BRADLEY ARANT BOULT CUMMINGS LLP **First Quarter 2015**

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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Axel Bolvig, III
Jennifer Brinkley (h)
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Eric A. Frechtel (d.c.)
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Rick Humbracht (n)
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Michael W. Knapp (c)
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Walter J. Sears III
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Frederic L. Smith, Jr.
H. Harold Stephens (h)
Robert J. Symon (d.c.)
David K. Taylor (n)
D. Bryan Thomas (n)
Darrell Clay Tucker, II
Slates S. Veazey (j)
Paul S. Ware
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Heather Wright (n)

Government's Bad Faith Material Breach Justifies Work Stoppage

In the recent decision *Kiewit-Turner v. Department of Veterans Affairs*, the Civilian Board of Contract Appeals ("CBCA"), the judicial body with authority over claims against the non-military agencies of the United States Government, held that the Department of Veterans Affairs ("VA") materially breached its contract with its contractor, Kiewit-Turner ("KT"), by failing to provide a design that could be built for the estimated construction cost at award ("ECCA"). The CBCA ruled that as a result of the material breach, KT was permitted to stop performance.

In August 2010, VA awarded KT an IDC-type contract (integrated design and construct) for preconstruction services on a medical center in Colorado. The contract contained an option for the performance of construction services. The contract was intended to allow KT to review and advise VA on its design, allowing VA to procure additional funds or direct its architect-engineer ("AE") to make changes to meet the ECCA. However, this project was troubled from the start. By the time KT's contract was awarded, the design was 50% complete and funding decisions had been made, limiting VA's ability to make modifications based on KT's input. Throughout the preconstruction phase, KT warned VA and its AE that the design lacked coordination and completeness, was over budget, was over-designed, and that value engineering ("VE") was not being implemented.

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Once the design was 65% complete, KT submitted its proposal for construction. KT's proposal price of $609 million was significantly above the established ECCA of $582,840,000 and contained important assumptions and clarifications that KT noted would result in additional costs if not met.

Rather than VA increasing its budget for the contract, VA and KT negotiated a contract modification that required VA to produce a design that could be built for the ECCA. The modification did not specify any set of drawings because, in KT's view, the most recent drawings could not be built for the ECCA. Subsequently, VA provided drawings that it purported to be the 100% drawings. These drawings were incomplete and required substantial supplementation. As KT acquired more information, it became clear to KT that the design could not be built for anywhere near the ECCA. Thereafter, multiple estimates were performed by KT, the AE, and a VA consultant, and every estimate exceeded the ECCA, with KT's last estimate reaching $1.085 billion. The parties engaged in extensive VE efforts, but ultimately VA instructed the AE to disregard the VE options and directed KT to proceed with construction, holding KT to the firm target price established in the contract modification.

KT objected to the direction, started work, and, most significantly, given the extraordinary circumstances, sought declaratory relief from the CBCA as to whether VA had breached its obligation to provide a design that could be built for the ECCA and whether KT consequently had the right to stop construction. The CBCA found that VA had obligated itself to produce a design that met the ECCA and that VA's commitment to do so was "critical" to the agreement. The CBCA found—applying a five-part test—that VA's breach of this obligation was material because (i) KT had been deprived of the benefit of a design that met the ECCA; (ii) KT could not be adequately compensated for VA's breach, in part, because VA did not have sufficient funds allocated; (iii) any forfeiture suffered by VA was limited; (iv) there was little likelihood that VA would cure its breach, given its insistence that it would neither redesign the project nor seek additional appropriated funds; and (v) VA breached its duty of good faith and fair dealing. More specifically, VA failed to control its AE, disregarded VE suggestions and cost estimates, delayed progress of construction, and adopted an estimate developed by the AE as its independent government estimate—an estimate that was "an academic exercise" and that was so far below any previous estimate "as to be of dubious accuracy." The Court rejected VA's argument that KT had waived its right to stop work by obeying the directive, noting that KT continued to work under specific and written protest. In light of the material breach, KT was entitled to stop performance.

This decision strongly reaffirms the Government's duty of good faith and fair dealing in its contracts, and reaffirms a contractor's right to stop work for a material breach. However, the facts of this case were very extreme, with repeated bad faith by VA and a refusal by VA to recognize its own failures. Contracts often afford both parties the right to stop work for material breaches such as a party's non-payment. However, the decision to implement a work stoppage should not be taken lightly, as an improper stoppage could carry serious consequences, such as a termination for default. Any decision to stop work should only be made after careful consideration, including discussion with legal counsel, regarding the basis for, the strength of the basis, and the potential ramifications of a decision to stop work, or to continue work under protest.

By Christopher Selman

Civil False Claims Act Liability in Applications for Payment

A recent opinion from the Fourth Circuit Court of Appeals, the federal appeals court covering Virginia, Maryland, West Virginia, North Carolina, and South Carolina, serves as a reminder of the breadth of the civil False Claims Act ("FCA") when applied to contractors working on projects funded by the federal government. *Badr v. Triple Canopy* also reminds contractors working on federally-funded jobs to maintain strong compliance programs and internal controls designed to avoid the types of contractual violations that can lead to liability under the FCA. Otherwise, contractors could be looking at civil FCA violations, which carry with them the potential for treble damages and up to $11,000 in penalties per false claim or false statement.

In *Badr*, the Fourth Circuit joined other federal courts across the country in holding that a government contractor violates the FCA if it submits a request for payment on a federally-funded contract and, in the process, withholds information about the contractor's noncompliance with a "material" contractual requirement. Under this "implied certification" theory of claim falsity, there is no requirement that the contractor submit a false certification of compliance with the contractual term at issue, or otherwise include something false within its payment application. So long as the contractual provision that was violated by the contractor was "material," and the contractor knew or recklessly disregarded the fact that it was submitting its payment application without disclosing

the violation of a material contract term, the contractor can be held liable for damages and penalties under the FCA.

According to the Fourth Circuit, a material contract term is one where a contractor's compliance or noncompliance with the term has "a natural tendency to influence, or [is] capable of influencing, the Government's decision to pay." The contract itself does not have to expressly state that a provision is material or that payment is conditioned upon compliance with the provision for the contract term to be "material."

The *Badr* case involved a contract to provide security guards at an airbase in Iraq. The contractor allegedly hired guards who did not meet a marksmanship requirement contained in the contract, and allegedly created false shooting scorecards to disguise the deficiency. The Fourth Circuit held that the marksmanship requirement was material because, in the court's words, "common sense strongly suggests that the Government's decision to pay a contractor for providing base security in an active combat zone would be influenced by knowledge that the guards could not, for lack of a better term, shoot straight." The court also noted that the contractor's alleged efforts to cover up the deficiency also suggested materiality.

The contractor in *Badr* argued that the Government failed to properly allege that the falsified scorecards were material because there was no allegation that the government official in charge of payment actually reviewed the scorecards. The Fourth Circuit rejected this argument, stating "the FCA reaches government contractors who employ false records that are capable of influencing a decision, not simply those who create records that actually do influence the decision."

The Fourth Circuit's holdings in *Badr* do not present new theories of FCA liability. Instead, the Fourth Circuit is following trends set by other federal courts across the country. Contractors on federally-funded projects must train employees to spot deficiencies in contract performance and report them to appropriate personnel within the company so that a decision can be made as to how to address those deficiencies before the contractor submits its next payment application.

By Kyle Hankey

Untangling Inconsistent Drawings and Specifications: Leave it to the Courts at your Peril

Contractors rely on information conveyed by design drawings and specifications to determine how to build a project. Ideally, the information in drawings and specifications will be consistent and complementary, providing a complete and accurate picture of what the owner and designer expect the contractor to build. Unfortunately, drawings and specifications can be inconsistent or ambiguous, and such design flaws often result in claims.

In *Goodrich Quality Theaters, Inc. v. Fostcorp Heating and Cooling, Inc.*, the general contractor agreed to construct an IMAX movie theater based on a set of contract documents that included a Project Manual, Design Drawings and the Steel Joist Institute Manual. Two of the structural Design Drawing sheets showed that the framing plan for the roof consisted of joist girders and roof deck. The key issue in the case was whether these two sheets adequately depicted the design intent for the joists.

The project designer ("AE") intended HVAC ducts to pass through openings in the roof joists. On the drawings it prepared, the AE used an hourglass-shaped dashed line on each roof joist to show where the ductwork would pass through the joist, inserted the word "opening" next to the hourglass mark, and wrote a dimension on the drawing to indicate the location of the opening in the joist. The AE undoubtedly believed it had supplied ample information to allow the contractor to determine where the joists needed to be modified to accommodate the ductwork.

Unfortunately, the hourglass mark meant nothing to the contractor and its structural steel subcontractor, and they simply ignored it. The structural steel subcontractor submitted shop and erection drawings that called for standard joist girders that did not contain openings for ductwork. These shop drawings were submitted to and approved by both the general contractor and AE. When roof joists arrived at the jobsite, the AE realized that the joists would not accommodate the ductwork.

The general contractor and AE instructed the structural steel subcontractor to proceed with erecting the standard joists, but the parties disputed for months about how to resolve the conflict with the ductwork, causing delays to the HVAC subcontractor. Eventually, the HVAC subcontractor incurred extra costs to modify its ductwork to fit around the roof joists.

Both subcontractors separately asserted claims and filed mechanics' liens that ended up being tried together in a fourteen-day trial. The trial court found in favor of both subcontractors, ordering the general contractor to pay damages to both subcontractors.

On appeal, the Indiana Court of Appeals tackled the question of whether the structural steel subcontractor breached its subcontract by providing and installing standard roof joists that did not accommodate ductwork.

The Court of Appeals found in favor of the structural steel subcontractor and concluded, like the trial court, that the contract documents only required standard joist girders. The Court reasoned that the hourglass mark used by the AE to indicate openings in the joist girders for ductwork was "not an industry-standard mark" according to the Steel Joist Institute Manual that was part of the contract. Indeed, the Manual specifically provided instructions for marking non-standard joist girders, and the AE did not follow those instructions.

The Court acknowledged that its interpretation effectively rendered the hourglass mark, the word "opening" and the dimensions written on the drawings next to the roof joists meaningless. The Court's opinion is well-reasoned, but a different court, or a panel of arbitrators, might have reached a different conclusion because it is at least arguably more reasonable to expect the contractor to submit a Request for Information ("RFI") than to simply ignore information on a drawing that it does not understand. It also ignored the typical contract interpretation 'rule' that a court should avoid, if possible, an interpretation that renders a portion of the contract meaningless.

The Court also rejected the argument that the structural steel subcontractor had a duty to discover and notify the general contractor of ambiguities in the plans. While such a duty was supported by a provision in the Project Manual and by Indiana law, the Court sidestepped this issue by concluding that the structural steel subcontractor did not know, and could not have known, that the hourglass mark created an ambiguity. Once again, a different court or arbitration panel might reach a different conclusion.

Finally, the Court attached great significance to the general contractor's and AE's approval of shop drawings that included standard trusses. The Court explained that "it was reasonable for . . . Wilson Iron to believe that the approval of the Joist Placement Plans meant that Roncelli and Paradigm intended them to use standard joist girders rather than special joist girders." To avoid this kind of argument, designers often approve shop drawings by applying a stamp that contains a disclaimer. The disclaimer typically states that the approval of the shop drawing "does not relieve the contractor of its obligation to comply with the contract documents" or words to that effect. Such a disclaimer here might have undermined the structural steel subcontractor's ability to rely on the shop drawing approvals. Unfortunately, the opinion does not address whether the shop drawing approvals contained a disclaimer. Regardless, the case certainly illustrates the logic behind including disclaimers in shop drawing approval stamps.

A fourteen day trial and an appeal were undoubtedly expensive, time-consuming and frustrating for the parties, especially because protracted litigation could have been avoided easily several different ways. The AE could have followed the Steel Joist Institute Manual, or provided a legend explaining what the hourglass mark meant, or supplied a note or detail showing how the ductwork intersected with the roof joists. The AE and general contractor could have reviewed the shop drawings more carefully, and determined that the structural steel subcontractor had missed the significance of the hourglass mark before fabrication started. Likewise, the structural steel subcontractor could have submitted an RFI asking about the meaning of the hourglass mark. Asking questions to understand the designer's intent is almost always going to be the best practice for the contractor to achieve a successful project without claims. Unfortunately, none of these things were done in this case, which led to project delays, claims, and a lengthy trial.

By Jim Archibald

"Tank Mix" and Match: Utilizing the Material and Workmanship Clause in Government Contracts

Last summer, The Armed Services Board of Contract Appeals ("ASBCA" or "Board") considered the enforceability of proprietary specifications in government contracts in *Appeals of Classic Site Solutions, Inc.* Classic Site Solutions, Inc. ("CSSI") entered into a contract to construct an automotive vehicle test and evaluation facility for the federal government. The contract called for the construction of a test track for military vehicles including tanks. The contract specified the type of concrete mix to be used in the construction of the test track as "Tank Mix," if locally available. If "Tank Mix" was not locally available, the contract specified that CSSI could, alternatively, develop its own mix or use a mix called "MdDOT Superpave hot mix."

Once the project began, CSSI submitted a mix design which listed "MdDOT Superpave hot mix" as the concrete for the test track. The government rejected the submittal noting that CSSI was not entitled to use the alternative mix so long as "Tank Mix" was locally available. CSSI ultimately performed the work using "Tank Mix," but filed a change order request and then a certified claim for the additional cost of "Tank Mix" relative to the alternative mix it originally submitted.

After denial of the certified claim and a subsequent appeal, the ASBCA considered the parties' competing

motions for summary judgment. The Board evaluated several other arguments in the parties' motions and then turned to CSSI's claim that, pursuant to the Material and Workmanship clause of the Contract, it was entitled to provide a mix design that was equal to "Tank Mix.

Per the Board, the Material and Workmanship Clause (FAR 52.236-5) was designed to promote competition and not limit a contractor to a specific name brand. Under the clause, a contractor has the right to submit a substitute product for a specified proprietary item "absent a warning that only the proprietary item will be accepted" if the substitute product is of equal quality. To prove entitlement to the use of substitute product the contractor must demonstrate:

> "'(1) the specifications are proprietary, (2) appellant submitted a substitute product along with sufficient information for the contracting officer to make an evaluation of the substitute, and (3) the proposed substitute meets the standard of quality represented by the specifications.'"

Without providing a detailed explanation, the Board concluded that the contract specifications did not contain a warning that only "Tank Mix" would be accepted, but CSSI did not develop the factual record sufficiently for the Board to rule on whether CSSI satisfied the burden of proof on its entitlement to use a substitute mix. Thus, the Board denied CSSI's motion for summary judgment on this issue.

The Board's decision suggests that contractors should be cognizant of the requirements of the Material and Workmanship Clause when negotiating for the use of alternate products. Through correspondence, submittals, or other written materials, a cautious contractor should document how the specified product is proprietary, provide sufficient information for the contracting officer to evaluate the alternate product, and demonstrate that the alternate product is equivalent in quality to the specified product. Such an approach may help a contractor avoid a prolonged and arduous claims process.

By Aman Kahlon

A Lesson on the Enforceability of Notice and Liquidated Damages Provisions

The Ohio Court of Appeals recently held in *Boone Coleman Construction v. Village of Piketon* that a general contractor could not claim additional time or recover delay damages if it failed to comply with the contract's notice provisions. At the same time, the court invalidated the parties' liquidated damages clause on the grounds that it produced such an unreasonably high award so as to constitute an unenforceable penalty.

This case involved the construction of a roadway and related improvements for the village of Piketon. As general contractor, Boone Coleman Construction entered into a contract with the village to complete the project for $683,300. The work was to be substantially complete within 120 days, and the parties agreed that liquidated damages would be assessed at $700 per day. Subcontractor and coordination issues arose during construction, and Boone Coleman delivered the project 397 days after the agreed project completion date. After the village refused to pay Boone Coleman its entire contract balance, Boone Coleman filed suit for the outstanding amount owed plus amounts claimed for additional work. The village then filed a counterclaim seeking liquidated damages. The trial court entered summary judgment in favor of the village reasoning that Boone Coleman failed to abide by the notice requirements of the contract in submitting its claims and that the liquidated damages provision was enforceable.

On appeal, the appellate court agreed that the general contractor was not entitled to delay damages because it did not provide proper notice. Although Boone Coleman had provided notice to the project's engineer, it was also contractually required to provide notice to the village. It failed to do so, and *even though the village had been informed by the project engineer of Boone Coleman's claims for additional costs and time*, the court denied those claims because notice was not strictly given in accordance with the contract. At the same time, the appellate court reversed the decision that the liquidated damages provision was enforceable. Specifically, the appellate court determined that the amount of liquidated damages was disproportionate to the value of the contract such that it constituted a penalty.

This case reinforces two important points. First, as has been said repeatedly in this newsletter previously, it is critical for contractors to faithfully comply with the notice provisions in their contracts. Failure to do so may bar recovery of claims for which the contractor is otherwise entitled. Moreover, as this case illustrates, constructive notice may not be a defense in some jurisdictions. The fact that the owner may be generally aware of a contractor's claim for additional costs or time (through its architect or engineer, for example) does not mean that the contractor is relieved from giving notice to the owner. As always, the safest option is, where practicable, to give notice in the exact manner as required by the contract.

Second, this case illustrates how courts may treat liquidated damages that are assessed over a long period of

time. The daily liquidated damages amount in this contract was modest by some standards. However, the amount of time that liquidated damages were assessed – almost 400 days – turned this modest amount into an award approximately 1/3 the value of the contract. Liquidated damages clauses are typically enforceable, but under these circumstances, the disproportionate result gave the court cause to invalidate this portion of the parties' agreement.

By Wilson Nash

SBA Proposes Broad Expansion of Mentor-Protégé Program

On February 5, 2015, the Small Business Administration ("SBA") issued a proposed rule that implements portions of the Fiscal Year 2013 National Defense Authorization Act pertaining to establishment of a mentor-protégé program available to *all* small businesses, instead of just certain SBA-approved 8(a) contractors as is the case under the current program. The SBA explains in its proposed rule that Service-Disabled Veteran-Owned Small Business ("SDVOSB"), HUBZone and woman-owned small business ("WOSB") companies will be included in the proposed "universal" mentor-protégé program and that "having five separate small business mentor-protégé programs could become confusing to the public and procuring agencies and hard to implement by SBA."

The new mentor-protégé program would permit, among other things, "a protégé [to] joint venture with its SBA-approved mentor and qualify as a small business for any Federal government contract or subcontract, provided the protégé qualifies as small for the size standard corresponding to the NAICS code assigned to the procurement." The new program would also allow mentor-protégé joint ventures to qualify as "small" for any socioeconomic contract for which the protégé is qualified. Thus, for instance, a joint venture between a WOSB protégé and its SBA-approved large business mentor would qualify for a WOSB set-aside contract.

The SBA is seeking comments from the public on a number of aspects of this proposed rule, including whether there should be a maximum of two mentors per protégé and whether the SBA should require all joint ventures in this program to be formed as separate legal entities. One issue that the SBA, acting in concert with other agencies, could stand to clarify in the final rule is what impact, if any, the new "universal" mentor-protégé program will have on the various agency-specific mentor-protégé programs, such as the Department of Veterans Affairs' mentor-protégé program. Public comments currently are due by April 6, 2015. We will continue to monitor this noteworthy development.

By Aron C. Beezley

Bradley Arant Lawyer Activities

Bradley Arant announces the recent opening of its new office in Tampa, Florida, with the addition of twelve lawyers from Glenn Rasmussen, P.A. The firm and our construction and procurement practice group are excited about this significant step into Florida. Our group has always had a strong Florida presence (see **Brian Rowlson** on next page, for example), and we are confident this addition allows our group to even better service our many clients in Florida.

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

Mabry Rogers was recently recognized as one of only four 2015 BTI Client Service Super All-Star MVPs for consistently setting "the standard for outstanding client service."

Doug Patin, **Bill Purdy**, **Mabry Rogers** and **Bob Symon** were recently listed in the *Who's Who Legal: Construction 2015* legal referral guide. **Mabry Rogers** has been listed in Who's Who for 20 consecutive years.

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

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

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

Jim Archibald, Ryan Beaver, Ralph Germany, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, David Taylor, and **Darrell Tucker** were named *Super Lawyers* in the area of Construction Litigation. **Arlan Lewis** and

Doug Patin were similarly recognized in the area of Construction/Surety. **Frederic Smith** was also recognized in the area of Securities & Corporate. In addition, **Monica Wilson** and **Tom Lynch** were listed as "Rising Stars" in Construction Litigation and **Aron Beezley** was listed as a "Rising Star" in Government Contracts.

Jim Archibald, **Axel Bolvig**, **Keith Covington**, **Arlan Lewis**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, **Bob Symon**, and **David Taylor** were recently rated AV Preeminent attorneys in Martindale-Hubbell.

Mabry Rogers was recognized by *Law360*, in February, as one of 50 lawyers named by General Counsel as a top service provider.

Bill Purdy and **David Taylor** were recently recognized as *2014 Mid-South Super Lawyers* in the area of Construction Litigation. **Alex Purvis** was selected as a *2014 Mid-South Rising Stars* in the area of Insurance Coverage. The Mid-South region includes Arkansas, Mississippi and Tennessee.

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.

Mabry Rogers was one of three U.S. construction lawyers recognized for outstanding client service in London on February 26, 2015 by the publishers of *Lexology* based on a survey of its in-house counsel subscribers, as well as all members of the Association of Corporate Counsel.

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

Christopher Selman joined the 2015 class of the ABC Future Leaders in Construction.

David Pugh has been named to the lawyer position on the Jefferson County Board of Code Appeals, which governs issues concerning the interpretation and application of the International Building Code in Jefferson County. He replaces **Mabry Rogers,** who served on the Board for over a decade.

Eric Frechtel recently spoke in New York at the American Conference Institute's 2nd Forum on Construction Claims and Litigation on "Duty of Good Faith and Fair Dealing in Administering a Contract, Interpreting the Court's Ruling in *Metcalf*, Level of Proof and Breach of Contract Issues."

In February, *Law360* published an Expert Analysis article authored by **Aron Beezley** titled "GAO Clarifies Task Order Project Jurisdictional Issues."

On February 25, **Bryan Thomas** and **Bridget Parkes** presented "Construction Law for Residential Brokers" for the Tennessee Association of Realtors in Nashville, Tennessee.

On January 21, **Keith Covington** spoke on Employer Strategies for Union Avoidance at the Associated Builders and Contractors of Alabama's Board of Directors Installation Luncheon.

Bryan Thomas and **Bridget Parkes** recently presented "Project Documentation, Notice, & Letter Writing" to the Emerging Leaders group of ABC in Nashville, Tennessee

Michael Knapp was recently asked to serve as an adjunct faculty member for University of Alabama at Birmingham to teach Construction Liability and Contracts in its Engineering Department's graduate level Construction Management program.

Bryan Thomas and **David Taylor** presented a seminar on claims avoidance on December 5 for a client's executive team in Nashville.

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

Monica Wilson presented at ABC Carolinas' November 2014 Excellence in Construction banquet in Uptown Charlotte, where general and specialty contractors throughout North and South Carolina were awarded for exceptional projects as judged by members of the construction industry. Monica is on her second term as co-chair of ABC Carolinas' Excellence in Construction Committee and also serves on ABC Carolinas Charlotte Council.

On December 11, 2014, **Keith Covington** spoke on Recent Developments at the National Labor Relations Board at a seminar held at the firm's Birmingham office.

Jim Archibald spoke on December 5, 2014 at the Construction Law Summit sponsored by the Construction Law Section of the Alabama State Bar, in Montgomery, Alabama. Mr. Archibald, who is currently the Vice President of the Section, discussed "Grounds for Challenging Unfavorable Arbitration Awards."

In December 2014, **David Taylor** and **Bryan Thomas** presented an update on legal issues and liens for a general contractor in Nashville, Tennessee.

On December 4, 2014, **Bob Symon** served as a panelist on a presentation sponsored by the Board of Contract Appeals

Bar Association (BCABA) entitled "The Duty of Good Faith and Fair Dealing - Litigants' Perspective on Recent Federal Circuit Jurisprudence from *Precision Pine* to *Metcalf* and Beyond."

Doug Patin and **Eric Frechtel** spoke at the 2014 ABA Construction SuperConference in Las Vegas, Nevada on December 2, 2014, about the *Metcalf* Decision from the Federal Circuit regarding the implied covenant of good faith and fair dealing in government contracts.

Jim Archibald spoke as part of a panel discussion on "Resolving the Dispute without Ruining the Project: Managing Mid-Project Disputes" at the same Construction SuperConference in Las Vegas on December 3, 2014.

On November 11, 2014 **Bryan Thomas** presented "Termination and the Big Questions before Commencing War" to the ABC's Emerging Leaders group in Nashville, Tennessee.

On November 7, 2014, **Ralph Germany** spoke at a seminar for the Tennessee Association of Construction Counsel on "Efficiently Arbitrating a $100,000 Construction Case."

David Taylor published an article in the October edition of *Student Housing Magazine* entitled "Using Arbitration for Disputes".

Monica Wilson authored an article entitled "The Legal Maze of Solar Globalisation" in the October 2014 issue of PV-Tech Power, an international solar power publication. The article addresses the challenges of developing projects in new jurisdictions as the utility-scale solar industry expands its geographical footprint worldwide.

Ryan Beaver recently presented to the American Society of Civil Engineers in Uptown Charlotte on the topic of risk management and claims avoidance for engineers.

David Taylor coordinated and spoke at a CLE seminar in January in Nashville sponsored by the Tennessee Bar Association's Construction Law committee.

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

Brian Rowlson was recently named co-chair of the newly formed Ethics and Legislative Affairs Committee of the North Carolina Bar's Construction Law Section **and Brian** was recently named vice chair of the Associated Builders and Contractors of the Carolinas (Charlotte Division) Education Committee for 2015.

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

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

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

David Pugh recently spoke at and moderated several panels at the "Alabama Facilities Directors and Constructors Conference" in Montgomery, Alabama.

BABC recently welcomed four new attorneys to its Construction and Government Contracts practice groups – **Jennifer Brinkley** (Huntsville), **Amy Garber** (Washington, D.C.), **Jasmine Kelly** (Charlotte), and **Bridget Parkes** (Nashville). We are very excited about the addition of these four to our practice groups.

Mabry Rogers joined the risk management and project management teams at their quarterly meeting at a construction client's HQ in Arizona on February 26 to present a Risk Management and Avoidance interactive slide show.

It is with mixed emotions that we report that **Charlie Baxley** has left the firm to go in-house with one of our construction clients, where he joins the staff of one of our former partners. Charlie will be missed, but we know that he will excel at his new job, and we are pleased that we will be able to continue working with him in his new capacity. Charlie served as assistant editor for this newsletter for the last two years and will be missed.

CPPG lawyers will again present the complimentary "Construction Law 101" morning seminar for clients in various cities during 2015. If interested, contact any CPPG lawyer or **Terri Lawson (205) 521-8210.**

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

This newsletter is available on-line on the publications link of our group's website, which can be found at http://www.babc.com/construction_and_procurement/

The online version will allow access to the cited cases or regulations.

NOTES

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