemical being used at a construction site. Workers should wear proper PPE when handling hazardous materials and should clean up any spills when they occur.

Employers are required to implement a written hazard communication program that includes an inventory of all hazardous materials used at the site. All containers of hazardous substances must have a hazard warning and be properly labeled. Employers should have an MSDS available for each hazardous material. Finally, it is the employer's obligation to supply the PPE applicable to a given hazard and to train its employees on the proper use of the PPE. It is the employee's obligation to use the provided PPE properly.

Bradley Lawyer Activities

Bradley's Construction and Procurement Practice Group received the distinction of "Law Firm of the Year" in the area of Litigation-Construction in the 2023 edition of *U.S. News Best Lawyers*. Only one firm per legal practice receives this designation per year, and this is Bradley's fourth time to receive this distinction (2018, 2020, 2022, and now 2023). 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 among all its practice groups, the firm earned four national Tier 1 rankings and 159 metropolitan Tier 1 rankings across all 10 of its offices. This recognition confirms, in a third party's objective analysis, 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*.

Ryan Beaver and **Anna-Bryce Hobson** were named to Business North Carolina's Legal Elite for 2023. Ryan was named in the category of Construction Law, and Anna-Bryce was named as a rising star.

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

Carly Miller was 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.

Aron Beezley was named as Law360's 2022 MVP of the Year in Government Contracts. **Aron** was also recognized by *JD Supra* in its 2022 Readers' Choice Awards for being among the top authors and thought leaders in government contracts law. (If you haven't read Aron's blogs, go to our website: www.buildsmartbradley.com to read them and all of our other construction related blogs.)

Carly Miller was recently selected to serve on the Steering Committee of AGC's Construction Leadership Council for a 3-year term beginning in 2023.

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.

Anna-Bryce Hobson was selected to participate in the Mecklenburg County Bar Leadership Institute Class of 2023.

On February 25, 2023, **Jim Archibald** will present "Emerging Energy Sources and What that Means for the Construction Industry and for Existing Infrastructure" at the American College of Construction Lawyers' Annual Meeting.

Meghan McElvy will be speaking on "Hot Topics in Energy Litigation" as part of a panel at the upcoming 74th annual Energy Law Conference in Houston on February 16, 2023.

On January 27, 2023, **Bryan Thomas** presented "Preparing & Presenting the Construction Case for Hearing in Arbitration" at the Tennessee Bar Associations Construction Law Forum.

Charley Sharman attended the Houston Bar Association Law and Media Committee's President's Speaker Series on January 27, 2023, where he is a committee member.

Aron Beezley spoke on False Claims Act developments at PubK's GovCon Annual Review on January 12, 2023.

Jim Archibald presented "There Ain't No Cure for the Escalation Blues . . . or is there?" to the American College of Construction Lawyers' Public Contracts Committee on December 14, 2022.

On December 14, 2022, **Carly Miller** and **Alex Thrasher** presented "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 December 8, 2022, **Monica Dozier**, along with labor and employment colleagues **Stephanie Gaston** and **Amy Puckett**, published "The clock is ticking on the IRA's prevailing wage and apprenticeship requirements" in PV Magazine USA, with guidance for developers and contractors' compliance with Inflation Reduction Act prevailing wage and apprenticeship requirements for renewable energy projects, following issuance of Treasury guidance.

On November 30, 2022, **Monica Dozier** moderated two panels at the Southeast Renewable Energy Summit in Charlotte, NC: New Directions for Clean Energy and

Economic Development in the Tennessee Valley, and Duke's Carbon Plan Emerges and the Monumental Impacts of HB951 in North Carolina.

Bryan Thomas presented to the Tennessee Association of Construction Counsel on Tennessee's Construction Defect Statute and Strategies for Early Management of Defect Cases on November 11, 2022.

On November 7, 2022, **John McCool** moderated, with Bradley sponsoring, E4 Carolinas' Energy Technology Series webinar featuring Cormetech, a world leader in manufacturing of high-quality environmental catalysts.

On October 26, 2022**, David Taylor** spoke 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.

On October 7, 2022, **Monica Dozier** moderated the Commodity Prices and Trends panel at the Tennessee Valley Solar + Storage Conference in Knoxville, TN, addressing recent supply chain volatility and associated procurement strategy for developers and contractors of renewable energy projects.

Carly Miller and **Alex Thrasher** presented 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.

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Construction and Procurement Practice Group Contact Information:

James F. Archibald, III (Birmingham), Attorney (205) 521-8520 jarchibald@ bradley.com
Petar Angelov (Nashville), Attorney (615) 252.3853 pangelov@bradley.com
Sarah Baldwin (Birmingham), Attorney (205) 521-8246 sbaldwin@bradley.com
David H. Bashford (Birmingham), Attorney (205) 521-8217 dbashford@bradley.com
Ryan Beaver (Charlotte), Attorney (704) 338-6038 rbeaver@ bradley.com
Aron Beezley (Washington, D.C.), Attorney (202) 719-8254 abeezley@ bradley.com
Axel Bolvig, III (Birmingham), Attorney (205) 521-8337 abolvig@ bradley.com
Lee-Ann C. Brown (Washington, D.C.), Attorney (202) 719-8212 labrown@ bradley.com
T. Michael Brown (Birmingham), Attorney (205) 521-8462 mbrown@bradley.com
Jared B. Caplan (Houston), Attorney (713) 576-0306 jcaplan@bradley.com
Frank M. Caprio (Huntsville), Attorney (256) 517-5142 fcaprio@bradley.com
Melissa Broussard Carroll (Houston), Attorney (713) 576-0357 mcarroll@bradley.com
Maria Carisetti (Charlotte), Attorney (704) 338-6002 mcarisetti@bradley.com
James A. Collura (Houston), Attorney (713) 576-0303 jcollura@bradley.com
Timothy R. Cook (Houston), Attorney (713) 576-0350 tcook@bradley.com
Erik M. Coon (Washington, D.C.), Attorney (202) 719-8258 ecoon@bradley.com
F. Keith Covington (Birmingham), Attorney (205) 521-8148 kcovington@ bradley.com
Ben Dachepalli (Tampa), Attorney (813) 559-5545 bdachepalli@bradley.com
Jeffrey Davis (Houston), Attorney (713) 576-0370 jsdavis@bradley.com
Ross A. Darville (Houston), Attorney (713) 576-0375 rdarville@bradley.com
Kyle M. Doiron (Nashville), Attorney (615) 252-3594 kdoiron@ bradley.com
Monica Wilson Dozier (Charlotte), Attorney (704) 338-6030 mdozier@ bradley.com
Jennifer Morrison Ersin (Jackson), Attorney (601) 592-9937 jersin@bradley.com
Ronald Espinal (Tampa), Attorney (813) 559-5531 respinal@bradley.com
Ian P. Faria (Houston), Attorney (713) 576-0302 ifaria@bradley.com
Cristopher S. Farrar (Houston), Attorney (713) 576-0315 cfarrar@bradley.com
Matthew J. Flynn (Washington, D.C.), Attorney (202) 719-8214 mflynn@bradley.com
Robert Ford (Houston), Attorney (713) 576-0356 rford@bradley.com
Timothy C. Ford (Tampa), Attorney (813) 559-5509 tford@bradley.com
R. Sumner Fortenberry (Jackson), Attorney (601) 592-9922 sfortenberry@bradley.com
Mary Elizondo Frazier (Houston), Attorney (713) 576-0371 mfrazier@bradley.com
Eric A. Frechtel (Washington, D.C.), Attorney (202) 719-8249 efrechtel@ bradley.com
Amy Garber (Washington, D.C.), Attorney (202) 719-8237 agarber@ bradley.com
Ralph Germany (Jackson), Attorney (601) 592-9963 rgermany@ bradley.com
John Mark Goodman (Birmingham), Attorney (205) 521-8231 jmgoodman@ bradley.com
Nathan V. Graham (Houston), Attorney (713) 576-0305 ngraham@bradley.com
Nathaniel J. Greeson (Washington, D.C.), Attorney (202) 719-8202 ngreeson@bradley.com
John W. Hargrove (Birmingham), Attorney (205) 521-8343 jhargrove@ bradley.com
Abigail B. Harris (Birmingham), Attorney (205) 521-8679 aharris@bradley.com
Anna-Bryce Hobson (Charlotte), Attorney (704) 338-6047 aflowe@bradley.com
Jon Paul Hoelscher (Houston), Attorney (713) 576-0304 jhoelscher@bradley.com
Aman S. Kahlon (Birmingham), Attorney (205) 521-8134 akahlon@ bradley.com
Michael W. Knapp (Charlotte), Attorney (704) 338-6004 mknapp@ bradley.com
Michael S. Koplan (Washington, D.C.), Attorney (202) 719-8251 mkoplan@ bradley.com
Daniel L. Lawrence (Nashville), Attorney (615) 252-3549 dlawrence@ bradley.com
Matthew K. Lilly (Charlotte), Attorney (704) 338-6048 mlilly@ bradley.com
Lisa Markman (Washington, D.C.), Attorney (202) 719-8291 lmarkman@ bradley.com
Kevin B. Mattingly (Washington, D.C.), Attorney (202) 719-8201 kmattingly@bradley.com
John S. McCool (Charlotte), Attorney (704) 338-6050 jmccool@bradley.com
Meghan Dawson McElvy (Houston), Attorney (713) 576-0314 mmcelvy@bradley.com
Kevin C. Michael (Nashville), Attorney (615) 252-3840 kmichael@bradley.com
Carlyn E. Miller (Birmingham), Attorney (205) 521-8350 camiller@ bradley.com
Philip J. Morgan (Houston), Attorney (713) 576-0331 pmorgan@bradley.com
E. Sawyer Neely (Dallas), Attorney (214) 939-8722 sneely@bradley.com
Trey Oliver (Birmingham), Attorney (205) 521-8141 toliver@bradley.com
Sarah Sutton Osborne (Huntsville), Attorney (256) 517-5127 sosborne@ bradley.com
David W. Owen (Birmingham), Attorney (205) 521-8333 dowen@ bradley.com
Emily Oyama (Birmingham), Construction Researcher (205) 521-8504 eoyama@ bradley.com
Douglas L. Patin (Washington, D.C.), Attorney (202) 719-8241 dpatin@ bradley.com
Sabah Petrov (Washington, D.C.), Attorney (202) 719-8268 spetrov@ bradley.com

J. David Pugh (Birmingham), Attorney ..... (205) 521-8314 ..... dpugh@ bradley.com
Bill Purdy (Jackson), Attorney ..... (601) 592-9962 ..... bpurdy@ bradley.com
Alex Purvis (Jackson), Attorney ..... (601) 592-9940 ..... apurvis@ bradley.com
Patrick R. Quigley (Washington, D.C.), Attorney ..... (202) 719-8279 ..... pquigley@bradley.com
Gabriel Rincón (Houston), Attorney ..... (713) 576-0399 ..... grincon@ bradley.com
E. Mabry Rogers (Birmingham), Attorney ..... (205) 521-8225 ..... mrogers@ bradley.com
Mason Rollins (Birmingham), Attorney ..... (205) 521-8157 ..... mrollins@ bradley.com
Brian Rowlson (Charlotte), Attorney ..... (704) 338-6008 ..... browlson@ bradley.com
Robert L. Sayles (Dallas), Attorney ..... (214) 939-8762 ..... rsayles@bradley.com
Peter Scaff (Houston), Attorney ..... (713) 576 0372 ..... pscaff@bradley.com
Justin T. Scott (Houston), Attorney ..... (713) 576-0316 ..... jtscott@bradley.com
Walter J. Sears III (Birmingham), Attorney ..... (205) 521-8202 ..... wsears@ bradley.com
Charles L. Sharman (Houston), Attorney ..... (713) 576-0348 ..... csharman@bradley.com
J. Christopher Selman (Birmingham), Attorney ..... (205) 521-8181 ..... cselman@ bradley.com
Saira Siddiqui (Houston), Attorney ..... (713) 576-0353 ..... ssiddiqui@bradley.com
Frederic L. Smith (Birmingham), Attorney ..... (205) 521-8486 ..... fsmith@ bradley.com
Lacey Spears (Houston), Attorney ..... (713) 576-0398 ..... lspears@bradley.com
Gabrielle A. Sprio (Huntsville), Attorney ..... (256) 517-5191 ..... gsprio@ bradley.com
H. Harold Stephens (Huntsville), Attorney ..... (256) 517-5130 ..... hstephens@ bradley.com
Robert J. Symon (Washington, D.C.), Attorney ..... (202) 719-8294 ..... rsymon@ bradley.com
David K. Taylor (Nashville), Attorney ..... (615) 252-2396 ..... dtaylor@ bradley.com
D. Bryan Thomas (Nashville), Attorney ..... (615) 252-2318 ..... dbthomas@ bradley.com
Alex Thrasher (Birmingham), Attorney ..... (205) 521-8891 ..... athrasher@bradley.com
Slates S. Veazey (Jackson), Attorney ..... (601) 592-9925 ..... sveazey@ bradley.com
Sydney M. Warren (Houston), Attorney ..... (713) 576-0354 ..... swarren@bradley.com
Loletha Washington (Birmingham), Legal Assistant ..... (205) 521-8716 ..... lwashington@ bradley.com
Charlotte E. Watters (Birmingham), Attorney ..... (205) 521.8651 ..... cwatters@bradley.com
W. Hunter Webb (Birmingham), Attorney ..... (205) 521-8065 ..... hwebb@bradley.com
Whitney Wester (Houston), Attorney ..... (713) 576-0358 ..... wwester@bradley.com
Heather Howell Wright (Nashville), Attorney ..... (615) 252-2565 ..... hwright@ bradley.com

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

You may also email your ideas to Emily Oyama at eoyama@bradley.com.

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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 #Streaming for later view

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

Emily Oyama
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104