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Fourth Quarter 2020

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Do it Right or Not at All: Challenging the Accuracy of a Contract Performance Assessment Report

The United States Court of Federal Claims recently dismissed multiple challenges to the accuracy of a Contract Performance Assessment Report (CPAR), not based on merit but based on jurisdiction. This serves as a reminder to all that the proper mechanism to challenge a CPAR must be obeyed for the claims to be heard.

In *Colonna's Shipyard, Inc. v. United States,* Colonna sought to challenge the accuracy of its CPAR from a previous Navy contract, the Narragansett Contract. After receiving a negative evaluation on the Narragansett Contract, Colonna bid on another Navy contract, the Prevail Contract. Unsurprisingly, the Navy relied on the its previous performance assessment of Colonna and awarded the Prevail Contract to another contractor.

Colonna sought to challenge the accuracy of its prior CPAR by bringing a post-award bid protest after Colonna was not awarded the Prevail Contract. Before the Court ruled on the merits of the case, the Court dismissed three of Colonna's four claims.

Colonna first raised a bid protest claim. Colonna argued that the Narragansett CPAR was factually incorrect and caused Colonna to lose the Prevail Contract; therefore, the Court should "correct" the CPAR through the bid protest. The Court relied on *Bannum, Inc. v. United States* in holding that a bid protest is not the proper forum to challenge a CPAR. Colonna then raised a breach of contract claim. The Court again followed Federal Circuit precedent, *Todd Construction L.P. v. United States*, and held the bid protest was not the proper forum. Finally, Colonna raised claims of an unconstitutional action and de facto debarment action by the Navy. The Court entertained both claims, but the Court held both claims' substance was a challenge to the Narragansett Contract CPAR. Therefore, the Court lacked jurisdiction to hear the unconstitutional and de facto debarment claims. Instead, the Court held that the proper mechanism to challenge the accuracy of a CPAR was an action asserted under the Contract Disputes Act.

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www.bradley.com

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

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

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

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

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

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

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

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

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

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

The Court dismissed all three claims for lack of jurisdiction.

The only claim the Court determined it had jurisdiction to hear was Colonna's breach of the covenant of good faith and fair dealing claim. Colonna claimed the Navy acted in bad faith in awarding the Prevail Contract. The Court held this claim, to the extent it focused on bad faith in awarding the Prevail Contract and not bad faith in the creation of the Narragansett Contract CPAR, was within the Court's bid protest jurisdiction.

The *Colonna* decision provides clear guidance on a question that contractors frequently ask about a CPAR rating. First, try to negotiate a better rating, addressing the bases for the lower rating. If still not satisfied, make the claim under the CDA, or combine it with other (monetary claims) under the CDA. Do not wait until the time to contest has passed or until the poor rating causes economic harm in a later bid.

By: Molly Maier

Posture Away, You May Still Get Your Way

The United States Sixth Circuit Court recently upheld a party's contractual right to arbitration despite pre-lawsuit, informal letters suggesting that the parties litigate in court. In *Borror Property Management, LLC v. Oro Karric North, LLC*, the Sixth Circuit heard a dispute arising out of an Ohio federal trial court decision related to whether a party waived its arbitration right. Oro Karric North, LLC and its related entities ("Oro") entered into a contract with Borror Property Management, LLC ("Borror") for Borror to manage Oro's residential apartments. The management contract included an arbitration provision stating, in essence, that disputes between them would be determined by arbitration unless they first resolved the dispute among themselves.

When a dispute arose between the parties, and Borror ceased to manage Oro's properties, Oro asserted in a letter that Borror was in breach of contract. Oro stated that it planned "to proceed directly to litigation in either state or federal court" as the contract does "not limit litigation exclusively to arbitration." Oro also asked Borror to notify it within 60 days if Borror preferred arbitration. Borror chose litigation. After receiving Oro's letter, Borror filed a complaint in federal court asserting its own breach of contract claims. Oro then moved to compel arbitration, but the district court found that Oro had waived its contractual right to arbitration through its pre-litigation conduct.

Because the parties both assumed that the arbitration provision was valid and applicable, the question before the court became whether Oro waived its otherwise enforceable right to have the dispute heard by arbitration. As the Sixth Circuit noted, federal law looks favorably upon arbitration, and any waiver of that right "is not to be lightly inferred." A party waives its arbitration right when (1) the party's acts are "completely inconsistent" with its arbitration right, and (2) the party's conduct is prejudicial to an opposing party (such as by significantly delaying one's asserting the right to arbitrate).

The Sixth Circuit concluded that Oro did not waive its right to arbitration. The main dispute was whether Oro's "litigation-threatening" correspondence amounted to conduct "completely inconsistent" with its arbitration right. But, as the court noted, pre-litigation letters serve a variety of purposes—from identifying a party's concerns to foreshadowing litigation to articulating a path to settlement. As such, these letters are often more rhetorical art than legal science. Further, because a party's true intentions in crafting such correspondence cannot be known, courts are reluctant to give those letters the same legal force as it might give a party's representations in other settings. While Oro's letter suggested that the ultimate dispute resolution path was Borror's to choose, the court did not view the letter as "completely inconsistent" with Oro's arbitration rights.

The Sixth Circuit also reasoned that concluding otherwise would make it much more difficult for parties to work out their differences short of litigation, which would, in turn, unnecessarily increase the load on the judicial system. Finally, even if it were to find Oro's letter entirely inconsistent with its arbitration rights, Borror was not materially prejudiced by Oro's actions. Typically, in this context, prejudice appears when one party spends substantial time or money in litigation before an arbitration right is invoked. Such was not the case here.

Having determined that Oro's pre-lawsuit communications were neither inconsistent with its arbitration right nor prejudicial to Borror, the Sixth Circuit held that there was no waiver of Oro's

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arbitration rights. This opinion supports the freedom to negotiate, posture, and act in one's interest when faced with a dispute. While there is always some risk that pre-lawsuit or pre-arbitration conduct can result in a waiver, that is not the result preferred by courts. By enabling parties to speak freely prior to filing suit, courts are facilitating out-of-court resolutions of their differences and reducing the load on the judicial system.

By: Carly Miller

Continuous Trigger Theory, A 'Grand Slam' Approach to Recovery Under CGL Insurance?

It behooves construction professionals, be they materials manufacturers, general contractors, or lower-tier subcontractors, to carry some form of commercial general liability insurance ("CGL Insurance"). Having such coverage alleviates some of the potential risk and financial exposure a construction professional carries on a particular project. That is, of course, unless the construction professional gets sued and the insurer refuses to pay.

One of the most common responses construction professionals receive as part of a denial for coverage under a CGL policy is that the injury sustained by the party suing the insured did not take place during the policy period. Said differently, the "occurrence" triggering the insured's liability (and any coverage) did not take place while the CGL policy was active. It is a frustrating conundrum that many in the construction industry deal with far too often. Complaints about defective work on a particular project frequently come years after the job has ended and the relevant CGL policy has expired. Even further, the "defect" in the work may not be traceable to one feature of the Project, one subcontractor, or even one single instance. Instead, the defect may be a continuous defect that is progressively worsening such as water-infiltration or mold.

One court in New Jersey recently addressed when and how a CGL insurer can be made to "pay up" for construction defects that may be "continuous defects" that injure clients over a span of years – and trigger a number of CGL policies. In *Travelers Lloyds Insurance Company v. Rigid Global Builders, LLC, et al.*, the owner of an indoor tennis complex, Grand Slam, sued a metal building manufacturer, Rigid Building Systems, Ltd. ("Rigid"), for alleged defects in a building it designed and engineered for the complex. Installed in 2007, the metal building sustained alleged water leaks between 2009 and 2011 following two hurricanes, and then a partial collapse in 2014 following a snowstorm. Grand Slam sued Rigid and alleged, among other things, that the pre-engineered metal structure was not built to code to sustain the correct ground snow load. Before trial, Grand Slam's counsel agreed that it would not introduce any "receipts or costs for damages between 2009 and 2011." Ultimately, the jury awarded Grand Slam $1.6 million in damages because the evidence showed the building had partially collapsed in 2014, its rod bracings were loose, and its frame was deflected and deformed in 2014 following the snowstorm (the "Grand Slam Action").

Soon after, Rigid's CGL insurer filed an action seeking a declaration that the $1.6 million awarded to Grand Slam was not covered by the two, occurrence-based CGL policies (the "Policies") it issued to Rigid between 2009 and 2011 (the "Policy Period"). Specifically, under the Policies, Travelers would only cover an "occurrence," defined as "an accident, including continuous or repeated exposure to substantially the same harmful conditions," during the Policy Period – not "occurrences" following the snowstorm in 2014.

In one of its arguments, Rigid claimed that Travelers must indemnify it for the $1.6 million under the Continuous Trigger Theory. Championing this theory created to "address the difficulties of establishing . . . when [a] harmful effect[] of a progressive disease or injury [] occurred," Rigid argued the damages sustained to Grand Slam's building were ongoing from installation in 2007 all the way through 2014. It believed that the harmful defects spanned the years of 2009 through 2011 and beyond.

The *Travelers* court chose to apply the theory to this construction defect case, but ultimately found for Travelers on the coverage issue. Courts applying the theory contend that "when progressive <u>indivisible</u> injury or damage results from exposure to injurious conditions, [they] may reasonably treat the progressive injury or damage as an occurrence within <u>each</u> of the years of a CGL policy." Thus, the theory allows

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construction professionals to seek coverage from each of the CGL policies implicated during the time period in which the "defect" injured the client.

The *Travelers* court found that Rigid was not entitled to coverage under the Continuous Trigger Theory because the Grand Slam Action's record was devoid of any evidence of "occurrences" of defects between 2009 and 2011 that were indivisible from the snowstorm damage in 2014. In fact, the Grand Slam Action attorney specifically excluded such evidence from this timeframe before trial. Further, even if the facts on the record did suggest that "occurrences" took place during those years, there was a "wholesale lack of any [proof of] damages" during those years; the alleged damages of "water leaks" were "merely tentative" in nature.

Importantly, the *Travelers* court did not eliminate the Continuous Trigger Theory from the theories through which a construction professional can attempt to hold a CGL insurer liable. Instead, it confirmed another avenue for potential recovery from an insurer who tries to obviate its responsibilities under a CGL policy. This case provides some level of comfort, in the jurisdictions where Continuous Trigger Theory has been applied to construction defect cases, to contractors who may be able to seek coverage from their CGL insurers for "defects" that injured clients over a period of time and while the contractor held a number of different policies. In the end, this theory may prove to be a "Grand Slam" approach for contractors.

By: Anna-Bryce Hobson

The Right to Arbitrate and the Risk of Losing that Right: a Reminder from the Alabama Supreme Court

The Alabama Supreme Court recently found that a party was in breach of an arbitration clause for declining to pay the fee schedule set forth by the American Arbitration Association (AAA) and thus lost the right to compel arbitration. This case serves as a reminder to follow the orders of arbitral institutions or risk losing the opportunity to arbitrate your dispute. The Alabama Supreme Court's decision further enforces the sage advice to draft arbitration agreements carefully so as to protect your rights and preferences in the adjudication of a dispute.

In *Fagan v. Warren Averett Companies, LLC*, the parties disputed the applicability of the Employment Arbitration Rules in regard to a case concerning a Personal Service Agreement (PSA). The plaintiff employee filed her demand for arbitration under the AAA Employment Arbitration Rules while the PSA specified that any disputes between the parties be settled by arbitration pursuant to the AAA Commercial Arbitration Rules.

Upon review of the arbitration demand, AAA issued a letter informing the parties that it had determined the arbitration would be administered in accordance with the AAA Commercial Arbitration Rules and the Employment/Workplace Fee Schedule, which required the defendant employer to submit a non-refundable fee of $1,900.00 while the employee was charged only $300.00. The employer sent a letter objecting to the application of the Fee Schedule. AAA informed the employer that the administrative review was "subject to review by the arbitrator," and that all such disputes could be raised upon satisfaction of the filing requirements.

When the employer declined to pay its AAA filing fee, the AAA closed the case. The employee then filed suit against the employer in state court. In response, the employer filed a motion to dismiss and compel arbitration. The employer argued that the employee had breached the PSA by filing her demand for arbitration under the Employment Arbitration Rules, which violated the parties' agreement to resolve disputes pursuant to the AAA Commercial Arbitration Rules. The employer further alleged that the parties had agreed to split arbitration costs 50/50 and that the AAA's administrative ruling applying the Employment Fee Schedule violated that agreement. The employee responded that the employer was precluded from enforcing the arbitration provision in the PSA because it had declined to participate in the arbitration.

Although the trial court agreed with the employer and granted the motion to compel arbitration, the Alabama Supreme Court reversed. The Supreme Court relied on the AAA Commercial Arbitration Rules, which stipulated that claims regarding employees or independent contractors and their employers that

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involve work related claims shall be subject to the Employee Fee Schedule. Based on this rule, the Supreme Court found that the employee had not violated the parties' arbitration agreement by filing her demand on the AAA form titled "Employment Arbitration Rules Demand for Arbitration."

The Supreme Court also disagreed with the employer's assertion that the parties were contractually bound to split arbitration costs 50/50. The Supreme Court noted that the PSA did not specify that all fees and costs would be split equally, but instead specified that only the "fees and expenses of any arbitrator" and the cost of the hearing locale would be borne equally by the parties. The Supreme Court found that because the parties' arbitration clause did not specify that administrative fees would be split 50/50, the employer should have paid the fee and then contested the fee allocation with the arbitrator. The Supreme Court held that the employer's refusal to pay the filing fee constituted a default of the arbitration provision in the PSA, and that based on this breach, the employer had lost the right to compel arbitration.

What can you learn from this decision? If you select arbitration as your means of binding dispute resolution, then you must also adhere to the rules, decisions, and procedures of the chosen arbitral institution or run the risk of losing the right to arbitrate altogether. That risk is not to be taken lightly. Arbitration is intentionally selected as a means of resolution for any number of reasons. Arbitration can provide the parties an arbitral tribunal that is well-versed in the subject matter and industry, allowing parties crucial expertise they may not have access to in state or federal courts. It also typically offers a more expedient and efficient means of resolution. To preserve the arbitration remedy and all its accompanying benefits, adherence to applicable rules and procedures is important.

The second take away is to carefully and precisely draft your contracts. In this case, if the parties had specified they would split all costs and fees 50/50 in the arbitration agreement, the court may have decided differently. Enlisting legal help for an assiduous contract review may not sound appealing, but it is a task that can save you much heartache and expense down the road. Ensuring that your priorities, intentions, and requirements are codified clearly and unambiguously in a binding document is money well spent.

By: Katie Blankenship

Attention, Georgia: Update to Lien Waivers Coming Soon

An important update to Georgia's statutory lien waiver laws will take effect on January 1, 2021. This summer, Georgia enacted an amendment to O.C.G.A. § 44-14-366 (the Lien Waiver Statute), that alters the form for interim and final lien waivers. The new statute makes it clear that lien waivers only waive lien or bond rights against the property and do not waive the right to file a lawsuit for non-payment or other related claims. The law also extends the deadline to file an affidavit of non-payment from 60 days to 90 days.

Georgia's legislature and Governor were prompted to amend the Lien Waiver Statute following a controversial 2019 decision from the Georgia Court of Appeals. In *ALA Constr. Servs., LLC v. Controlled Access, Inc.*, the plaintiff contractor sued a property owner for non-payment. The contractor signed an interim lien waiver at the time it submitted its invoice. Although the contractor never received payment, it failed to timely record an affidavit of non-payment or a claim of lien within 60 days of executing its lien waiver. The contractor then filed suit for breach of contract for non-payment. The Georgia Court of Appeals dismissed the contractor's breach of contract action on the basis that it had been waived by the interim final lien waiver and subsequent failure to file an affidavit of nonpayment.

The Georgia Court of Appeals interpreted two provisions of the Lien Waiver Statute to reach its decision. The first provision was the language stating that the "waiver or release shall be binding against the claimant *for all purposes*." The second provision was the language providing that the "amounts shall be conclusively deemed paid in full…sixty days after the date of the execution…unless…claimant files a claim of lien, or files…an affidavit of nonpayment." The Court held that, based on statutory plain language, the second provision automatically extinguished not just the plaintiff's lien rights but also all of plaintiff's underlying claims for payment when the affidavit of

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non-payment was not timely filed to nullify the lien waiver. Thus, under the current Lien Waiver Act, failure to timely file a claim of lien or affidavit of nonpayment waives all claims and results in the underlying debt being deemed satisfied.

On August 5, 2020, Georgia enacted amendments (Senate Bill 315) to the Lien Waiver Act that expressly limit applicable waivers and releases under the Lien Waiver Statute to just mechanic lien and bond rights. This change thereby allows claimants to retain any other contractual claims or rights to collect sums owed. This change has resulted in the deletion of language on the statutory lien waiver form that the sum owed is "conclusively deemed paid" if no Affidavit of Nonpayment is not timely filed. The time to file an affidavit of nonpayment or claim of lien has been extended to 90 days.

It is important to note that the lien waiver statute at issue in *ALA Constr. Servs., LLC v. Controlled Access, Inc.* is still in effect until January 1, 2021, and presents a continuing risk for all contractors in Georgia. The changes discussed above would have typically become effective on the July 1, 2020 following the Governor's signature. However, due to the COVID-19 pandemic, the Georgia General Assembly did not adjourn the Legislative Session until June 26, 2020, and therefore the Governor did not have time to review, sign or veto most bills before July 1, 2020. Effective dates of legislation are governed by O.C.G.A. § 1-3-4— and because Senate Bill 315 has no specific effective date listed in the text, and because the Governor did not sign the bill before July 1, 2020, it will not go into effect until January 1, 2021.

By: Connor Rose

Safety Moments for the Construction Industry

According to the U.S. Bureau of Labor Statistics, nearly three out of five workers were not wearing eye protection at the time of an eye injury. When asked why, "I didn't think that I needed them" was the most common answer given by construction workers.

Know what eye protection you need:

- Wear safety glasses with side protection if you will be working around flying particles, no matter the size.
- Wear goggles if working with chemicals.
- Wear a face shield OVER your safety glasses.

Focus on safe work practices:

- Use safety controls, such as machine guards.
- Remove protective eye wear only after turning off a tool.
- Clean yourself of all debris before removing eye protection.
- Be accountable to yourself and your co-workers. If your co-worker is not wearing their safety glasses, tell them to.
- #1 tip to prevent eye injuries on the job – wear your PPE all of the time!

Coronavirus/COVID-19

Our firm has endeavored to compile a number of helpful resources to assist our clients to navigate the uncertainties of COVID-19, with a heavy emphasis on issues affecting the construction industry. If you have questions related to the coronavirus and how it may impact you or your business, please visit: https://www.bradley.com/practices-and-industries/practices/coronavirus-disease-2019-covid-19. This site contains various resources across different areas, including employment, insurance, healthcare, as well as the construction industry.

Additionally, our Practice Group maintains its **BuildSmart Blog** and has published a number of coronavirus-related blog posts to help our clients in the construction industry navigate these issues: https://www.buildsmartbradley.com/. If you would like to get the blogs routinely, we invite you to subscribe to the blog at the above web address.

If you have additional questions that are not answered by these resources or you would like to discuss further, please contact an attorney in our practice group to help you find an answer to your question.

Bradley Arant Lawyer Activities

The pandemic may have changed the way we gather, but it has not changed our desire to provide relevant content and important guidance to our friends in the construction industry.

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In lieu of our annual in-person seminar, we are working to create short video snippets that cover a wide range of topics that answer common questions or informational points of concern that need to be addressed. The content will be easily digestible and readily available at your convenience. We are still working through the library of topics, but if you have a question you would like to see addressed, please email Chrissy Ruth at cruth@bradley.com. We look forward to seeing everyone in-person soon!

Our firm is extremely honored and grateful to our clients to have been recognized as the "**Law Firm of the Year**" in **Construction Law** for 2020 by the *U.S. News & World Report* in its "Best Law Firms" rankings.

Ranked the Top Law Firm in the U.S. for **Construction Law** 2018 & 2020

In U.S. News' 2021 "Best Law Firms" rankings, **Bradley's Construction and Procurement Practice Group** received a Tier One National ranking, the highest awarded, in Construction Law and Construction Litigation.

Bradley's Construction Practice was ranked No. 3 in the nation by *Construction Executive* for 2020.

Chambers USA ranked Bradley as one of the top firms in the nation for construction for 2020. The firm's Washington D.C., Mississippi, and North Carolina offices were also recognized as a top firm for those locales for Construction Law.

Chambers USA also ranks lawyers in specific areas of law based on direct feedback received from clients. **Ryan Beaver, Ian Faria, Doug Patin, Bill Purdy, Mabry Rogers, Bob Symon,** and **Ralph Germany** are ranked in Construction. **Aron Beezley** is ranked in the area of Government Contracts.

In *Best Lawyers in America* for 2021, **David Taylor** was named Lawyer of the Year in Construction for Nashville, TN, **Mabry Rogers** was named Lawyer of the Year in Construction for Birmingham, AL, and **Ralph Germany** was named Lawyer of the Year in Construction for Jackson, MS.

Axel Bolvig, David Taylor, David Owen, Doug Patin, Mabry Rogers, Eric Frechtel, Ian Faria, David Pugh, Jim Collura, Jim Archibald, Jared Caplan, Jon Paul Hoelscher, Monica Wilson Dozier, Mike Koplan, Ralph Germany, Bob Symon, Ryan Beaver, Wally Sears, and Bill Purdy have been recognized by *Best Lawyers in America* in the area of Construction Law for 2021.

Axel Bolvig, David Owen, Mabry Rogers, Fred Humbracht, Ian Faria, David Pugh, Jim Archibald, Michael Bentley, Bob Symon, and **Russell Morgan** were also recognized by *Best Lawyers in America* for Litigation - Construction for 2021.

David Taylor, Doug Patin, and **Mabry Rogers** were recognized by *Best Lawyers in America* for Arbitration in 2021.

Keith Covington and **John Hargrove** were recognized by *Best Lawyers in America* in the areas of Employment Law - Management, Labor Law - Management, and Litigation - Labor and Employment.

Andrew Bell, **Katie Blankenship**, **Amy Garber**, **Matt Lilly**, **Carly Miller**, and **Chris Selman** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and Construction Litigation for 2021.

Jim Archibald, Axel Bolvig, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, Ian Faria, Doug Patin, Ralph Germany, David Taylor, and **David Owen** were named *Super Lawyers* in the area of Construction Litigation. **Jeff Davis** was named *Super Lawyer* for Civil Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Luke Martin**, **Bryan Thomas**, **Andrew Stubblefield**, **Aman Kahlon, Amy Garber, Carly Miller,** and **Chris Selman** were listed

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as "Rising Stars" in Construction Litigation. **Ryan Kinder**, **Justin Scott**, and **Mary Frazier** were recognized as "Rising Stars" in Business Litigation. **Monica Dozier Wilson** and **Matt Lilly** were named North Carolina *Super Lawyers* "Rising Stars" in Construction Litigation. **Ian Faria** and **Jeff Davis** were ranked as Top 100 in Texas *Super Lawyers*.

Bob Symon was recently accepted as a Fellow in the American College of Construction Lawyers. Other Fellows include **Jim Archibald**, **Bill Purdy**, **Mabry Rogers**, and **Wally Sears**.

Jim Archibald, **Axel Bolvig**, **Jim Collura**, **Keith Covington**, **Ian Faria**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, **Bob Symon**, and **David Taylor** have been rated AV Preeminent attorneys in Martindale-Hubbell.

Jim Archibald, Axel Bolvig, Ian Faria, Eric Frechtel, Mabry Rogers, Bob Symon, David Taylor, **Bryan Thomas** and **Michael Knapp**, have been selected as Fellows of the Construction Lawyers Society of America (CLSA), and **Carly Miller** and **Aman Kahlon** were selected as Associate Fellows of the CLSA.

Luke Martin was named one of Birmingham's "Top 40 Under 40" by the *Birmingham Business Journal* in its annual honor for young professionals.

Monica Wilson Dozier was selected to The Mecklenburg Times' list of the "50 Most Influential Women" for 2020, whose honorees represent the most influential women in business, government, law, education and not-for-profit fields in the Charlotte region. The annual list is selected by a panel of independent business leaders and is based on professional accomplishment and community involvement.

Bradley recently served as the Charlotte Regional Presenting Sponsor of the 2020 ABC Carolinas Excellence in Construction Awards, celebrating the quality, innovation and service of the best contractors and projects in the Carolinas. **Monica Wilson Dozier** and **Brian Rowlson** presented the EIC awards to winners in socially-distant celebrations, and Bradley honored each winner in a special presentation of the Charlotte Business Journal.

Aron Beezley and **Sarah Osborne** presented on bid protests at the North Alabama FBA Acquisition Law Symposium on December 4, 2020.

On December 3, Bradley sponsored the Energy Technology Series webinar hosted by E4 Carolinas. **Chris Selman** presented the keynote speaker, Scott Tew, Vice President, Sustainability & Managing Director at Trane Technologies.

On November 11, **Abba Harris** moderated a panel regarding the importance of diversity and inclusion in the workforce for the Birmingham Chapter of the National Association of Women in Construction.

Aron Beezley and **Sarah Osborne** hosted a webinar on bid protests on October 15, 2020.

On August 26, Bradley sponsored the Energy Technology Series webinar hosted by E4 Carolinas. **Monica Wilson Dozier** presented the keynote speaker, Nick Smallwood, VP of Business Development at Sunrun.

Luke Martin jointly authored an article entitled "Arbitration: Third-Party Joinder after *GE Energy Power*" with former Bradley partner A.H. Gaede, Jr. for the Summer 2020 edition of the Journal of the American College of Construction Lawyers.

Anna-Bryce Hobson was recently selected to serve on the Wake Forest Law School Rose Council, a leadership council for graduates who have graduated within the last ten years. The Rose Council builds community by encouraging recent grads to increase their involvement by volunteering, attending law school events, staying informed, and giving back.

David Taylor was named to the Board of Directors of the Nashville Conflict Resolution Center.

Abba Harris is currently serving as the President of the Greater Birmingham Chapter of the National Association of Women in Construction (NAWIC). Abba was also recently awarded the first-ever Jo-Ann Golden Humanitarian Award from the Southeast Region of NAWIC.

Michael Knapp was appointed to the Board of Trustees for the Patriot Military Family Foundation, a group that raises money and awareness to benefit wounded veterans and their families.

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David Taylor was reappointed to the Executive Committee of the Tennessee Bar Association's Construction Law Committee. He was also recently reappointed to the Legal Advisory Counsel of the Associated General Contractors of Middle Tennessee.

Ian Faria, **Jon Paul Hoelscher** and **Andrew Stubblefield** became board certified by the Texas Board of Legal Specialization in Construction Law. Only about 100 or so attorneys out of more than 100,000 licensed Texas attorneys hold the certification.

Abba Harris recently received the firm's Cam Miller award, an award which recognizes an associate within the firm who exemplifies excellence in his or her legal work coupled with a high degree of involvement in community service. In addition to her pro bono work, Abba works extensively with the YWCA in Birmingham and has recently started a workforce program to help women who live in their shelters get into the skilled trades, and she has donated her financial award as a kickstart for that program.

Monica Wilson Dozier has graduated from the 2020 class of Carolina Executive Energy Leaders with E4 Carolinas, joining the Carolina Leadership Energy Alumni Network.

Anna-Bryce Hobson recently joined the Commercial Real Estate Women of Charlotte Sponsorship Committee.

Heather Wright moderated a webinar entitled "*Business Continuity During the COVID-19 Pandemic and How Alternative Dispute Resolution Can Help.*" This webinar was a joint project between the Women in Insurance of the National Association of Women Lawyers and JAMS.

Lee-Ann Brown recently joined the Legislative Committee of the Associated Builders & Contractors of Washington, DC.

Kyle Doiron was named as a member of the Associated General Contractors' Construction Leadership Council for Nashville.

Monica Wilson Dozier served as mentor to Ashipa Electric in the TechStars Alabama EnergyTech accelerator, supporting entrepreneurship in the evolving energy industry as Ashipa Electric develops microgrid projects and microgrid controller software.

Rebecca Muff was appointed to the Board of Directors for the Junior League of Houston, Inc., an organization of women committed to promoting voluntarism, developing the potential of women, and improving communities through effective action and leadership of trained volunteers.

Jay Bender and **James Bailey** recently authored a book entitled "Construction Issues in Bankruptcy: Executory Contracts, Mechanic's Liens and Other Issues that Arise in Construction-Related Bankruptcies," which is written for the people who run construction companies, construction lawyers, and bankruptcy professionals representing parties in distressed construction matters.

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NOTES

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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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Construction and Procurement Practice Group Contact Information:

Joseph R. Anderson (Houston), Attorney ... (713) 576-0374 ... jranderson@bradley.com
James F. Archibald, III (Birmingham), Attorney ... (205) 521-8520 ... jarchibald@ bradley.com
David H. Bashford (Birmingham), Attorney ... (205) 521-8217 ... dbashford@bradley.com
Ryan Beaver (Charlotte), Attorney ... (704) 338-6038 ... rbeaver@ bradley.com
Aron Beezley (Washington, D.C.), Attorney ... (202) 719-8254 ... abeezley@ bradley.com
Andrew W. Bell (Houston), Attorney ... (713) 576-0379 ... abell@ bradley.com
Katherine H. Blankenship (Nashville), Attorney ... (615) 252-3587 ... kblankenship@bradley.com
Axel Bolvig, III (Birmingham), Attorney ... (205) 521-8337 ... abolvig@ bradley.com
Lee-Ann C. Brown (Washington, D.C.), Attorney ... (202) 719-8212 ... labrown@ bradley.com
T. Michael Brown (Birmingham), Attorney ... (205) 521-8462 ... mbrown@bradley.com
Stanley D. Bynum (Birmingham), Attorney ... (205) 521-8000 ... sbynum@ bradley.com
Jared B. Caplan (Houston), Attorney ... (713) 576-0306 ... jcaplan@bradley.com
Frank M. Caprio (Huntsville), Attorney ... (256) 517-5142 ... fcaprio@bradley.com
Melissa Broussard Carroll (Houston), Attorney ... (713) 576-0357 ... mcarroll@bradley.com
James A. Collura (Houston), Attorney ... (713) 576-0303 ... jcollura@bradley.com
Timothy R. Cook (Houston), Attorney ... (713) 576-0350 ... tcook@bradley.com
F. Keith Covington (Birmingham), Attorney ... (205) 521-8148 ... kcovington@ bradley.com
Jeff Dalton (Birmingham), Legal Assistant ... (205) 521-8804 ... jdalton@ bradley.com
Jeffrey Davis (Houston), Attorney ... (713) 576-0370 ... jsdavis@bradley.com
Stephanie J. Dinan (Washington, D.C.), Attorney ... (202) 719-8284 ... sdinan@bradley.com
Kyle M. Doiron (Nashville), Attorney ... (615) 252-3594 ... kdoiron@ bradley.com
Monica Wilson Dozier (Charlotte), Attorney ... (704) 338-6030 ... mdozier@ bradley.com
Joel Eckert (Nashville), Attorney ... (615) 252 4640 ... jeckert@ bradley.com
Ian P. Faria (Houston), Attorney ... (713) 576-0302 ... ifaria@bradley.com
Cristopher S. Farrar (Houston), Attorney ... (713) 576-0315 ... cfarrar@bradley.com
Robert Ford (Houston), Attorney ... (713) 576-0356 ... rford@bradley.com
Mary Elizondo Frazier (Houston), Attorney ... (713) 576-0371 ... mfrazier@bradley.com
Eric A. Frechtel (Washington, D.C.), Attorney ... (202) 719-8249 ... efrechtel@ bradley.com
Amy Garber (Washington, D.C.), Attorney ... (202) 719-8237 ... agarber@ bradley.com
Ralph Germany (Jackson), Attorney ... (601) 592-9963 ... rgermany@ bradley.com
John Mark Goodman (Birmingham), Attorney ... (205) 521-8231 ... jmgoodman@ bradley.com
Nathan V. Graham (Houston), Attorney ... (713) 576-0305 ... ngraham@bradley.com
Nathaniel J. Greeson (Washington, D.C.), Attorney ... (202) 719-8202 ... ngreeson@bradley.com
J. Douglas Grimes (Charlotte), Attorney ... (704) 338-6031 ... dgrimes@bradley.com
John W. Hargrove (Birmingham), Attorney ... (205) 521-8343 ... jhargrove@ bradley.com
Abigail B. Harris (Birmingham), Attorney ... (205) 521-8679 ... aharris@bradley.com
Anna-Bryce Hobson (Charlotte), Attorney ... (704) 338-6047 ... aflowe@bradley.com
Jon Paul Hoelscher (Houston), Attorney ... (713) 576-0304 ... jhoelscher@bradley.com
Aman S. Kahlon (Birmingham), Attorney ... (205) 521-8134 ... akahlon@ bradley.com
Ryan T. Kinder (Houston), Attorney ... (713) 576-0313 ... rkinder@bradley.com
Michael W. Knapp (Charlotte), Attorney ... (704) 338-6004 ... mknapp@ bradley.com
Michael S. Koplan (Washington, D.C.), Attorney ... (202) 719-8251 ... mkoplan@ bradley.com
Matthew K. Lilly (Charlotte), Attorney ... (704) 338-6048 ... mlilly@ bradley.com
Cheryl Lister (Tampa), Attorney ... (813) 559-5510 ... clister@ bradley.com
Tom Lynch (Washington, D.C.), Attorney ... (202) 719-8216 ... tlynch@ bradley.com
Lisa Markman (Washington, D.C.), Attorney ... (202) 719-8291 ... lmarkman@ bradley.com
Luke D. Martin (Birmingham), Attorney ... (205) 521-8570 ... lumartin@ bradley.com
Kevin C. Michael (Nashville), Attorney ... (615) 252-3840 ... kmichael@bradley.com
Carly E. Miller (Birmingham), Attorney ... (205) 521-8350 ... camiller@ bradley.com
Marcus Miller (Houston), Attorney ... (713) 576-0376 ... mnmiller@bradley.com
Kenneth J. Milne (Houston), Attorney ... (713) 576-0335 ... kmilne@bradley.com
Philip J. Morgan (Houston), Attorney ... (713) 576-0331 ... pmorgan@bradley.com
Rebecca A. Muff (Houston), Attorney ... (713) 576-0352 ... rmuff@bradley.com
E. Sawyer Neeley (Dallas), Attorney ... (214) 939-8722 ... sneely@bradley.com
Trey Oliver (Birmingham), Attorney ... (205) 521-8141 ... toliver@bradley.com
Jackson Olsen (Birmingham), Attorney ... (205) 521-8062 ... jolsen@bradley.com
Sarah Sutton Osborne (Huntsville), Attorney ... (256) 517-5127 ... sosborne@ bradley.com
David W. Owen (Birmingham), Attorney ... (205) 521-8333 ... dowen@ bradley.com
Emily Oyama (Birmingham), Construction Researcher ... (205) 521-8504 ... eoyama@ bradley.com
Douglas L. Patin (Washington, D.C.), Attorney ... (202) 719-8241 ... dpatin@ bradley.com

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J. David Pugh (Birmingham), Attorney .... (205) 521-8314 .... dpugh@ bradley.com
Bill Purdy (Jackson), Attorney .... (601) 592-9962 .... bpurdy@ bradley.com
Alex Purvis (Jackson), Attorney .... (601) 592-9940 .... apurvis@ bradley.com
Patrick R. Quigley (Washington, D.C.), Attorney .... (202) 719-8279 .... pquigley@bradley.com
E. Mabry Rogers (Birmingham), Attorney .... (205) 521-8225 .... mrogers@ bradley.com
Connor Rose (Birmingham), Attorney .... (205) 521-8906 .... crose@ bradley.com
Brian Rowlson (Charlotte), Attorney .... (704) 338-6008 .... browlson@ bradley.com
Robert L. Sayles (Dallas), Attorney .... (214) 939-8762 .... rsayles@bradley.com
Peter Scaff (Houston), Attorney .... (713) 576 0372 .... pscaff@bradley.com
Justin T. Scott (Houston), Attorney .... (713) 576-0316 .... jtscott@bradley.com
Walter J. Sears III (Birmingham), Attorney .... (205) 521-8202 .... wsears@ bradley.com
J. Christopher Selman (Birmingham), Attorney .... (205) 521-8181 .... cselman@ bradley.com
Saira Siddiqui (Houston), Attorney .... (713) 576-0353 .... ssiddiqui@bradley.com
Frederic L. Smith (Birmingham), Attorney .... (205) 521-8486 .... fsmith@ bradley.com
H. Harold Stephens (Huntsville), Attorney .... (256) 517-5130 .... hstephens@ bradley.com
Andrew R. Stubblefield (Dallas), Attorney .... (214) 257-9756 .... astubblefield@bradley.com
Robert J. Symon (Washington, D.C.), Attorney .... (202) 719-8294 .... rsymon@ bradley.com
David K. Taylor (Nashville), Attorney .... (615) 252-2396 .... dtaylor@ bradley.com
D. Bryan Thomas (Nashville), Attorney .... (615) 252-2318 .... dbthomas@ bradley.com
Alex Thrasher (Birmingham), Attorney .... (205) 521-8891 .... athrasher@bradley.com
Slates S. Veazey (Jackson), Attorney .... (601) 592-9925 .... sveazey@ bradley.com
Sydney M. Warren (Houston), Attorney .... (713) 576-0354 .... swarren@bradley.com
Loletha Washington (Birmingham), Legal Assistant .... (205) 521-8716 .... lwashington@ bradley.com
Heather Howell Wright (Nashville), Attorney .... (615) 252-2565 .... hwright@ bradley.com

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

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

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

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

Terri Lawson
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104