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

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

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Federal Circuit's *Metcalf* Decision a Big Win for Contractors

In a recent decision, the U.S. Court of Appeals for the Federal Circuit ("CAFC") the supervising court for the Court of Federal Claims and the Boards of Contract Appeals, among others) clarified important legal principles concerning the federal government's duty of good faith and fair dealing and its responsibility for differing site conditions. *Metcalf Construction Company, Inc. v. United States* controls disputes with the federal government and also provides authority and rationale useful to contractors in disputes with any project owner, public or private.

Inside:

Government Defenses of Defective Certification and the Severin Doctrine not a Silver Bullet.....2

Are No-Damage-for-Delay Provisions Worth the Paper they are Written On? 3

The High Price of Proceeding without a License 4

It is Critical to Understand Your Applicable Lien Law.....5

General Contractor May Be Liable for Subcontractor's Failure to Assign Work as Required by Project Labor Agreement.....5

Lawyer Activities 7

In October 2002, Metcalf Construction, a small business based in Hawaii, was awarded a $48 million contract to design and build 212 housing units for the U.S. Navy on a Marine Corps base in Hawaii. Saying the project did not go smoothly is an understatement. Metcalf's performance was hindered and delayed by unanticipated soil conditions and other issues made worse by the Navy's failure to administer the contract fairly and according to its terms. By the time the Navy finally accepted the project as complete in March 2007, almost two full years after the original completion date, Metcalf had incurred costs in excess of $76 million - leaving the contractor with losses of approximately $27 million.

Metcalf filed a lawsuit in the U.S. Court of Federal Claims ("CFC") to recover most of its losses. At trial, Metcalf presented numerous examples of the Navy's poor administration of the contract, contending that the Navy's conduct amounted to a breach of the duty of good faith and fair dealing – an implied clause included in all government contracts. In its decision, the CFC made several findings in Metcalf's favor, including that the Navy failed to promptly investigate Metcalf's contention that the "expansiveness" of the project soils constituted a differing site condition, entitling Metcalf to a 260-day time extension; that the Navy employed "hard-nosed" tactics by forcing Metcalf to withdraw and compromise claims and fire personnel to trigger the release of progress payments and retainage; that the

project was "plagued" by the Contracting Officer's "lack of knowledge and experience;" and that a "difficult and overzealous" Navy inspector performed his duties in a "retaliatory" manner. Yet, the CFC rejected Metcalf's claim and awarded damages of $2.4 million to the government for project delay. Relying on an earlier decision called *Precision Pine*, the CFC said that Metcalf was required to show that the Navy "specifically designed to reappropriate the benefits" Metcalf expected from the contract and "specifically targeted" action to obtain the "benefit of the contract" or "for the purpose of delaying or hampering" contract performance.

Metcalf appealed to the CAFC, arguing that the "specifically designed/specifically targeted" standard applies only in a unique factual context – where acts of a separate government agency or authority, like new legislation or a court order in a separate case, impact the contract at issue. Metcalf asserted that in the more ordinary context presented in its case, where the conduct of the government officials administering the contract forms the basis of the breach, the CFC should have applied a "reasonableness" standard. Metcalf also argued that the CFC misinterpreted certain provisions of Metcalf's contract.

The CAFC agreed with Metcalf, vacating the CFC's decision and damage award for the government and remanding the case back to the CFC for further proceedings using the correct standard. In addition to reaffirming the existence of a mutual duty of good faith and fair dealing implied in every federal government contract and that failure to fulfill the duty constitutes a breach of contract, the court explained that *Precision Pine* "does not impose a specific-targeting requirement applicable across the board or in this case." Rather, Metcalf's claim was governed by the "general" and the broader standards announced in other decisions – essentially a "reasonableness" standard. The court also announced the important concept that a breach of the duty of good faith and fair dealing does not require a violation of an express contract provision.

Additionally, the court determined that the CFC misinterpreted certain contract provisions, most notably rejecting the CFC's determination that Metcalf assumed the risk and costs of differing site conditions because of contractual obligations to investigate the site during performance. Regarding the standard Differing Site Conditions clause incorporated into federal construction contracts, the court explained: "It exists precisely in order to 'take at least some of the gamble on subsurface conditions out of bidding': instead of requiring high prices that must insure against the risks inherent in unavoidably limited pre-bid knowledge, the provision allows the parties to deal with actual subsurface conditions once, when work begins, 'more accurate' information about them can reasonably be uncovered." The court held that the "natural meaning" of the Navy's pre-bid representations concerning soil conditions "was that, while Metcalf would investigate conditions once the work began, it did not bear the risk of significant errors in the pre-contract assertions by the government about the subsurface site conditions."

Metcalf affirms the federal government's duty of good faith and fair dealing, which some feared had been read its last rites by *Precision Pine*. By limiting the narrow *Precision Pine* standard to certain factual settings and confirming the general applicability of the "reasonableness" standard, the CAFC ensured that the government will be held accountable for unreasonable contract administration. Metcalf also reaffirms that the standard Differing Site Conditions clause allocates the risk of additional costs to the government and makes clear that pre-bid representations about subsurface conditions are not nullified by a contractor's obligation to conduct a site investigation or by broad liability disclaimers – concepts equally applicable to contract disputes with public and private owners alike.

Eric A. Frechtel, along with Robert J. Symon, served as counsel for Metcalf Construction.

By Eric Frechtel

Government Defenses of Defective Certification and the Severin Doctrine not a Silver Bullet

Recently, in *Group Health Inc. v. Dep't of Health & Human Services,* the Civilian Board of Contract Appeals (CBCA) issued a noteworthy decision on defective Contract Disputes Act (CDA) certification issues and the so-called *Severin* doctrine. The CBCA's decision in *Group Health* is noteworthy because it demonstrates that the frequently raised government defenses of defective certification and the *Severin* doctrine will not necessarily bar contractor claims.

The appeal at issue was filed by Group Health Incorporated ("Group Health") on behalf of its

subcontractor, Douglas Consulting & Computer Services, Inc. ("Douglas"), from a denial by the Contracting Officer of a claim arising out of the termination of Group Health's contract with the government and the resulting termination of the subcontract between Group Health and Douglas. Shortly after the appeal was filed, the government moved to dismiss the appeal for lack of subject matter jurisdiction.

The government's motion raised issues as to the merits of the underlying claim, arguing that factual assertions in the claim were "at odds" with Group Health's certification of the claim, that Group Health failed to set forth a "separate analysis" of Douglas's claim, and that there were "disparities" between the positions taken by Group Health and Douglas as to whether certain costs were allowable. In addition, the government asserted that Group Health was not liable to Douglas for Douglas's claimed costs and, therefore, the claim was barred by the *Severin* doctrine (the *Severin* doctrine provides that prime contractors cannot sue the government on behalf of one of their subcontractors to recover monies due to the subcontractor unless the prime contractor is itself liable to the subcontractor).

After considering the parties' arguments, the CBCA found that, while the government "may have concerns about the merits of the underlying claim, [Group Health's] certification [was] compliant with the CDA and its appeal of the certified claim confers jurisdiction on th[e] Board." The CBCA further stated that "[c]oncerns as to the merits of the claim do not divest the Board of jurisdiction and must be resolved during the appeal process." With respect to the government's *Severin* doctrine challenge, the CBCA found that the government failed to meet its burden to establish the existence of an iron-clad release or contract provision immunizing Group Health from any liability to Douglas. Accordingly, the CBCA denied the government's motion in full.

Group Health demonstrates that the CBCA will not allow defective certification or the *Severin* doctrine, both defenses frequently asserted by the government, to bar contractor claims without substantiation.

By Aron Beezley

Are No-Damage-for-Delay Provisions Worth the Paper they are Written On?

No-damage-for-delay provisions are routinely inserted into construction contracts to protect the upstream party in the event of a delay during the course of a project. However, many states have passed statutes declaring that such provisions are void and unenforceable on public policy grounds. Other states recognize exceptions that can prevent the enforcement of such clauses. Those exceptions typically include fraud, bad faith, or gross negligence by the upstream party, active interference, and unexpected or unreasonable delays. With the growing breadth of statutes and exceptions, one has to wonder whether the enforcement of a no-damage-for-delay provision has become the exception rather than the rule.

A recent case in Kentucky federal district court concerning a federal project involving a Miller Act bond reminds us that such clauses are void in Kentucky based on the Kentucky Fairness in Construction Act, which was adopted in 2007. However, the Court went much further than just stating the clause is not enforceable under Kentucky law. The Court arguably concluded that no-damage-for-delay-provisions are simply not enforceable by any Miller Act surety.

In *United States v. Safeco Ins. Co. of America,* a masonry subcontractor brought suit asserting damages associated with delays arising during the completion of the project. One of the claims asserted by the masonry subcontractor was against Safeco Insurance Company of America, which issued the payment bond required by the Miller Act to secure payment for subcontractors on the project. The Miller Act surety responded that it was not liable for the delay damages being asserted by the masonry subcontractor because the masonry subcontract included the following no-damages-for-delay provision:

> "Subcontractor shall not be entitled to any claim for damages (including but not limited to claims for delay …) on account of hindrances or delays from any cause whatsoever. An extension of time shall be Subcontractor's sole and exclusive remedy for any occurrence giving rise to a delay, and [general contractor] shall be released and discharged of and from any claims for damages which Subcontractor may have on

account of any cause of delay, whether or not specifically stated herein…"

After recognizing the existence of the no-damage-for-delay provision, the Court relied on language in the Miller Act statute to conclude that the clause "is void under the Miller Act." The Miller Act provision the Court relied on states, "[a] waiver of the right to bring a civil action on a payment bond … is void unless the waiver is – (1) in writing; (2) signed by the person whose right is waived; and (3) executed after the person whose right is waived has furnished labor or material for use in the performance of the contract." 40 U.S.C. 3133(c). Based on this language the Court concluded that the no-damage-for-delay provision executed at the inception of the project before any delays occurred effectively functioned as a waiver of the right to bring a civil action and was thus void.

It is not known whether this decision will be broadly accepted, nor how those involved in construction contract drafting will react. However, in light of this case, one has to wonder whether no-damage-for-delay provisions will start appearing in the payment/claim waivers executed throughout the course of a federal project to make the provision (waiver) arguably valid under the Miller Act.

By D. Bryan Thomas

The High Price of Proceeding without a License

Most contractors know that they need a license prior to execution of a construction contract. But in many states, the time to obtain a license begins long before execution. In Florida, for example, not only must a contractor be licensed to submit a bid, a contractor must also be licensed in order to represent its ability to perform services for which a license is required.

This license requirement often includes a requirement – as in Florida – that contractors list their license numbers on all advertising, including websites and social media pages. California also requires license numbers to be displayed on all advertising (even specifying the size of the letters for certain contractors) and to be disclosed on bid documents as well. Because the lead time to obtain a license in a new jurisdiction may be significant – including, if necessary, an examination and board review of the entity's financial statements – contractors should apply for a license as soon as the contractor anticipates an opportunity in a new jurisdiction.

Nationwide, states appear to be trending toward tougher licensing laws and enforcement. Even states that have not traditionally required licenses, such as Georgia, have either instituted license requirements or are considering doing so. Many license boards conduct undercover or "sting" operations to identify businesses or individuals operating without a proper license, and almost all license boards provide public hotline information for reporting activity of an unlicensed contractor. The penalties for violation of license laws range from civil penalties (generally, a fine assessed per violation, or the inability to recover payment for work performed without a license – often known as "disgorgement") to criminal penalties (in some states, violation of licensing laws is a felony). The Tennessee Code, for example, states that an individual who unlawfully represents himself as a licensed contractor has committed an unfair and deceptive trade practice. The Florida statutes also provide an unfair trade practice action for unlicensed activity – an action which may be initiated by state attorneys, the Office of the Attorney General, or by a private party.

This increased attention to license compliance extends both to initial licenses and renewal of licenses. Some states still allow reinstatement grace periods after a license expires, although most also require additional information and payment in order to reinstate a license, which is at the discretion of the licensing board. Increasingly, reinstatements are not retroactive.

Given the significant penalties – both commercially and criminally – of license law violations, the decision to proceed into a new jurisdiction or with a bid submission prior to obtaining a contractor's license may ultimately cost more than any benefit. Contractors should be wary of engaging in business in a state prior to obtaining a contractor's license. Often, the decision is a commercial one based on the costs to obtain a license weighed against the likelihood of being awarded a project – but the risk of proceeding without a license is too great to ignore.

By Monica Wilson

It is Critical to Understand the Applicable Lien Law

Recently, a Louisiana Appellate Court affirmed a lower court's ruling that, to preserve its lien claim under Louisiana state law, a material supplier on a public works project must provide notice of nonpayment for each month that materials were delivered rather than providing a single notice of nonpayment for all deliveries. In *J. Reed Constructors, Inc. v. Roofing Supply Group, LLC,* the roofing subcontractor on a public project purchased roofing materials on an open account from a roofing material supplier, Roofing Supply Group. That supplier made a number of deliveries during the months of June, July, August and September, with the last delivery made September 26, 2011, pursuant to multiple purchase orders with the roofing subcontractor. Along with each delivery, the roofing supplier provided the subcontractor an invoice that reflected the due date for payment, which was the tenth day of the second month after delivery.

After a little more than two months from its last delivery, the supplier sent written notice to the general contractor and owner, informing them of the roofing subcontractor's nonpayment of invoices for roofing supplies delivered for use on the public project. Because the supplier did not receive payment after providing this notice, it filed and recorded its lien claims for the full amount owed for all material deliveries. In response, the general contractor challenged the supplier's lien claim, contending that the supplier's notice was untimely as to its deliveries in the months of June, July, and August 2011 because the supplier provided notice only once, in December of 2011. The supplier opposed the general contractor's contention and argued that its single notice was timely and sufficient under the Louisiana Public Works Act for all of its deliveries.

Under the Louisiana Public Works Act, a materialman who has not received payment for materials supplied must provide the general contractor and owner written notice "on or before seventy-five days from the last day of the month in which the material was delivered . . . ." The court found that the statute's language was "clear and unambiguous," and concluded that the time period for notice commences on the last day of the month in which any materials are delivered during that month "[r]egardless of the month of delivery or the number of deliveries . . . ." Thus, the court held that the supplier's notice was untimely for all of its deliveries made prior to September because the notice was provided outside of the seventy-five day requirement for those deliveries.

Based on the court's ruling in *J Reed*, Louisiana law requires a supplier to send multiple notices-of-nonpayment within seventy-five days of the last day of the month for each month that material is delivered. Failure to do so can result in the loss of one's lien rights. Other states have different notice requirements, some of which allow a single notice for all deliveries. However, like Louisiana, most, if not all, states require strict compliance with lien laws. Because strict compliance is required, materialmen, subcontractors, and general contractors should all be familiar with the lien laws in any state in which materials are supplied or work is performed.

By Chris Selman

General Contractor May Be Liable for Subcontractor's Failure to Assign Work as Required by Project Labor Agreement

In *Sheet Metal Workers Int'l Ass'n Local Union No. 27 v. E.P. Donnelly, Inc.*, the United States Court of Appeals for the Third Circuit (the court supervising federal trial courts in Pennsylvania, Delaware, and New Jersey) recently held that a general contractor on a project governed by a Project Labor Agreement ("PLA") may be held liable for the failure of its subcontractor to assign work as required by the PLA. This case serves as an important reminder that a general contractor or construction manager who is a signatory to a PLA must be diligent to ensure that its subcontractors are in full compliance with the PLA's requirements.

Sambe Construction Company, Inc. ("Sambe") was the general contractor on a project for the construction of a community center for Egg Harbor Township in Atlantic County, New Jersey. The Township adopted a PLA governing the terms and conditions of the project's construction. All contractors on the project were required to become signatories to the PLA. Sambe executed the PLA and subcontracted the roofing work on the project to E.P. Donnelly, Inc. ("Donnelly")

The PLA required Sambe to require its subcontractors "to accept and be bound by the terms and conditions" of the PLA by executing a letter of assent, and imposed on Sambe an obligation to "assure

compliance" with the PLA by its subcontractors. Sambe obtained the letter of assent from Donnelly, who further agreed that any party it selected to do the roofing work would also be required to become a signatory to the PLA.

Despite this letter of assent, Donnelly selected the United Brotherhood of Carpenters and Joiners of America, Local 623 ("Carpenters Local") to perform the roofing work, even though Carpenters Local was not a signatory to the PLA. The Sheet Metal Workers' International Association, Local 27 ("Sheet Metal Local"), which was a signatory, protested the work assignment, arguing that Carpenters Local could not continue the roofing work because it had not executed the PLA. Donnelly had previously signed a separate collective bargaining agreement with Carpenters Local and refused to reassign the work on the project to Sheet Metal Local.

Sheet Metal Local initiated arbitration under the PLA and an arbitrator issued a decision awarding the roofing work to Sheet Metal Local. Carpenters Local threatened to picket the project if Donnelly did not continue to assign the work to Carpenters Local. Donnelly then filed an unfair labor practice charge with the National Labor Relations Board ("NLRB") alleging that Carpenters Local's threats to picket violated the National Labor Relations Act ("NLRA").

In the meantime, Sheet Metal Local filed a lawsuit in the U.S. District Court for the District of New Jersey, seeking enforcement of the arbitration award, a reassignment of the roofing work to Sheet Metal Local, and declaratory and monetary relief against Sambe, Donnelly, and Carpenters Local for breach of contract under Section 301 the Labor Management Relations Act.

After a hearing, known as a 10(k) hearing, on the work jurisdiction dispute, the NLRB issued a decision resolving Donnelly's unfair labor practice charge. The NLRB entered an order awarding the disputed roofing work to Carpenters Local.

Notwithstanding the NLRB's award, Sheet Metal Local continued to pursue its Section 301 lawsuit. Donnelly then filed a second unfair labor practice charge with the NLRB, this time against Sheet Metal Local, claiming that Sheet Metal Local's continued maintenance of the lawsuit against Sambe and Donnelly violated the NLRA because it sought reassignment of the roofing work in contravention of the NLRB's 10(k) award in favor of Carpenters Local. Following a hearing, an administrative law judge found that Sheet Metal Local's continued pursuit of the Section 301 lawsuit was a violation of the NLRA.

After the project was completed, Sheet Metal Local amended its Section 301 suit. Sheet Metal Local now sought monetary damages against Sambe and Donnelly for breach of contract under the PLA. The U.S. District Court entered summary judgment against both Sambe and Donnelly and awarded Sheet Metal Local $1 in nominal damages against Sambe and (after a bench trial) $365,349.75 in compensatory damages against Donnelly.

The NLRB ultimately confirmed the administrative law judge's decision that Sheet Metal Local's Section 301 lawsuit, as against Donnelly, was an unfair labor practice because that lawsuit "directly conflict[ed]" with the NLRB's 10(k) award and it ordered Sheet Metal Local to withdraw the lawsuit against Donnelly in its entirety. However, it reversed the administrative law judge's decision as to Sambe, finding that the lawsuit against Sambe, the general contractor, did not violate the NLRA.

In consolidated appeals, the Third Circuit reviewed both the U. S. District Court's rulings in the Section 301 suit and the NLRB's decision on Donnelly's unfair labor practice charge. The Third Circuit upheld the NLRB's decision that Sheet Metal Local's Section 301 suit against Donnelly constituted an unfair labor practice. The Court expressly noted, however, that its holding applied only to a suit against an employer making the disputed work assignment and not to those against non-assigning general contractors (like Sambe). In making this distinction, the Court found significant that only the employer actually making the work assignment is subject to the conflicting demands of the Section 301 suit for damages, on the one hand, and the NLRB's 10(k) order, on the other.

The Third Circuit then found that the District Court had erred in finding in favor of Sheet Metal Local on its contract claim against Donnelly, vacated the $356,349.75 award, and remanded to the U.S. District Court with instructions to enter judgment in Donnelly's favor. The Third Circuit stated that this result was compelled by its decision to enforce the NLRB's order

on Donnelly's unfair labor practice charge because, under that decision, Sheet Metal Local was "prohibited from the continued maintenance of [its] Section 301 suit."

The Third Circuit also held that the District Court's order granting summary judgment against Sambe on Sheet Metal Local's breach of contract claim was improper. However, instead of ordering a judgment in Sambe's favor, it remanded the claim against Sambe to the District Court for a determination on the issue of contract liability. Relying again on the fact that Sambe was not the employer who actually assigned the disputed work, the Third Circuit refused to find that Sheet Metal was prohibited from pursuing the Section 301 suit against Sambe on the basis of the NLRB's 10(k) award. Instead, in deciding the issue of contractual liability, the District Court was ordered to make a factual determination as to whether Sambe had acted sufficiently to "assure compliance" of the hiring requirements by Donnelly as required by the PLA. The Third Circuit did not specifically address the issue of damages and it is unclear whether the District Court will limit its damage award to the $1 in nominal damages previously awarded in the event it ultimately concludes, on remand, that Sambe breached the PLA.

What is clear is how important it is for a general contractor to make sure its subcontractors are in full compliance with the terms and conditions of a governing PLA. It is likely not sufficient simply to have the subcontractors sign the PLA. The general contractor should also take affirmative steps to ensure that its subcontractors are actually assigning work as required by the PLA and otherwise complying with the terms of the PLA. Such steps could include obtaining appropriate representations and warranties – along with a right to indemnity for breach – from the subcontractors. Otherwise, and somehow ironically, it will likely be the general contractor who actually "pays the price" if one of its subcontractors ignores the PLA's requirements.

By F. Keith Covington

Bradley Arant Lawyer Activities:

U.S. News recently released its "Best Law Firms" rankings for 2013. **BABC's Construction and Procurement Practice Group** received a Tier One National ranking, the highest awarded, in both Construction Law and Construction Litigation. The Birmingham, Nashville, Jackson, and Washington, D.C. offices received similar recognition in the metropolitan rankings.

Jim Archibald, Axel Bolvig, Rick Humbracht, Russ Morgan, David Pugh, and **Mabry Rogers** were recognized by *Best Lawyers in America* in the category of Litigation - Construction for 2014.

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

Mabry Rogers and **David Taylor** were recognized by *Best Lawyers in America* in the areas of Arbitration and Mediation for 2014. **Keith Covington** and **John Hargrove** were recognized in the area of Employment Law – Management. **Frederic Smith** was recognized in the area of Corporate Law.

Jim Archibald, David Bashford, Ryan Beaver, Ralph Germany, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, David Taylor, and **Darrell Tucker** were named *Super Lawyers* in the area of Construction Litigation. **Arlan Lewis** and **Doug Patin** were similarly recognized in the area of Construction/Surety. **Frederic Smith** was also recognized in the area of Securities & Corporate. In addition, **Monica Wilson** and **Tom Lynch** were listed as "Rising Stars" in Construction Litigation and **Aron Beezley** was listed as a "Rising Star" in Government Contracts.

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

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

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

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

David Taylor recently co-authored an article for the March/April edition of the ABA's *Probate and*

Property magazine entitled "Arbitration and Other Forms of ADR in Real Estate Deals: The Process, Drafting Considerations, and Making ADR Provisions Work."

Keith Covington taught a client seminar on December 3 on "Modern Communications: Perils and Pitfalls of Email Communications."

Jim Archibald and **Eric Frechtel** led a panel discussion at the Construction SuperConference in San Francisco in December 2013 entitled "The Government's Duty of Good Faith and Fair Dealing: The Bell Tolls for Thee?"

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

Eric Frechtel recently published an article in *Construction Executive* entitled "Holding the Government Accountable for Unreasonable Contract Administration". To access the article online, click here.

David Taylor and **Brian Rowlson** spoke on December 5, 2013 to an in-house legal department in Michigan on "Pros and Cons of Binding Arbitration."

Ryan Beaver, **Brian Rowlson**, and **Monica Wilson** attended the ABC of the Carolinas Excellence in Construction Awards Banquet on November 21 in Charlotte. Monica presented awards at the ceremony as co-chair of the Excellence in Construction Committee.

David Bashford and **Monica Wilson** recently co-authored an article published in the December 2013 edition of Solar Business Focus entitled "Management of a Utility-Scale Solar Project: Contract by Communication."

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

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

Monica Wilson attended the 2013 Energy Summit hosted by the Charlotte Chamber of Commerce, focusing on the roles that clean and safe energy, technology, and the government play in the future of the industry.

Keith Covington spoke at an Entrepreneurs Organization roundtable on hiring and employment best practices on February 20, 2014.

On February 27, 2014, **Ryan Beaver** served as a panelist at ABC Carolinas' February monthly meeting, speaking on North Carolina's new public-private partnership legislation as part of a 2013 Legislative Year in Review: Successes, Failures, and Continuing Efforts.

David Bashford led a risk management seminar in Nyngan, Australia on March 13, 2014. He and **Monica Wilson** led a risk management seminar at a project site in New Mexico on January 7-8, 2014. David and Monica regularly lead seminars to project teams to effectively implement risk management plans during the construction process. These are tailored to the client's contract and subcontracts actually in place on the project.

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

An article authored by **Eric Frechtel**, **Steven Pozefsky** and **Aron Beezley** on a proposed bill that would move the VA SDVOSB certification function to the Small Business Administration was published in the October/November 2013 issue of *Federal Construction Magazine*.

Axel Bolvig, **Stanley Bynum**, **Keith Covington**, and **Arlan Lewis** were recently recognized by *Birmingham's Legal Leaders* as "Top Rated Lawyers." This list, a partnership between Martindale-Hubbell® and ALM, recognizes attorneys based on their AV-Preeminent® Ratings.

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

Arlan Lewis is a Co-Chair of the 2014 Annual Meeting of the ABA Forum on the Construction Industry which will be held in New Orleans, Louisiana on April 10-12, 2014. The program theme is "Beat the Blues: Counseling the Client during the Course of the Ongoing Construction Project" and will focus on the interplay of

the legal, business, and relationship issues at stake when trouble arises in the middle of a construction project. Arlan is also currently serving a two-year term as the Chair of the Project Delivery Systems Division (Div. 4) of the Forum. The Forum on the Construction Industry is the largest organization of Construction lawyers in the United States.

Michael Knapp, **Arlan Lewis**, and **Wally Sears** recently attended the Midwinter Meeting of the ABA Forum on the Construction Industry in Nassau, Bahamas.

On January 3, 2014, **David Bashford** and **Monica Wilson** published an article in Law360 entitled "Future Innovations Light the Way for Solar Power."

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

Luke Martin spoke to construction project managers for a client's project management group on documentation on the construction project in December, 2013.

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

Charlie Baxley participated in the ABC of Alabama's 2013 Future Leaders in Construction class, a four day leadership training seminar attended by representatives of various construction industry companies.

Chambers annually ranks lawyers in bands from 1-6, with 1 being best, in specific areas of law, based on in-depth client interviews. **Bill Purdy** and **Mabry Rogers** are in Band One in *Litigation: Construction*. **Doug Patin** was ranked in Band Two and **Bob Symon** in Band Three, both in the area of *Construction*.

Mabry Rogers, **Wally Sears**, **Bob Symon**, **Bryan Thomas**, and **Monica Wilson** presented a complimentary invited-client seminar, Contracts 401: Advanced Discussion of EPC Contracts in an Industrial, Power Plant, or Commercial Design and Construction Context on November 8 in Washington, D.C.

The lawyers of Bradley Arant will hold a complimentary legal seminar on "Managing Risk on a Construction Project" at various locations in May and June. Please see the invitation included with this newsletter for additional information.

For more information on any of these activities or speaking engagements, please contact Terri Lawson at 205-521-8210.

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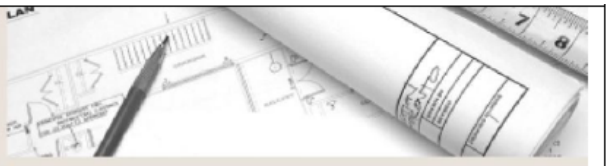

invites you to attend a complimentary legal seminar and breakfast:

2014 Construction Seminar: Managing Risk on a Construction Project

Please choose a location and date most convenient to you:

May 9	May 16	May 30	June 6
Jackson, MS	**Birmingham, AL**	**Charlotte, NC**	**Nashville, TN**
188 East Capitol St.	One Federal Place	Charlotte City Club	1600 Division St.
Suite 400	1819 Fifth Ave. North	121 West Trade St.	Suite 700
Jackson, MS 39201	Birmingham, AL 35203	Charlotte, NC 28202	Nashville, TN 37203

Summary

A complimentary seminar hosted by the Construction Lawyers of Bradley Arant Boult Cummings LLP about key issues which arrive after work has begun and which can impact the bottom line:

- Dealing with the Drawings/Specifications
- Handling Changes
- Claims of Defective Work
- Overcoming the Defaulting Subcontractor or Supplier
- Suspension and Termination
- Managing Warranties and Post Completion Claims

Schedule

7:30 a.m. to 8:00 a.m.	Registration & Breakfast
8:00 a.m. to 10:30 a.m.	Program: Part 1
10:30 a.m. to 10:45 a.m.	Break
10:45 a.m. to 11:45 a.m.	Program: Part 2
11:45 a.m. to 12:00 p.m.	Question & Answer

Who Should Attend?

- Project Managers
- Project Engineers
- Superintendents
- Contract Administrators
- Owners
- Architects
- Engineers
- Subcontractors
- Suppliers

To confirm your attendance please e-mail cruth@babc.com no later than one week prior to the event. Seating is limited.

No representation is made that the quality of legal services performed is greater than the quality of legal services performed by other lawyers

NOTES

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This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult your own lawyer concerning your own situation and any specific legal questions 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.babc.com.

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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.

Your Name:

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

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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?

_____

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

Comments:

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