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First Quarter 2019

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Federal Circuit Decision Involving Commercial Contracts Increases Risk for all Government Contractors

Pursuant to the Federal Acquisition Streamlining Act of 1994 (FASA), Congress requires that government agencies prioritize acquisition of commercial items. Commercial items acquisition is meant to reduce the administrative and compliance burdens on government contractors and agencies. Since Congress enacted FASA, however, agencies, courts, and boards have increased the burdens of administrative and compliance obligations imposed on commercial item acquisitions. The application of the *Christian doctrine is one way courts and boards* have increased those burdens for contractors.

The *Christian* doctrine, which was established in *G.L. Christian and Associates v. United States*, permits boards to insert a clause into a government contract, mistakenly left out by agency officials,by operation of the law, if the subject clause (1) is mandatory, and (2) expresses a significant or deeply ingrained strand of public procurement policy. The Federal Circuit's recent decision, *K-Con v. Secretary of the Army*, is an example of how the Christian doctrine increases the cost of doing business with the government for commercial-items contractors—and all federal contractors—by increasing their risk of incurring additional costs when agency officials fail to properly include all clauses in solicitations.

K-Con involved two contracts for the procurement of prefabricated buildings. The Army solicited these task orders as commercial-items procurements without performance or payment bond requirements, using Standard Form 1449. After awarding K-Con the task orders, the Army told K-Con that it needed to obtain performance and payment bonds as required by the *Miller Act*, 40 U.S.C.A. §§ 3131 to 3134, and FAR 52.228-15.

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K-Con had not anticipated providing bonding because it was not required by either contract. K-Con notified the Army that it was unable to obtain the bonds because its bonding capacity was tied up in an ongoing dispute with the Army on another contract. Instead of terminating the contracts for convenience, the Army waited two years until K-Con was able to acquire the bonds and paid K-Con's bonding costs. The Army, however, denied K-Con's request for equitable adjustment to cover material and labor escalation caused by the two-year delay.

K-Con appealed the contracting officer's final decision to the Armed Services Board of Contract Appeals ("ASBCA"), stressing that the contracts were labeled, solicited, and awarded as commercial-items contracts, and did not include FAR 52.228-15. The ASBCA found that even though the Army had issued the procurement as a commercial-items solicitation, the contracts required construction services, and the Miller Act bonding requirements apply as a matter of law to all construction contracts. Accordingly, the ASBCA read FAR 52.228-15 into the contracts via the *Christian* doctrine.

K-Con then appealed to the Federal Circuit. On appeal, the Federal Circuit addressed two issues: (1) whether the contracts at issue were construction contracts, and (2) whether the contacts included FAR 52.228-15 as a matter of law by way of the *Christian* doctrine.

Contrary to the traditional rule of *contra proferentem*, pursuant to which ambiguous contract terms are interpreted against the drafter, the patent ambiguity doctrine requires that government contractors seek clarification of patent ambiguities or forfeit their right to advance their interpretation of ambiguous contact terms in a post-award dispute.

On appeal, K-Con stressed that the contracts were for pre-engineered metal buildings, which are considered personal property and fit the definition of commercial items in FAR 2.101, and that the construction services included in the contracts were ancillary to the commercial items being purchased by the Army. The Army argued that the contracts were patently ambiguous on the issue of whether they were construction or commercial items contracts and, as a result, K-Con had a duty to clarify the ambiguity prior to submitting its bids.

The Federal Circuit agreed with the Army, finding that the contracts were patently ambiguous because even though the Army used the standard commercial items contract form, it also included "many indications that the contracts were for construction." Thus, K-Con was precluded from arguing that they were for commercial items, because it had failed to inquire into the alleged ambiguity during the solicitation period.

Having rejected K-Con's argument that the contracts were commercial items contracts instead of construction contracts, the Federal Circuit affirmed the ASBCA's *Christian* doctrine analysis. The Federal Circuit found—despite the contracting officer's ability to revise the bonding requirements pursuant to FAR 28.102-3(a)—that the Miller Act bonding requirements implemented by FAR 52.228-15 were mandatory and therefore met the first prong of the *Christian* test.

The Federal Circuit also found that FAR 52.228-15 met the second prong of the *Christian* test. The court reasoned that performance bonds protect the government by ensuring the contract will be completed at no cost to the government in the event of a contractor default. The court also noted that Congress' awareness of these protections is evident. Thus, payment and performance bond requirements are "deeply ingrained" in procurement policy.

The Federal Circuit's ruling in *K-Con* increases the risk assumed by government contractors. The decision particularly increases risk for commercial items contractors by leaving open the possibility that a contracting officer can retroactively change the categorization of a commercial-item contract—which is meant to reduce the burden of the normal acquisition process—and expose the contractor to non-commercial-item clauses that the contractor may not have accounted for in pricing its proposal. This decision is also a reminder to *all federal contractors* of the inequitable results that may follow an agency official's failing to properly include all clauses in their solicitations, and the importance of carefully scrutinizing the solicitation requirements and clarifying any ambiguities.

By: Lee-Ann Brown and Bob Symon

Say What? Statutes of Repose/Limitation may not be defenses in an Arbitration

Most private construction contracts contain binding arbitration clauses and call for the application of the "law of the state" in which the project is located. While arbitration is less formal than litigation in court, legal defenses are often raised, including whether or not a

claim is legally barred by a statute of limitation or, in the case of a construction claim, a statute of repose. A statute of repose, as opposed to a statute of limitation, with a few exceptions, means that no matter when the claimed defect is "discovered," there is a legal bar to such claims if a formal legal claim is not brought within a specific period of time after a specified event, often substantial completion. Many states have different time periods for statutes of repose. However, a recent ruling by an arbitration panel in a case should give pause to all parties and counsel relying on such time limitations.

Most state statutes of repose (and statutes of limitation) contain a reference to "any and all **actions**." In the arbitration case, a $1.5M defective work claim was brought by an owner against a prime contractor ten years after substantial completion of the project, which was located in Tennessee. The general contractor filed a request with the arbitration panel to dismiss the claim based upon Tennessee's 4-year statute of repose. However, the owner cited to a few reported court cases (not in Tennessee) and argued that the word "action" in the statute of repose was intended by the legislature to apply only to litigation, cases filed in court, not to claims made when the parties agree to binding arbitration. One point made by the owner was that the statute of repose was passed decades prior to any state passage of arbitration laws that allowed courts to enforce arbitration agreements.

The contractor argued that if statutes of repose (and statutes of limitation) do not apply when the parties agree to binding arbitration, there would be unlimited liability for contractors (and subcontractors) for years – and even decades – after substantial completion. In some of those few state cases which adopted such an argument from an owner, state legislatures jumped in to clarify the law (but not in time for that particular party).

Surprisingly, the arbitration panel in Tennessee ruled in favor of the owner and stated that the 4-year statute of repose did not apply in arbitration, even though it was undisputed that the arbitration was commenced 10 years after the project was completed. The panel commented that this problem was up to the Tennessee legislature to fix. The contractor was then forced to substantively defend the claimed defect claim. While the panel ultimately found in favor of the contractor, the legal and arbitration fees were extensive and would have been avoided had the arbitration panel applied the statute of repose.

What can be done to avoid such a result? One suggestion is to check each state's laws on construction statutes of repose and determine if there is any case law on the issue or if that state's statutes use the same word "action." Another is, of course, to not agree to binding arbitration (which has many pros and cons as compared to litigating in court). Another possibility is to lobby the state legislature to amend the statutes to ensure that "arbitration" is included in the definition of "action." Finally, one other "drafting" suggestion would be to include, in any contract which calls for binding arbitration, a provision which states that in any arbitration, the parties agree that the arbitrator(s) shall apply any statutes of repose and statutes of limitation in that jurisdiction, notwithstanding that a court may have, or may in the future, have ruled that such statutes do not apply to arbitration proceedings.

By: David Taylor and Kyle Doiron

Cannabis and the Contractor: Effective Drug Testing Policy and Compliance

Although marijuana is an illegal drug under federal law, a majority of states have now legalized its use in one form or another. Additionally, Canada recently legalized the use of marijuana, and proposals for loosening America's federal prohibition abound in Congress. This rapidly evolving legal landscape presents new challenges for contractors (and other employers), particularly those working in several states. Contractors must balance complying with often divergent federal and state laws, maintaining a safe work environment, and protecting employees' rights. Although difficult at times, there are steps contractors can take to help navigate this legal minefield successfully.

Maintain a Safe Workplace and Jobsite

The Occupational Safety and Health Act's general duty clause requires contractors to maintain a safe jobsite and work environment "free from recognized hazards that are ... likely to cause death or serious physical harm." Construction sites already contain a number of hazards that can result in personal injury, and an employee's impairment due to drugs or alcohol can seriously increase the danger to persons and property. Accordingly, most contractors have zero-tolerance policies that ban the use of alcohol and illegal substances. Although zero-tolerance policies typically permit an employee to avoid adverse employment actions by disclosing the use of prescription drugs prior to a positive drug test, these

policies otherwise prohibit the off-site consumption of alcohol or drugs that will result in a positive test. The legalization of medical marijuana in a number of states has made maintaining a zero-tolerance policy more difficult.

In some states, contractors must accommodate an employee's use of medical marijuana. For example, in *Noffsinger v. SSC Niantic Operating Co., LLC*, a Connecticut federal court held that a federal contractor could not enforce its zero-tolerance drug policy against a medical marijuana user. Similarly, Oklahoma law prohibits contractors from discriminating or punishing an employee based on the employee's status as a medical marijuana card holder or a positive drug test for marijuana or its components unless the employer would lose a benefit under federal law or regulations. Although these statutes do not prohibit contractors from disciplining employees who consume marijuana, or are under its influence, while on the jobsite, it may be difficult to determine when an employee is actually impaired and a drug test is warranted. This difficulty can give rise to liability for discriminatory drug testing or wrongful employment actions in instances where a contractor is mistaken.

Other states that have legalized medical marijuana do not require a contractor to accommodate employees' use. In California, for example, a contractor can dismiss an employee who tests positive for marijuana and its components. Likewise, under Ohio law, contractors are not prohibited from refusing to hire, discharging, or disciplining a person because of the use or possession of medical marijuana, nor are contractors prohibited from establishing and enforcing a zero-tolerance drug policy.

Between these two ends of the accommodation spectrum, a number of states' laws provide for varying levels of accommodation for employees' medical marijuana use. In Illinois, for example, contractors are prohibited from discriminating against employees and job applicants who qualify as a medical marijuana patient unless the accommodation would result in the violation of a federal law or the loss of a federal benefit. Nonetheless, Illinois contractors may still impose reasonable limitations on the consumption of medical marijuana and enforce zero-tolerance and drug-free work place policies as long the policies are applied in a non-discriminatory manner. Other states, such as Delaware, Nevada, New York, and West Virginia, have similarly varied degrees of required accommodation.

To help navigate these nuanced laws, contractors, especially those with a multi-state footprint, should develop a well-defined drug policy and administer a drug testing program in a non-discriminatory manner.

Develop a Well-Defined Drug Policy

Developing a well-defined company policy on marijuana use will minimize the risk of harm to persons and property, and decrease the likelihood that drug testing and disciplinary action arising from marijuana intoxication will open the door to liability for adverse employment decisions. At a minimum, contractors should ensure that a company drug policy:

- Defines the terms "marijuana," "cannabis," or any other derivation of the drug. Simply prohibiting the use of "illegal drugs" can create ambiguity because of marijuana's legal status in various jurisdictions.
- Indicates that the use of marijuana, whether recreationally or on the job, is strictly prohibited.
- Articulates drug testing policies and procedures (including penalties for failing a drug test).
- Educates employees on clinical issues relating to marijuana, such as its effects on the body, the length of time it can continue to impair cognitive and physiological functions, and the potential impacts on workplace safety and performance.
- Is included in recruiting and new-hire onboarding materials to ensure notice to the individual.

Consistently Administer a Drug Testing Program

Once a contractor adopts a drug policy, it is critical that drug tests are conducted uniformly for all employees. Failure to do so can subject a contractor to liability for discrimination claims that arise from adverse employment actions.

If an employee tests positive for marijuana, the recourse available to a contractor can vary greatly under federal and state laws. For example, the Americans with Disabilities Act (ADA) currently does not shield an employee from adverse employment actions for using marijuana to treat a disability, even if the employee refrains from using medical marijuana while on the job. The ADA exempts from its scope the "illegal use of drugs" and defines that term to include any substances that are unlawful under the Controlled Substances Act, which currently lists "marihuana" as a banned substance. As a result, at least under the ADA, contractors can terminate an employee who tests positive for marijuana, even if that employee is disabled, prescribed medical marijuana, and only uses marijuana on his or her own

time. Note, however, that under the ADA, if an employee discloses a disability and requests an accommodation, a contractor is required to consider reasonable accommodations, which could include transfer to a non-safety sensitive job (where the marijuana use may not pose a safety concern) or for temporary leave during treatment.

By contrast, as discussed above, some states require an employer to accommodate an employee's use of medical marijuana and prohibit a contractor from terminating an employee for a failed drug test for marijuana use. Contractors should be mindful of the potential for conflict between their own drug testing policies and requirements mandated by federal or state laws. If there are questions as to what actions a contractor can take against an employee for failing a drug test, contractors should seek the advice of legal counsel. A similar dilemma may be presented where the contractor did not discover the violation, but the owner (or general contractor) did and insists the contractor dismiss the employee, and may make legal advice prudent.

The Measure of Success

An effective drug policy decreases hazards and promotes an accident-free work environment. While state and federal laws meant to promote this goal may seem straight forward when read in isolation, problems arise when these laws overlap or conflict with one another. The growing number of states legalizing marijuana use, and the nuanced differences between laws, will only amplify this problem. Although all contractors need to implement well-defined policies and procedures, it is particularly important that contractors operating in any of the 30 plus states in which marijuana is now legal in some form take time to review current policies and evaluate the need for changes to ensure employee safety and reduce company risk. If you have questions about this rapidly changing legal issue, you should contact an attorney with experience in this emerging area of the law.

By Chris Selman and Alex Thrasher

Deciding Who Decides: U.S. Supreme Court Holds Parties' Decision to Submit Question of Arbitrability to Arbitrator Should Not be Overridden by Court

When parties contractually agree to submit their disputes to arbitration, one of the frequent threshold issues that arises is whether their arbitration agreement applies to a particular dispute. In *Henry Schein, Inc. v. Archer and White Sales, Inc.*, decided in January 2019, the U.S. Supreme Court held that when the parties' contract delegates the question of whether a particular dispute is arbitrable to an arbitrator, the courts must respect the parties' decision as outlined in their contract.

Archer and White ("Archer") was a distributor of dental equipment that entered into a contract with Pelton and Crane ("Pelton"), a dental equipment manufacturer, to distribute Pelton's equipment. During Archer and Pelton's business relationship, disputes arose, and Archer sued Pelton's successor-in-interest and Henry Schein, Inc. ("Schein"). The contract between Archer and Schein contained an arbitration provision, which provided, in relevant part:

> Any dispute arising under or related to this Agreement (except for actions seeking injunctive relief and disputes related to trademarks, trade secrets, or other intellectual property…shall be resolved by binding arbitration in accordance with the arbitration rules of the American Arbitration Association.

After Archer sued, Schein asked the U.S. District Court for the Eastern District of Texas to refer the matter to arbitration. Archer objected, arguing that the dispute was not covered by the parties' arbitration agreement because Archer's suit sought injunctive relief. Schein contended that the parties' contract provided that an arbitrator, not the court, should decide whether the parties' dispute was covered by the arbitration agreement. In response, Archer argued that in cases where a party's argument for arbitration was "wholly groundless," the trial court could resolve the threshold question of arbitrability. Both the U.S. District Court and the 5th Circuit Court of Appeals agreed with Archer and denied Schein's motion to refer the matter to arbitration.

Justice Kavanaugh, writing for a unanimous U.S. Supreme Court, noted that under the Federal Arbitration Act, arbitration is a matter of contract, and courts must enforce arbitration contracts according to the parties' agreed terms. Referring to prior precedent, the Court noted that it had previously held that a court may not rule on the potential merits of an underlying claim that is assigned by contract to an arbitrator, even in situations where the court thinks that the argument that the dispute is governed by the parties' arbitration agreement is frivolous.

In determining whether a dispute should be referred to arbitration, the U.S. Supreme Court reiterated that the

trial court still must make a determination that a valid arbitration agreement exists. However, once the trial court determines that a valid arbitration agreement exists, and the agreement delegates the question of whether the dispute is arbitrable to an arbitrator, the trial court may not make its own decision regarding arbitrability, even where the trial court thinks the merits of a claim are frivolous or "wholly groundless." The Supreme Court also reinforced previous decisions where the Court held that the parties may delegate threshold arbitrability questions to the arbitrator, so long as that delegation is outlined in the parties' contract with "clear and unmistakable" language.

Following the Supreme Court's ruling in *Henry Schein*, assuming that a party desires that the question of arbitrability be decided by the arbitrator, that party should draft its arbitration agreement to include specific language that requires an arbitrator to determine questions regarding whether a particular dispute is arbitrable. With that attention to detail, parties who wish to arbitrate disputes will spend more time actually arbitrating those disputes rather than spending valuable time litigating the threshold issue of whether the dispute should actually be arbitrated in the first place.

By: Justin T. Scott

Arbitration vs. Courthouse: Contractor Bond Claim Lawsuits May Come in Second to Subcontract Arbitration

In *CIP Construction Company v. Western Surety Company*, a Maryland federal court stayed a contractor's performance bond lawsuit pending arbitration between the contractor and subcontractor. The subcontract contained an arbitration agreement that applied to "a dispute between the parties," *i.e.*, the contractor and subcontractor. The subcontractor's performance bond incorporated the subcontract by reference, but also stated that a bond claimant "may" bring a lawsuit on the bond in court. The subcontractor filed an arbitration demand against the contractor, and while that action was pending, the contractor filed a complaint against the performance bond surety (and not the subcontractor) in court pursuant to the payment bond disputes clause.

The surety moved to dismiss or stay the lawsuit pursuant to the arbitration clause in the subcontract, claiming that the performance bond claim was also subject to arbitration. The court refused to dismiss the case, holding that the subcontract arbitration agreement did not divest the court of jurisdiction over the bond claim. The subcontract arbitration clause was narrow and expressly applied to the parties to that agreement, and the performance bond disputes clause clearly contemplated a lawsuit in court. Nevertheless, the court stayed the case because the surety represented that its liability on the bond was contingent on the determination of the subcontractor's liability in the arbitration. Thus, the court reasoned that the interests of judicial economy and avoiding inconsistent results weighed heavily in favor of a stay.

The *CIP* court's discretionary stay – which is consistent with other federal courts' decisions in similar cases – demonstrates that courts consider the language of contracts and bonds, as well as the practical implications of each dispute resolution mechanism. When a subcontract contains an arbitration agreement, contractors should be mindful that courts may place a bond claim lawsuit on hold in order to determine the parties' liability in arbitration.

By: Amy Garber

Safety Moments for the Construction Industry

The majority of work-related eye injuries are the result of flying or falling objects or sparks hitting the eyes. Therefore, workers should be attuned to having and wearing proper eye protection for the task at hand. This will generally include the following:

- Always wear proper eye protection where required, even if danger to your eyes seems remote.
- Before use, verify that your eye protection is appropriate for the task.
- Inspect eye protection prior to each use.
- If you wear prescription eyewear, use eye protection that accommodates it.
- When welding or cutting, always wear safety glasses or goggles underneath face shields or welding helmets.
- When your work is complete, store eye protection properly and away from extreme temperatures or direct sunlight.

Bradley Arant Lawyer Activities

In U.S. News' 2019 "Best Law Firms" rankings, **Bradley's Construction and Procurement Practice Group** received a Tier One National ranking, the highest awarded, in Construction Law and a Tier Two ranking in Construction Litigation. Birmingham, Houston, Nashville, Jackson, and Washington, D.C. offices received Tier One Metropolitan recognition for Construction Law.

Chambers USA ranks lawyers in specific areas of law based on direct feedback received from clients. **Bill Purdy, Mabry Rogers** and **Ralph Germany** are ranked in *Litigation: Construction*. **Doug Patin, Bob Symon** and **Ian Faria** are ranked in *Construction*. The firm's Washington D.C. office is recognized as a "Leading Firm" for Construction Law.

Jim Archibald, Ryan Beaver, Axel Bolvig, David Owen, David Pugh, Mabry Rogers, Walter Sears, Monica Wilson Dozier, Jim Collura, Ian Faria, Ralph Germany, Jon Paul Hoelscher, Bill Purdy, David Taylor, Eric Frechtel, Douglas Patin, and Bob Symon have been recognized by *Best Lawyers in America* in the area of Construction Law for 2019.

Jim Archibald, **Michael Bentley**, **Axel Bolvig**, **Ian Faria**, **David Pugh, David Owen, Mabry Rogers,** and **Bob Symon** were recognized by *Best Lawyers in America* for Litigation - Construction in 2019. **Keith Covington** was recognized by *Best Lawyers in America* in the areas of Employment Law - Management, Labor Law - Management, and Litigation - Labor and Employment. **John Hargrove** was recognized in the area of Litigation - Labor and Employment. **Frederic Smith** was recognized in the area of Corporate Law.

Mabry Rogers, Doug Patin and **David Taylor** were also recognized by *Best Lawyers in America* for Arbitration for 2019.

Ian Faria was recognized as Lawyer of the Year in Construction Litigation (Houston). **David Pugh** was recognized as Lawyer of the Year in Construction Litigation (Birmingham). **Bill Purdy** was recognized as Lawyer of the Year in Construction Law (Jackson).

Jim Archibald, Axel Bolvig, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, Ian Faria, Doug Patin, Ralph Germany, David Taylor, David Owen and **Jeff Davis** were named *Super Lawyers* in the area of Construction Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Luke Martin**, **Bryan Thomas**, **Andrew Stubblefield**, **Jon Paul Hoelscher**, **Aman Kahlon, Amy Garber, and Jackson Hill** were listed as "Rising Stars" in Construction Litigation. **Ryan Kinder**, **Justin Scott**, and **Mary Frazier** were recognized as "Rising Stars" in Business Litigation. **Monica Dozier** was named a 2018 North Carolina *Super Lawyers* "Rising Star" in Construction Litigation, and **Matt Lilly** was named a "Rising Star" in Energy and Resources.

In Texas, **Andrew Stubblefield, Jon Paul Hoelscher**, **Ryan Kinder**, and **Justin Scott** were named 2018 Texas *Super Lawyers* "Rising Stars."

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 recently selected as Associate Fellows of the CLSA. **Mabry Rogers** was elected as the 2019 President (CLSA). **David Taylor** received the CLSA Community Service Award.

Aron Beezley was recently named by *Law360* as one of the top 168 attorneys under the age of 40 nationwide.

Mabry Rogers was recently named as a "Thought Leader" in *Who's Who Legal* for 2019. **Jim Archibald, Ian P. Faria, Douglas L. Patin, J. David Pugh, William R. Purdy, E. Mabry Rogers and Robert J. Symon** were also recently listed in the *Who's Who Legal: Construction 2019* legal referral guide. **Mabry Rogers** has been listed in *Who's Who* for 21 consecutive years.

Axel Bolvig, **Stanley Bynum**, and **Keith Covington** 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.

Ralph Germany has been appointed a 2018 Leader in the Law by the Mississippi Business Journal.

Sarah Osborne was recently elected as Secretary and Treasurer of the Construction Section of the Alabama State Bar.

Abba Harris was recently elected to the Board of Directors for the Birmingham Chapter of the National Association of Women In Construction.

Monica Dozier was awarded the first "Above and Beyond" Award by the Associated Builders and Contractors of the Carolinas at the 2018 Excellence in Construction Awards Gala in Charlotte, North Carolina. The "Above and Beyond" Award recognizes an ABC member for outstanding leadership and service to ABC.

Chris Selman serves on the Board and **Carly Miller** and **Aman Kahlon** are currently serving as Members of the Young Professionals of the Alabama Chapter of the Associated Builders & Contractors.

Jon Paul Hoelscher recently concluded his service as Chair of the Houston Bar Association Construction Law Section after serving on the council for seven years.

Abba Harris was selected to participate in the 2019 class of Future Leaders in Construction with the Alabama Chapter of the Associated Builders & Contractors.

Ian Faria and **Jon Paul Hoelscher** became board certified by the Texas Board of Legal Specialization in Construction Law. Over 111 attorneys out of more than 100,000 licensed Texas attorneys hold the certification.

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

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

Michael Knapp was recently 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.

David Taylor was recently 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.

In June 2019, the **Construction and Procurement Practice Group** will be hosting its annual series of Construction Law 101 seminars on the following dates: **June 7** in **Birmingham**, **June 21** in **Charlotte**, and **June 28** in **Nashville**.

David Taylor spoke at the annual meeting of the Tennessee Bar Association's Construction Law Committee on January 25, 2019 regarding "Bad Faith Mediation."

Tom Lynch taught two classes entitled Contracts 101 to a collection of project managers from the Mechanical Contractors Association of America in Austin, Texas.

David Owen spoke about "Shifting the Risk: Transitioning from Cost-Reimbursable to Lump Sum" at the Contract and Risk Management for Construction and Capital Projects Workshop on January 8-10, 2019 in Houston, Texas.

Aman Kahlon spoke at the 5th Annual Alabama State Bar Construction Law Summit in Birmingham, Alabama on "Public and Private Change Order Administration."

On November 16, 2018, **David Taylor** spoke at the annual meeting of the Tennessee Association of Construction Counsel on "Bad Faith Mediation: What Crosses the Line."

Katie Blankenship spoke at the Tennessee Association of Construction Counsel fall seminar on November 9, 2018 regarding 2018 Construction Law Updates.

On November 8, 2018, at the Southeast Renewable Energy Summit, **Monica Dozier** moderated the panel "Utility Renewable Energy Procurement Plans and Green Energy Tariffs" and **Aman Kahlon** moderated the panel "Gulf Coast" Mississippi, Louisiana, and Alabama" addressing the market and opportunities for renewable power in the Gulf Coast states.

Construction Law 101: Managing Risk on a Construction Project

Birmingham, AL Charlotte, NC Nashville, TN

Join us when Bradley's construction lawyers will share timely advice and practical suggestions on reducing the exposure to risk when key issues arise in construction projects. This ***complimentary*** seminar is ideal for Project Managers, Project Engineers, Superintendents, Contract Administrators, and Owners.

June 7: Birmingham
One Federal Place
1819 Fifth Ave. North
Birmingham, AL 35203
7:30 am to 12:00 pm

June 21: Charlotte
214 North Tryon Street
Suite 3700
Charlotte, NC 28202
7:30 am to 12:00 pm

June 28: Nashville
1600 Division Street
Suite 700
Nashville, TN 37203
7:30 am to 12:00 pm

Invitations will be sent early May. For more information or to register, contact:

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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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