Bradley
Bradley Arant Boult Cummings LLP

Third Quarter 2023

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

A Caution Against Over-Promising

It is common knowledge on a design-bid-build project that a general contractor is required to build its scope of work in accordance with the plans and specifications furnished by the owner, and the owner impliedly guarantees that the plans it provides are "workable and sufficient." This is what the landmark case of *United States v. Spearin* established. The *Spearin* doctrine allows a contractor to effectively manage the risk associated with a particular project and focus on constructability. There is, in some jurisdictions , an exception to this rule. That is when a contractor includes an express warranty that goes beyond warranting its work, and instead, warrants that its work will function as intended under the owner-provided plans and specifications. In that case, all bets may be off. The contractor must honor its warranty obligation to make the project operate as intended by the owner – even if the project's issues stem from defects in the owner-provided design.

So, what are some examples of express warranty provisions that would saddle a general contractor with these additional warranty obligations? In *King County v. Walsh Construction Company II, LLC*, the Court of Appeals of Washington explored several versions of warranty language and the implications of that language for contractors. In *Walsh*, a utility contractor contracted to install a conveyance pipeline for a municipality. The pipeline broke, and the County looked to Walsh, under the express warranty provision in its contract, to repair the pipeline. Walsh contested performing the repair work without additional compensation because it claimed the pipeline broke due to design defects in the plans. Walsh ultimately performed the repairs under a full reservation of rights. The county sued Walsh contending that the costs of the repairs were Walsh's responsibility and, ultimately, the appellate court was asked to decide if Walsh's express warranty barred any design defect defense it may otherwise be able to use. Walsh's express warranty read:

> "If material, equipment, workmanship, or Work proposed for, or incorporated into the Work, does not meet the Contract requirements . . . the County shall have the right to reject such Work . . . [.] The County . . . shall require the Contractor. . . to either: (a) promptly repair, replace, or correct all Work **not performed in accordance with the Contract** at no cost to the County; or Provide a suitable corrective action plan at no cost to the County."

The *Walsh* Court held that this guarantee was not broad enough to overcome the County's implied warranty of the engineer's design under the *Spearin* doctrine. This warranty correctly focused on the contractor's performance of its work as dictated by the plans – not the overall performance and feasibility of the project. The Court also reviewed US Supreme Court cases where an express warranty was overly broad and did commit the contractor to perform warranty work at no cost regardless of design defects. Specifically, it highlighted *Port of Seattle v. Puget Sound Sheet Metal Works* and *Shopping Center Management Company v. Rupp*. In *Port of Seattle*, the contractor undermined its

ability to claim design defects because its express warranty read:

> "We hereby guarantee to keep the roof installed by us . . . in perfect condition for a term of ten years from this date."

The broad language of this warranty was held to bind the contractor to maintain and keep its roof work in "perfect" condition even if an "imperfect condition arose from [the contractor's failure to comply with the plans . . . or . . . a defect in the very plan of construction itself[.]" Designer error was of no consequence. Similarly, in *Rupp* the court found that the warranty language was "more than merely [an agreement to] repair or replace any defective material[.]" It expressly guaranteed the "satisfactory operation of all materials and equipment installed under the contract." The *Rupp* contract also stated that it "include[ed] the plans and specifications." The *Rupp* warranty language essentially guaranteed the operation of installed work as opposed to the completion of the project as reflected on the plans.

The three cases above provide a necessary reminder to contractors that they may still be responsible for performing warranty work stemming from design defects if they do not carefully limit the language in their contracts. Always keep warranty language narrowly tailored to the services provided by the contractor. One way to do this is to proactively acknowledge the division of responsibilities between designer and contractor in the contract. In *Walsh*, the contractor chose to do this by including the following language in a separate provision:

> "Contractor will not be required to provide professional services which constitute the practice of architecture and engineering except to the extent provided for in the technical specifications and drawings."

By having this language in the contract, Walsh was able to deny responsibility where design defects were to blame and demand payment for the pipe repairs. For the court to interpret the express warranty in *Walsh* differently would have been to run afoul of the above limitation on responsibilities.

Ultimately, a contractor who is performing work based on owner-provided plans and specifications should aim to have warranty provisions that are in harmony with the *Spearin* doctrine. This can be accomplished by (1) clearly defining the scope of the work covered by the warranty; (2) including a provision that states the contractor is not providing design services, and (3) avoiding the use of broad language. For a project that is publicly bid and that contains broad language about the contractor's warranty, you may consider whether to opt out of the project, but, at minimum, you should develop a clear understanding with your insurance professional as to your company's ability to be insured in the event the "defect" in design leading to a defect in construction does not excuse the your company's performance.

By: Anna-Bryce Hobson

When Strikes Break New Ground: The Legal Implications for Workers Engaged in Protest

In the realm of labor disputes, strikes have long served as a powerful tool for workers to voice grievances and push for improved working conditions. However, the line between peaceful protest and unlawful behavior can be blurred. In, *Glacier Northwest, Inc. v International Brotherhood of Teamsters Local Union No. 174*, the U.S.Supreme Court struck a mighty blow to the foundation of union protests when workers banked on the protections of the National Labor Relations Act (NLRA) to their detriment. Historically, the NLRA has protected and promoted the rights of employees in relation to collective bargaining, organizing, and engaging in other concerted activities for the purpose of mutual aid and protection. Under the NLRA, employers are prohibited from interfering with employees' right to engage in union activities including organized strikes.

Glacier Northwest is a concrete contractor and, after a union agreement ended, Glacier Northwest's truck drivers, members of the International Brotherhood of Teamsters Local Union No. 174, were instructed by the Union to stop working on a morning it knew that Glacier Northwest was in the process of mixing substantial amounts of concrete, loading batches into ready-mix trucks, and making deliveries. The Union instructed drivers to ignore Glacier Northwest's instructions and cease deliveries in progress. At least 16 drivers who had already set out for deliveries returned with fully loaded trucks. Glacier Northwest prevented significant damage to its trucks by initiating emergency maneuvers, however, all the concrete material mixed that day hardened and became useless. Glacier Northwest sued the Union for damages in state court, claiming that the Union intentionally destroyed the company's material and that this conduct resulted in significant damages.

The case made its way all the way to the Supreme Court where the Court decided that the actions of the Union failed to meet the NLRA standards of "tak[ing] reasonable precautions to protect" against foreseeable and imminent danger, and, therefore, did not constitute protected actions. On the contrary, the Union took affirmative steps to endanger Glacier Northwest's property rather than reasonable precautions to mitigate the risks. Moreover, there were alternative measures that could have been taken to mitigate Glacier Northwest's loss: the Union could have initiated the strike before Glacier Northwest's trucks were loaded with material or facilitated a safe transfer of equipment. But, instead, they failed to take reasonable measures to protect against the resulting damage, thereby losing the protections historically afforded by the NLRA.

When dealing with labor disputes, it is crucial to remember the ultimate goal should be to find resolutions that are fair, reasonable, and uphold the dignity and rights of all involved. Let this case be a reminder to tread carefully and consider the potential ramifications before resting on legal maneuvers in bad faith, as the consequences can be far reaching and detrimental to all parties involved.

By: DeMario Thornton

Contractor Recovers COVID-19-Related Additional Costs

The Armed Services Board of Contract Appeals (ASBCA), in the case of StructSure Projects, Inc., recently granted COVID-19-related costs to a contractor under a fixed-price contract. The key facts, holdings, and takeaways from this noteworthy case are discussed below.

The Facts

The government awarded the contractor a fixed-price task order for design and alteration services. The task order required the contractor to provide temporary facilities for the government to use while work was being performed and included a specific contract line-item for those facilities.

After the COVID-19 pandemic hit, the government designated the contractor's work as non-mission essential and, thus, suspended the contractor's access to the site for 44 days. The government, however, continued to use the facilities provided by the contractor during the suspension period.

The contractor submitted a claim seeking recovery of out-of-pocket rental costs incurred for the facilities resulting from the restricted access to the site, but the government denied the claim. The contractor thus filed an appeal at the ASBCA.

The Holding

The ASBCA held that, while the contractor may have assumed the risk associated with the scope of the fixed-price task order, the government modified the task order's scope, thus requiring the contractor to supply the temporary facilities for an extended period. In so holding, the ASBCA rejected the government's "sovereign acts defense," which generally protects the government from having to pay additional contract costs incurred as a result of a sovereign act of the government that is (1) "public, general, and only incidentally falls upon the contractor," and (2) makes it impractical or impossible for the government to render performance under the contract.

More specifically, the ASBCA found that the sovereign acts defense did not apply because the government's decision to suspend the contractor's access to the site did not render supplying the temporary facilities impossible. Rather, the ASBCA noted, the government continued to use the facilities throughout the entire 44-day suspension period.

The Takeaway

Recovering additional costs incurred as a result of the COVID-19 pandemic has, so far, been difficult for federal contractors working under fixed-price contracts. The ASBCA's decision in StructSure Projects, Inc., however, demonstrates that contractors do, in fact, have a potential avenue for recovery of COVID-19-related additional costs where the government changed the contractor's work and/or continued to receive the benefit of the contract during a COVID-19-related delay. Accordingly, contractors who experienced COVID-19-related additional costs should consider whether the ASBCA's recent decision may provide them with a potential path to recovery.

By: Aron Beezley & Lisa Markman

Wait, Is My Lien Waiver Enforceable?

If you get into a construction dispute concerning payments made to your contractor, subcontractor, or supplier, you want to be sure that your lien waivers are enforceable in your jurisdiction. A lien waiver is an agreement between an owner and a contractor, a contractor and a subcontractor or supplier, and so on down the line, where the payee agrees to not record a lien on the property in exchange for payment for its labor or materials. Lien waivers can be conditional,

meaning they go into effect upon receipt of payment. Some lien waivers are unconditional, meaning they can be used as proof of payment being received.

Lien and claim waivers are important for key reasons. The owner does not want liens recorded or placed on its property or to have his or her property encumbered. Also, the general contractor usually agrees in the prime contract with the owner to ensure the property stays free and clear of liens. The general contractor also typically agrees to indemnify or defend the owner against subcontractor and supplier nonpayment claims when the owner has paid for those labor and materials. Finally, if a lien or claim for payment is filed, the owner or contractor may be able to use the lien waiver as a defense. Courts generally enforce lien waivers and claim waivers as binding contracts, though the specifics may vary jurisdiction to jurisdiction.

But why would a payee ever agree to sign a lien and claim waiver that waives rights? Contractors, subcontractors, and suppliers want to be paid for their labor and materials. With that in mind, requiring fully executed lien and claim waivers as a condition of payment usually incentivizes the payee to sign it. Courts may enforce agreements that require receipt of a fully executed lien and claim waiver as a condition of payment.

Many jurisdictions mandate that parties use a statutory form or conform with certain specific requirements in order for the lien waiver to be enforceable. The eleven states that currently have statutory lien waivers forms are: Arizona, California, Georgia, Massachusetts, Michigan, Mississippi, Missouri, Nevada, Texas, Utah, and Wyoming. Missouri's statutory lien waiver form is only required for residential projects. Florida also has a statutory lien waiver form, but Florida's statute specifically permits a party to use other forms. Other states have other statutory requirements. While Colorado does not have a statutory form per se, it requires lien waivers to include a statement by the person waiving the lien rights that all debts owed to any third party by the person waiving the lien rights and relating to the goods or services covered by the waiver of lien rights have been paid or will be timely paid.

The statutory lien waiver requirements can be very specific. Some statutes require that lien waivers comply exactly with the statutory form, that the legal description be included, certain font sizes, all caps, bold or underlined text, or affidavit requirements. There are other requirements in many states, as well. Failure to comply with statutory lien waiver requirements may result in an unenforceable lien waiver. Because some of the statutory lien waiver forms do not include claim waiver language, it is recommended that the party seeking a waiver explore other ways to obtain a waiver.

If you are a payor on a project, you may want to have your lien and claim waiver contractual tools reviewed before the project commences to bolster your lien and claim defenses. By the same token, if you are an entity which is to receive payment, you should likewise make certain that you do not sign an overly broad waiver form.

By: Mason Rollins

West Virginia Supreme Court Offers Guidance on Contractual and Implied Indemnity Claims

The West Virginia Supreme Court of Appeals recently reversed, in part, and affirmed, in part, a lower court decision regarding dismissal of contractual indemnity and implied indemnity claims. WW Consultants was the design engineer on a wastewater treatment plant project for Pocahontas County Public Service District ("Pocahontas County"). Pocahontas County bid construction of the plant out to three separate construction contractors. WW Consultants brought a breach of contract claim against Pocahontas County alleging that WW Consultants incurred costs relating to project delays and extra work ordered by Pocahontas County. Pocahontas County counter-claimed for negligence and breach of contract alleging WW Consultants design work was defective.

In response to the counterclaims, WW Consultants filed a third-party complaint against the construction contractors alleging, in part, that the contractors were responsible for the costs and impacts alleged in Pocahontas County' counterclaim under a theory of contractual and implied indemnity. The contractors responded by moving to dismiss the contractual indemnity claims and seeking summary judgment on the implied indemnity claims. The lower court granted the motion to dismiss the contractual indemnity claims finding that the contract barred indemnity for claims arising out of WW Consultants' defective work. The clause in question read:

The indemnification obligations of Contractor under Paragraph 7.18.A shall not extend to the liability of Engineer and Engineer's officers, directors, members,

partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them if that is the primary cause of the injury or damage.

The lower court, likewise, granted summary judgment in favor of the contractors on WW Consultants' implied indemnity claims because WW Consultants had not plead, or created a factual question regarding, the existence of any special relationship between WW Consultants and the contractors. WW Consultants appealed these and other findings of the lower court.

Addressing the contractual indemnity claims, the West Virginia Supreme Court reversed the lower court decision finding that the lower court misapplied the standards for dismissal to the facts of the case. The court concluded that whether the exceptions to the contractors' indemnity obligations (described above) applied to WW Consultants' indemnity claims created a factual question that precluded dismissal. There was also a question regarding the ripeness of the contractual indemnity claim, which did not technically mature until an obligation for WW Consultants to pay Pocahontas County arose. The West Virginia Supreme Court determined that "such claims may be brought by way of third-party practice before they are technically ripe to serve the interests of fairness and judicial economy."

As to the implied indemnity claims, the West Virginia Supreme Court upheld the lower court's decision. In West Virginia, the elements of an implied indemnity claim require a showing that "(1) an injury was sustained by a third party, (2) for which a putative indemnitee has become subject to liability because of a positive duty created by statute or common law, but whose independent actions did not contribute to the injury, and (3) for which a putative indemnitor should bear fault for causing because of the relationship the indemnitor and indemnitee share." To satisfy the third element, a party must show a special relationship exists between the indemnitor and indemnitee. According to the West Virginia Supreme Court, a "special relationship" arises when a party is obligated to pay "because of its vicarious, constructive, derivative or technical liability for the wrongful acts of another" and where there was no actual fault on the part of the proposed indemnitee.

In upholding the lower court's decision dismissing WW Consultants' implied indemnity claims, the West Virginia Supreme Court found that WW Consultants had failed to allege that any wrongful act of the contractors was being imputed on WW Consultants by operation of law. Specifically, the court found WW Consultants' third-party complaint contained "no facts about its relationship with [the contractors], much less one that gives rise to imputed or vicarious liability" and that Pocahontas County had not asserted any claims based on vicarious or imputed liability.

The WW Consultants case gives a glimpse of how courts evaluate indemnity claims and emphasizes the importance of having a lawyer examining and satisfying the statutory requirements to mount a successful claim for such indemnity. It is critical that she or he understands the requirements of a particular jurisdiction to enforce such a claim, and that you provide her or him with the requisite factual grounds, if any, supporting such a claim.

By: Aman Kahlon

Safety Moment for the Construction Industry

Trust your managers and keep training… Safety is an individual responsibility and a team effort. Safety managers oversee the training of staff, implementing steps to prevent accidents and injuries, and ensure compliance with safety procedures. Embracing the role of the safety manager will help ensure that all employees are informed, prepared, and safe on (and off) the job. And, continued safety training creates an environment that regularly strengthens the safety culture and adherence to fundamentals.

Bradley Lawyer Activities and News

Six Bradley Partners Named To 2023 Who's Who Legal: Construction

Bradley is pleased to announce that six of the firm's partners have been named to the 2023 edition of *Who's Who Legal (WWL): Construction* as among the world's leading construction lawyers.

Jim Archibald, Jon Paul Hoelscher, Doug Patin, Bill Purdy, Mabry Rogers and **Bob Symon** are all recognized in the 2023 edition as "Recommended," a designation for international leaders in their field. Mr. Hoelscher is also recognized in the "Future Leaders – Partners" category, which highlights practitioners aged 45 and under.

Anna-Bryce Hobson Named To 2023 Icons and Phenoms List by *North Carolina Lawyers Weekly*

Bradley is pleased to announce that associate Anna-Bryce Hobson has been selected to the 2023 list of *North Carolina Lawyers Weekly* "Icons and Phenoms of Law."

The "Icons and Phenoms of Law" awards celebrate the achievements and contributions of the region's most accomplished and promising legal professionals. The Phenoms category is dedicated to rising stars who have already established themselves as standouts in their first 10 years of practice, demonstrating their promise as future leaders through their ambition and accomplishments, as well as their dedication to the practice of law.

350 Bradley Attorneys Listed in 2024 *The Best Lawyers In America*® and *Best Lawyers: Ones To Watch In America*

Bradley is pleased to announce that 350 of the firm's attorneys are recognized in the 2024 *Best Lawyers* lists. The following individuals have been recognized by *Best Lawyers in America* in the area of Construction Law for 2024: **Jim Archibald (Lawyer of the Year), Ryan Beaver, Axel Bolvig, Jared Caplan, Debbie Cazan, 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.**

The following individuals have been recognized by *Best Lawyers in America* in the area of Litigation - Construction for 2024: **Jim Archibald, Ryan Beaver, Michael Bentley, Axel Bolvig, Debbie Cazan, Jim Collura, 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**.

Andy Bell, Kyle Doiron, **Abba Harris**, **Anna-Bryce Hobson, Carly Miller, Sarah Osborne, Sabah Petrov, Mason Rollins** and **Chris Selman** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and Construction Litigation for 2024.

Lee-Ann Brown, Ron Espinal, and **Marc Nardone** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and **Matt Lilly** has been recognized as *Best Lawyers: Ones to Watch* in the area of Litigation – Construction.

Jim Collua, Jeff Davis, Ian Faria, Steve Fernelius, Jon Paul Hoelscher, and **Peter Scaff** have been named to the 2023 edition of *Texas Super Lawyers*.

Jim Archibald and **Carly Miller** will be presenting at the Construction Super Conference on December 1, 2023 in Hollywood, FL on the topic "Gaining the Upper Hand in Proposal-Related Disputes between Designers and Contractors in Design-Build Contracts."

On November 3, 2023, **Carly Miller** and **Aman Kahlon** will be presenting at the annual meeting of the Construction Lawyers Society of America in Palmetto Bluff, SC on the topic "Trends in Renewable Energy: Industry Developments and Our Observations from Recent Renewable Disputes Renewable Energy Disputes."

Jennifer Morrison Ersin participated on a panel at the South Eastern Europe Arbitration Conference in Vienna, Austria on October 12, 2023 entitled "Transformation of Disputes in the Region."

Moniza Dozier and **Aman Kahlon** presented a Renewable Energy Webinar Series entitled "A New Era of Compliance: Forced Labor Prevention in the Global Supply Chain" on October 11, 2023.

Carly Miller presented on a panel on the topic "Recent Developments in Arbitration Award Enforcement" at the Atlanta International Arbitration Society Annual Conference on October 2, 2023 in Altanta, GA.

Aron Beezley and **Sarah Osborne** will be the featured speakers on the Deep Dive Bid Protest Lunch and Learn series on October 4, 2023. Their presentation will discuss practical tips for both protesters and intervenors, as well as hot topics in bid protest law.

Bradley hosted the Energy Law Seminar on September 14, 2023 in Houston, TX with in-depth discussion and expert panels on unique challenges and winning strategies for oil and gas companies in the courtroom, new battlefields in energy litigation, and the latest cyber threat trends for energy companies and strategies to minimize risk.

On September 8, 2023, **Charlotte Watters** and **Cortlin Bond** presented to the ABC Alabama Chapter Safety

Committee. Their presentation was entitled "Keeping it Cool: Hot Tips to Avoid OSHA and Other Liability on Site."

Heather Wright recently co-chaired a fundraiser for the Nashville Conflict Resolution Center which provides mediation services to low income individuals.

Aman Kahlon was recently named to the AGC's Climate Change Working Group.

Kevin Mattingly was recently elected as an at-large member of the Maryland State Bar Association's Construction Law Section Council for the 2023-2025 term.

Mason Rollins attended the Annual Alabama AGC Convention on June 22-25, 2023 in San Destin, Florida.

In June, **Monica Dozier** and **Matthew Flynn** published a whitepaper entitled "Bonus Points: Evaluating Pre-Regulatory Guidance for the Domestic Content ITC Bonus Qualification," analyzing the current state of compliance with the domestic content tax credit bonus pursuant to the Inflation Reduction Act of 2022.

Bradley is pleased to announce that 12 of the firm's Dallas and Houston attorneys have been named to the 2023 *Lawdragon 500 X – Next Generation* list, including these four members of the Construction and Procurement Practice Group:

- **Melissa Broussard Carroll,** Construction, Oil & Gas and Litigation
- **Eve L. Pferdehirt**, Construction and Litigation
- **Saira S. Siddiqui**, Construction, Energy, Commercial Litigation and Personal Injury
- **Sydney M. Warren**, Construction and Commercial Litigation

NOTES

Disclaimer and Copyright Information

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.*

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific acts or circumstances. The contents are intended only for general information. Consult a lawyer concerning any specific legal questions or situations you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our group whose names, telephone numbers and E-mail addresses are listed below; or visit our web site at www. bradley.com.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. ATTORNEY ADVERTISING.

NOTES

Disclaimer and Copyright Information

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.*

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific acts or circumstances. The contents are intended only for general information. Consult a lawyer concerning any specific legal questions or situations you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our group whose names, telephone numbers and E-mail addresses are listed below; or visit our web site at www. bradley.com.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. ATTORNEY ADVERTISING.

NOTES

Disclaimer and Copyright Information

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.*

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific acts or circumstances. The contents are intended only for general information. Consult a lawyer concerning any specific legal questions or situations you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our group whose names, telephone numbers and E-mail addresses are listed below; or visit our web site at www. bradley.com.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. ATTORNEY ADVERTISING.

Construction and Procurement Practice Group Contact Information:

Petar Angelov (Nashville), Attorney	(615) 252.3853	pangelov@bradley.com
Dustin Appel (Houston), Attorney	(713) 576.0327	dappel@bradley.com
James F. Archibald, III (Birmingham), Attorney	(205) 521-8520	jarchibald@ bradley.com
V. Justin Arpey (Atlanta), Attorney	(404) 868.2006	jarpey@bradley.com
Erik J. Badia (Atlanta), Attorney	(404) 868.2015	ebadia@bradley.com
Ryan Beaver (Charlotte), Attorney	(704) 338-6038	rbeaver@ bradley.com
Aron Beezley (Washington, D.C.), Attorney	(202) 719-8254	abeezley@ bradley.com
Andrew Bell (Houston), Attorney	(713) 576-0379	abell@bradley.com
Axel Bolvig, III (Birmingham), Attorney	(205) 521-8337	abolvig@ bradley.com
Barry J. Brooks (Dallas), Attorney	(214) 258.9833	bjbrooks@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
Maria Carisetti (Charlotte), Attorney	(704) 338-6002	mcarisetti@bradley.com
Ariella Cassell (Washington, D.C.), Attorney	(202) 719-8263	acassell@bradley.com
Deborah Cazan (Atlanta), Attorney	(404) 868.2041	dcazan@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
Morgan Crider (Dallas), Attorney	(214) 257.9757	mcrider@bradley.com
Ben Dachepalli (Tampa), Attorney	(813) 559-5545	bdachepalli@bradley.com
Ross A. Darville (Houston), Attorney	(713) 576-0375	rdarville@bradley.com
Jeffrey Davis (Houston), Attorney	(713) 576-0370	jsdavis@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
Rico Falsone (Washington, D.C.), Attorney	(202) 719.8267	rfalsone@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
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
Karl V. Hopkins (Houston), Attorney	(713) 576-0310	khopkins@bradley.com
Kevin Hulbert (Washington, D.C.), Senior Advisor	(202) 719-8276	khulbert@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
Melissa B. Mahle (Washington, D.C.), Senior Advisor	(202) 719-8286	mmahle@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

Jacob A. Muñoz (Dallas), Attorney (214) 257.9842 jmunoz@bradley.com
E. Sawyer Neely (Dallas), Attorney (214) 939-8722 sneely@bradley.com
Reagan Hanna Noser (Houston), Attorney (713) 576.0367 rnoser@bradley.com
Christopher A. Odgers (Tampa), Attorney (813) 559-5503 codgers@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
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
Eve L. Pferdehirt (Houston), Attorney (713) 576-0351 epferdehirt@ bradley.com
Sinan Pismisoglu (Houston), Attorney (713) 576-0317 spismisoglu@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
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
Owen Salyers (Washington, D.C.), Attorney (202) 719-8204 osalyers@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
J. Christopher Selman (Birmingham), Attorney (205) 521-8181 cselman@ bradley.com
Charles L. Sharman (Houston), Attorney (713) 576-0348 csharman@bradley.com
John I. Spangler III (Atlanta), Attorney (404) 868.2040 jspangler@bradley.com
Gabrielle A. Sprio (Huntsville), Attorney (256) 517-5191 gsprio@ 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
DeMario Thornton (Birmingham), Attorney (205) 521-8042 dthornton@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
Catherine Welch (Houston), Attorney (713) 576-0334 cwelch@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 Heather McLeod at hmcleod@bradley.com.

To update your contact information or learn about the latest news, announcements and upcoming events on the topics that are important to you and your business, please visit: Bradley.com/subscribe

Your Name:

☐ I would like to see articles on the following topics covered in future issues of the Bradley *Construction & Procurement Law News*:

_____

_____

_____

☐ Please add the following to your mailing list:

_____

_____

_____

☐ Correct my name and mailing address to:

_____

_____

_____

☐ My e-mail address:_____

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

_____

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

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

Comments:

_____

_____

_____

_____

_____

_____

_____

_____

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

Heather McLeod
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104