BRADLEY ARANT BOULT CUMMINGS LLP

First Quarter 2016

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

The Camel's Nose: Incorporating Commercial and Construction Arbitration Rules

There is an old proverb that states, "If the camel once gets his nose in the tent, his body will soon follow." Stated differently, one should not let the camel's nose inside unless he or she is prepared to accept the whole camel. Within the arbitration context, this proverb is an important reminder for construction businesses to think carefully when entering contracts incorporating the rules of an arbitration administrator such as the American Arbitration Association ("AAA"); otherwise, they may be agreeing to more than they initially realize.

A recent Alabama Supreme Court decision, *Fed. Ins. Co. v. Reedstrom*, provides a good illustration of this lesson. In *Reedstrom*, a company held an insurance policy which protected company officers from loss for actions committed in the course of their employment with the company. The company fired its executive director, resulting in a lawsuit where the executive director and the company each filed claims against one another. The executive director gave the insurance company issuing the policy notice of the claims asserted against him and requested coverage per the policy's terms. The insurance company denied his claim, prompting the executive director to file a separate action against the insurance company alleging breach of contract.

The insurance policy at issue contained a provision stating that any dispute or claim relating to coverage issues had to be submitted to binding arbitration. Furthermore, the provision specified that all arbitration proceedings would be conducted "pursuant to the then-prevailing commercial arbitration rules of the [AAA]."

The insurance company sought to compel arbitration. The executive director argued that such action was barred as (1) the insurance company had waived arbitration, and (2) the executive director was not bound by the arbitration provision as he had never signed the insurance policy. The Alabama Supreme Court noted that while both of these issues are typically resolved by a court of law, there is an exception where

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"the subject arbitration provision clearly and unmistakably indicates that those arguments should instead be submitted to the arbitrator." In this case, the arbitration provision incorporated the commercial AAA rules, one of which, Rule 7(a), states, "The arbitrator shall have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any claim or counterclaim." Accordingly, the Court held that the question of the arbitration provision's enforceability must be submitted to an arbitrator per the commercial AAA rules incorporated within the policy.

Beyond questions of enforceability and jurisdiction, incorporated commercial and construction arbitration rules can control many aspects of disputed matters. For example, within both the AAA Commercial and Construction Rules, there are specific rules which govern discovery procedures, Rules R-22 and R-24 respectively. Such rules could present issues for parties planning to rely on traditional discovery to assess the strength of their positions and engage in settlement discussions. Furthermore, both sets of AAA rules establish a specific timeline ranging from the filing of the demand to the scheduling of the final hearing to resolve the dispute at issue. This timeline has the capacity to affect the manner in which parties prepare their claims and defenses and could play a substantial role in their strategic decisions.

The decision whether to commit to binding arbitration has many impacts on the dispute resolution process. It can undoubtedly be beneficial for purposes of certainty and case administration, but it is important to remember the potential impact that these short, seemingly innocuous provisions can have on disputes arising from your agreement. So take the time to read the arbitration rules that your contract incorporates and make sure that they make sense for the needs of your company. If not, you should amend them in the body of your arbitration clause in your contract. Otherwise, you may be stuck with a camel that you never wanted to ride.

By Jackson Hill

Cybersecurity for the Construction Industry

Warren Buffett, Chairman and CEO of Berkshire Hathaway, issued his annual letter to shareholders at the end of February. He included one dire warning about a threat over which he admits he has no control: "That threat to Berkshire is also the major threat our citizenry faces: a 'successful' (as defined by the aggressor) cyber, biological, nuclear or chemical attack on the United States. That is a risk Berkshire shares with *all* of American business."

A cyberattack, and cybersecurity measures aimed at fending off, mitigating, and responding to an attack, should not be a concern just for Fortune 500 companies, health care providers, retailers that handle consumer information, and financial institutions. Every business, including contractors, architects, suppliers, and others in the construction industry, must be aware of and take measures to address cybersecurity.

The cyberattacks that most often make the news involve hacks that expose personal information of customers like credit card and bank account information. However, potential victims of cyberattacks include any business connected to the internet. In fact, contractors have a wide array of information that would be attractive to cyber-criminals, including:

- Employee information. Your systems have payroll and other personal financial information of employees. With exposure of that information, the employer has obligations under state and federal law to inform the affected personnel.

- Construction data. This data can include owner's plans and specifications, Davis-Bacon Act data which will include subcontractor employee data, and other confidential or proprietary data of the owner, designer, or a supplier. You may have a contractual obligation to keep that data secure. In addition, construction plans may include security system information, which can be used for a later, more traditional attack on the physical assets of the business.

- Valuable company data. Your systems likely have various intellectual property, trade secrets, company financial information, and other confidential company data that could be used by a competitor.

Cyberattacks are unpredictable and take many forms, ranging from email "phishing" schemes to sophisticated hacking or denial of service attacks. However, planning for cybersecurity can mitigate the threat. Taking the following steps will help to stave off or stop the attack and guide the response:

- Establish Incident Response Plans. Prepare a plan for responding to an incident. The plan should address both stopping an ongoing attack, securing data from further breach, and notification procedures for personnel or partners whose data was compromised.

- Define Key Responders. The personnel tasked with responding to the attack must know their role and action steps. While identifying a team leader is essential, the leader needs to be able to rely on other previously identified personnel to assist.

- Establish Lines of Communication. In responding to a cyberattack and its aftermath, communication is key. Communication has both internal and external elements. Internally, employees and department heads must know when a situation needs to be escalated and to whom the report must be made for the best response. Externally, the company must establish lines of communication in the initial response when it identifies a breach (to network providers, outsourced IT personnel, banks, and law firms), and in follow-up response (to government regulators and affected internal or outside personnel).

- Ready and Train Employees. All employees should receive training, at the appropriate level, on how to respond and lines of communication. Internal IT personnel may receive detailed training about the latest cybersecurity measures and programs. Management may receive training from law firms and law enforcement about threats and legal remedies. All personnel should receive training on the "simple" points: password security, being wary of opening attachments to email from unknown or unlikely sources, and being able to spot a phishing email.

Ultimately, responding to a cyberattack can be a daunting process that will involve a concerted response from a team of management, employees, and likely outside professionals. Planning for an attack (even up to running a simulated attack) and identifying the team that will respond may not prevent an attack or breach, but will pay dividends in mitigating the damage. But, the first step requires that the construction industry realize that it has the same vulnerability as any other industry.

By Michael S. Denniston

Design Errors Exception to the Economic Loss Doctrine

A recent Pennsylvania case, *Gongloff Contracting, LLC v. L. Robert Kimball & Assocs., Architects and Engineers, Inc.*, sheds light on circumstances in which design errors can lead to damages in tort as courts recognize exceptions to the economic loss doctrine for such errors or deficiencies.

A University engaged Kimball as an architect-engineer for the construction of a convocation center. After Kimball completed the design, the University hired Whiting-Turner as the general contractor, which then entered into a subcontract with Kinsley Construction to do the structural steel fabrication and erection. Kinsley then entered into a subcontract agreement with Gongloff Contracting under which Gongloff was to provide labor, materials, and equipment to erect the structural steel. Kinsley also entered into a subcontract with Vulcraft to detail and fabricate the steel trusses, which would be erected by Gongloff. In addition, Kinsley hired Carney Engineering to assist in the detailed design of the structural steel. Kimball's design of the steel structure was supplied to each of the parties. Both Vulcraft and Carney raised concerns about the roof design, warning that the header beams that supported the trusses were drastically undersized.

Gongloff brought suit against Kimball for negligent misrepresentation, alleging monetary damages resulting from Kimball's improper roof design. The trial court decided that Gongloff could not pursue the negligent misrepresentation claim and ruled in Kimball's favor based on the economic loss doctrine. Gongloff appealed raising two issues: (1) whether a design professional is required to make an explicit negligent misrepresentation of a specific fact for a third party to recover economic damages, and whether (2) Gongloff properly alleged that Kimball either "expressly" or "impliedly" represented that the structure could safely sustain all required loads.

Pennsylvania law generally bars claims brought in negligence that result solely in economic loss, known as the economic loss rule. An exception, however, provides that if a person in the course of his profession supplies false information for the guidance of others, he is subject to liability for monetary loss caused by the "justifiable reliance upon the information," if he fails to

exercise reasonable care in communicating the information.

Kimball argued that Gongloff was required to identify particular communications of documents provided by Kimball that were false. The court, however, did not agree that such a conclusion was proper, and stated that the actual misrepresentation here was the information in Kimball's roof design. The court also agreed with Gongloff's argument that the trial court erred when it faulted Gongloff for failing to show that Kimball "explicitly or impliedly represented that the structure could safely sustain all required construction."

The court concluded that Gongloff had alleged sufficient facts to meet the exception to the economic loss doctrine. The court reasoned that Gongloff showed that Kimball supplied its design in order to provide guidance as to how the project was to be built, that Kimball qualifies as a design professional, and that the feasibility of the construction of the roof in accordance with Kimball's design was determined to be impossible, thereby permitting an inference that the design included false information.

This case serves as a reminder to contractors, architects, and designers that errors or deficiencies in design are not necessarily shielded by the economic loss doctrine in states that apply this doctrine. Special attention should be paid to the possibility of being hit with damages for such design flaws if one enters contracts in states applying such exceptions to the economic loss doctrine.

By Carly Miller

Changes to IRS Partnership and LLC Rules

You may have heard that the IRS's ability to audit partnerships (including multi-member LLCs) will be greatly enhanced due to changes made by the recent Bipartisan Budget Act of 2015. The IRS will be ramping up its partnership audit efforts and training auditors. Congress projects these new procedures to generate over $9.3 billion in new revenue over a 10 year period. The new rules apply to tax years beginning after 2017, and will apply to partnerships of 100 or more partners. It will apply to other partnerships as well, if one or more members fit certain categories (*i.e.*, a member itself has more than one hundred partners).

Partnerships need to begin preparing now for these changes by amending their agreements, selecting a new "Partnership Representative," and making decisions that will affect internal operations for years to come.

Currently, few partnerships are audited by the IRS, in large part because the agency cannot assess partnerships directly, but instead must pursue each partner for its share of any assessment, often through multiple tiers. The default rule under the new Budget Act requires the IRS to assess the partnership if filing errors are detected during an audit, and a Partnership Representative ("PR") must then quickly decide whether the partnership itself (the current partners, indirectly), or those who were partners during the audit period, should pay the assessment.

First and foremost, a PR should be designated well before the end of 2017. He or she will be the sole contact person with the IRS auditor and is authorized to make all decisions regarding how to handle the audit, whether to appeal the assessment or settle, and whether the partnership will "push out" the assessment to the former partners or pay the assessment itself. The partnership and all its partners will be bound by actions taken by the PR in connection with partnership audits.

Initially, the PR (we think) makes the decision whether the partnership can opt-out of the new rules – and the first step is determining whether that option is available based on head count. The partnership must have 100 or fewer partners, and all partners must be either individuals, S corporations, C corporations, or estates of deceased partners. If you have an S corporation partner, then you must count each of its shareholders for this purpose. If even one of the partners is another partnership/LLC, a disregarded single member LLC (unless future guidance says otherwise) or a trust, the partnership is automatically thrown into the new regime. *No opt-out.*

Your company's current tax matters partner or tax matters member will need to be replaced, as the old law is being repealed for tax years after 2017. If a new PR hasn't been designated, the IRS will have the authority to designate one for you. So start thinking about (1) who the new PR should be, (2) what level of indemnification will be afforded them against any costs or liabilities that may be incurred in acting that role, and (3) the level of accountability they will have to the company and its partners. The PR need not be a partner.

Your LLC or partnership agreement may require review for how one handles a past tax liability for a retiring partner or member. Or for how your JV will

deal with a late audit, long after the JV's single-purpose project is completed.

A final warning: if you are contemplating a new business venture that will be classified as a partnership for tax purposes (including an LLC or joint venture), or if you need to amend an existing agreement, then these changes should be incorporated into the new or revised agreement immediately, even though detailed guidance from the IRS on many aspects of the Budget Act is not expected to be released until later this year.

By Bruce P. Ely and Stuart J. Frentz

Proposed FAR Rule Would Restrict Confidentiality Agreements between Contractors and Their Employees

Recently, the Federal Acquisition Regulation Council published a proposed rule that, if implemented, would impose a government-wide prohibition on contracting with companies "that require employees or subcontractors to sign an internal confidentiality agreement that restricts such employees or subcontractors from lawfully reporting waste, fraud, or abuse to a designated Government representative authorized to receive such information." 81 Fed. Reg. 3763 (Jan. 22, 2016). The proposed rule – which is aimed at providing protections for potential whistleblowers – imposes significant consequences for non-compliance, and therefore, it is important that all contractors which bid on federal work be aware of the rule's key features:

- The proposed rule requires "that each offeror, in order to be eligible for award, represent, by submission of its offer, that it does not require employees or subcontractors to sign or comply with such internal confidentiality agreements." Notably, this language does not require an affirmative representation of compliance; rather, such a representation is implied "by submission" of the offer.

- The proposed rule requires contractors to "notify employees that any such agreements in pre-existing confidentiality agreements are no longer in effect." Of note, the proposed rule states that "[t]his notice could be accomplished through normal business communication channels, such as email."

- The rule, as proposed, applies "to all solicitations and resultant contracts that are funded with FY 2015 funds or subsequent FY funds that are subject to the same prohibition on confidentiality agreements, including contracts and subcontracts for acquisitions in the amounts not greater than the simplified acquisition threshold, and contracts and subcontracts for the acquisition of commercial items, (including commercially available off-the-shelf items)." In other words, the proposed rule applies to most federal contracts.

Public comments on the proposed rule currently are due on or before March 22, 2016. We will continue to monitor this noteworthy development.

By Aron C. Beezley

Burn Notice: Why Strict Compliance with Notice Requirements is Critical

Compliance with notice provisions in contracts is often a threshold question for courts when evaluating contract claims. In *Contractors Edge, Inc. v. City of Mankato*, the Minnesota Court of Appeals addressed such a circumstance with respect to a road extension project in the City of Mankato, MN. The City contracted with Contractor's Edge ("CEI") on the extension project for, among other items, construction of the road, drainage facilities, and a drainage ditch known as a "bio swale." A dispute arose over the location specified in the contract for the stock pile where excavated materials could be stored. The contract specified that a stock pile would be one half mile away from the project, but, upon starting the work, CEI discovered that the driving distance was more than a half mile, which increased its hauling costs. CEI requested a change order for the increased hauling costs, and the City initially granted this change.

However, the City later rescinded the change order arguing that the straight line distance between the stock pile and the project was actually less than one half mile, and the contract did not specify that the distance referred to "driving" distance. The City's and CEI's contract required a party to submit written notice of any claim within a prescribed time period and to include with the notice "the amount or extent of the Claim, with supporting data." The contract further provided that the "responsibility to substantiate a Claim shall rest with the party making the Claim."

Shortly after the City rescinded the change order and within the time limits prescribed by the contract, CEI submitted a "notice of claim" which sought payment for the extra hauling costs, but did not provide

detailed evidence supporting the claim in terms of itemized costs and labor hours. CEI's claim was rejected prompting it to file a lawsuit in Minnesota District Court to recover the increased hauling costs. The City then moved for summary judgment against CEI, and the district court granted the motion determining that CEI's "notice of claim" did not provide "supporting data" for the claim as required by the parties' contract. CEI appealed, and the Minnesota Court of Appeals affirmed the district court's decision.

In affirming the decision of the lower court, the court of appeals noted that, while a party may be granted some lenience relative to the form of its notice, it is not the case that "anything goes." Provision of "supporting data" was a requirement of written notice under the contract causing CEI's "notice of claim" to be facially deficient. Further, because CEI, as the claiming party, was responsible for substantiating the claim, the absence of "supporting data" in the form of itemized costs, labor hours, wages, etc. made CEI's notice ineffective.

The result in *Contractors Edge* is a good reminder for all participants in the construction industry to pay attention to and follow contractual requirements. Although notice in this case was timely, it was not sufficient because of other requirements laid out in the disputes clause of the contract. The risk of non-payment of what might otherwise be deemed a legitimate claim is too great to ignore any contractual notice requirement. A party should not rely on the leniency of the other party, or, ultimately, of a judge or arbitrator to preserve such claims.

By Aman Kahlon

Safety "Moments" for the Construction Community

Red Cross now offers free app downloads for smart phones that could truly benefit the members of the construction community. Available apps from Red Cross include those for first aid emergencies, an "all-inclusive" health app, severe weather apps so you can monitor inclement weather in your area, and apps for kids to become more educated and familiar with their health.

TurnCycle is a new gesture-controlled wireless bicycle turn signal, making bike-riding safer in our communities, particularly downtown and in other urban areas. Bike smarter, bike safer.

Announcing BABC's new Construction and Procurement Practice Group Blog

BuildSmart: Developments of Interest to Design, Construction and Government Contract Professionals.

Check it out at
https://www.buildsmartbradley.com/

Bradley Arant Lawyer Activities

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

In February 2016, **Jim Archibald** was inducted into the highly selective American College of Construction Lawyers (ACCL) as a fellow, joining Bradley Arant lawyers **Mabry Rogers**, **Bill Purdy**, and **Wally Sears**. Fellowship in the ACCL is offered only to those lawyers whose practices and careers have been marked by the highest standards of ethical conduct, scholarship, professionalism, and collegiality, and who have demonstrated a commitment to give back to the construction industry.

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**, **David Pugh**, **Bob Symon**, and **Arlan Lewis** were recently listed in the *Who's Who Legal: Construction 2016* legal referral guide. **Mabry Rogers** has been listed in Who's Who for 21 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 2016.

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 2016.

Mabry Rogers and **David Taylor** were recognized by *Best Lawyers in America* in the area of Arbitration for 2016. **Keith Covington** and **John Hargrove** were recognized in the area of Employment Law – Management. **Frederic Smith** was recognized in the area of Corporate Law.

Tony Griffin was recently selected (for the 18th consecutive year) for *Best Lawyers in America* for 2015 in the following areas: Employment Law-Management, Labor Law-Management, and Litigation-Labor and Employment.

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. **Aron Beezley** was named a 2016 *Super Lawyers* "Rising Star" in the area of Government Contracts. In addition, **Monica Wilson** was listed as a "Rising Star" in Construction Litigation, **Amy Garber** was listed as a "Rising Star" in Construction Law, and **Tom Lynch** was listed as a "Rising Star" in both Construction Litigation and Construction Law.

David Taylor was recently named Nashville's *Best Lawyers* 2016 Lawyer of the Year in the area of Arbitration.

Mabry Rogers was recently selected as Birmingham's *Best Lawyers* 2016 Lawyer of the Year in the area of Arbitration.

Bill Purdy was recently named Jackson's Best Lawyers 2016 Lawyer of the Year in the area of Construction Law.

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 Star* 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.

David Taylor and **Bryan Thomas** were recently named to the AGC of Middle Tennessee Legal Advisory Committee.

David Pugh will again serve as the Chair of the Hospital and Health Care Construction Track at the Associated Builders & Contractors' Fourth Annual User's Summit in New Orleans on October 12-13, 2016, which is intended to bring owners, developers and contractors together to share "best practices" and to discuss candidly and openly ways to improve safety, efficiency, productivity and quality in the design and construction process.

Arlan Lewis was elected to the 12-member Governing Committee of the American Bar Association's Form on Construction Law during its Annual meeting in April in Boca Raton, Florida.

On April 6, 2016, **David Taylor** and **Bryan Thomas** will present "Arbitration vs Litigation" at Vanderbilt University Law School.

On February 22, 2016, **Aron Beezley** published on BABC's blog *BuildSmart* an article titled "Top Ten Reasons to Intervene in Bid Protests."

Brian Rowlson and **David Taylor** made a claims avoidance presentation to a construction client in Ft. Lauderdale, FL on February 16, 2016.

On February 11, 2016, **Slates Veazey** presented at the Annual Insurance Professionals of Jackson's Education Day regarding insurance coverage issues facing the construction industry.

On January 29, 2016, **David Taylor** hosted and spoke at a Tennessee Bar Association seminar on Tennessee Licensing issues.

On January 22, 2016, *Law360* published an Expert Analysis article authored by **Aron Beezley** titled "Civilian Board of Contract Appeals Decision: A Win For All."

Doug Patin and **Aron Beezley** gave an in-house client presentation on January 13, 2016 on change order management issues in the federal construction context.

Monica Wilson and **Mabry Rogers** gave an in-house seminar on risk management at a client's project site in Georgia in January.

Bloomberg BNA Federal Contracts Report published an article on December 29, 2015 authored by **Aron Beezley** titled "The Case for Intervention in Bid Protests."

On December 22, 2015, *PubKCyber* published a feature interview with **Aron Beezley** on the rising prominence of cybersecurity-related issues in bid protests.

Law360 published an Expert Analysis article on December 14 authored by **Aron Beezley** titled "Inside New FAR Provisions on Reporting Felony, Tax Info."

Jim Archibald spoke on "Recent Developments in Building Information Modeling and Virtual Design and Construction" at the Second Annual *Construction Law Summit* for the Construction Law Section of the Alabama State Bar in Birmingham on December 1, 2015.

On December 3, 2015, **Beth Ferrell** spoke on a panel on the topic of "Price Realism" at the 2015 Nash & Cibinic Report Roundtable.

Jasmine Gardner became licensed to practice in South Carolina in November 2015.

Bridget Parkes recently became the President of the Associated Builders and Contractors (ABC) Middle Tennessee Chapter Emerging Leaders.

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.

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.

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*.

At our recent Construction and Procurement Group Learning Day in Nashville on March 14, most of our members received negotiation training from Dr. Susan Williams, Professor Emirata at Belmont University, and are now trained in the "Harvard Program of Negotiation."

NOTES

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.

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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.*

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