Bradley
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CONSTRUCTION AND PROCUREMENT LAW NEWS

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

The Spearin Doctrine Revisited

In the recent case *Penzel Construction v. Jackson R-2 School District*, a Missouri appellate court recognized and re-affirmed the *Spearin* Doctrine for a claim involving defective plans and specifications provided by the government. The general contractor brought a breach of contract action against a school district based on breach of implied warranty for furnishing deficient and inadequate plans and specifications to the contractor for a construction project involving an addition to a high school.

The owner furnished the plans and specifications for the Project to the contractor, who in turn provided them to the electrical subcontractor. Neither the contractor nor electrical subcontractor noticed any errors in the plans during the bidding process. At the end of the project, the electrical subcontractor claimed the sixteen-month delay was the result of the plans' defects and inadequacies. The contractor brought a claim against the school district on behalf of the electrical subcontractor.

As a brief synopsis, *Spearin* is a widely recognized federal case which stands for the proposition that when a government owner includes a detailed specification in a contract, it impliedly warrants that the plans are "reasonably accurate." If the plans and specifications are defective, unbuildable, or unsafe, the government is liable for the resulting consequences. In determining whether plans or designs are defective, courts look at the cumulative effect of the alleged errors. Not all states have adopted the doctrine.

The Missouri court had to first address whether the contractor's claim based was actionable in Missouri, as such an action had not previously been expressly accepted or rejected in the state. Noting that *Spearin* aligns with principles established by prior Missouri case law – namely, that a contractor who bids a job in reliance on the government's representations of what a project will entail will not be punished because the resulting product is

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defective – the court recognized *Spearin* claims on Missouri public construction projects.

A *Spearin* claim is a breach of contract claim. The two issues of concern in this case were (1) whether the government owner actually breached the contract, and (2) whether the contractor suffered damages that it could prove with reasonable certainty. As to the first issue, the plans and specifications are considered "defective" if they are "so faulty as to prevent or unreasonably delay completion of the contract performance." The court found that the contractor had sufficiently met its burden as to whether the plans were defective under the meaning of *Spearin.*

As to the second point, the court found that there was sufficient evidence to determine that the defective plans damaged the contractor and the amount of those damages. Specifically, the court found that the contractor presented an "adequate basis" under the modified total cost method for calculating a rational estimate of damages. The goal of the modified total cost method and the goal of Missouri contract law are consistent—both seek to place the non-breaching party in the same position he or she would be in absent the breach, while only penalizing the breaching party to the extent he or she is responsible for the other's damages.

Penzel Constr. v. Jackson adopts, for Missouri, the *Spearin* Doctrine as an acceptable cause of action for breach of contract arising from defective plans or specifications. Generally, this requires (1) a contractor or subcontractor (with a "pass-through" agreement) on a government construction project, (2) where the government owner furnishes plans and specifications for the contractor's (or subcontractor's) work, (3) those plans and specifications are "defective," and (4) those deficiencies cause additional costs. Intrinsic in this analysis is whether the specification at issue is a design specification or a performance specification, as the *Spearin* doctrine applies only to design specifications. If contractors are careful, diligent, and honest, and if design specifications are defective, the *Spearin* doctrine may provide a remedy.

By Carly Miller

Subcontractor Sidesteps Application of No Damages for Delay Clause

A typical "limitation of liability" clause in many construction contracts is a "no damages for delay" (NDFD) clause, which provides that if, through no fault of the contractor or subcontractor, the project is delayed, the contractor or subcontractor may recover additional time, but not money. Courts in a number of states have developed exceptions to such a clause. An example of a contractor recovering damages despite the presence of a NDFD clause is described in a recent decision from the Massachusetts Appeals Court.

In *Central Ceilings, Inc. v. Suffolk Constr. Co., Inc.*, Suffolk Construction Company, Inc. ("Suffolk") contracted with the Massachusetts State College Building Authority ("MSCBA") to serve as the general contractor for a residence hall erected at Westfield State College. The contract included a bonus for completing the project on time, and provided for the assessment of liquidated damages if it was not. Central Ceilings, Inc. ("Central") submitted a bid to Suffolk to perform, among other things, installation of the exterior heavy metal gauge framing and sheathing, interior light gauge framing, drywall, and hollow metal door frames. Critical to Central's estimate and ability to timely complete the work was the "flow" of the project, with each aspect of its work following in sequence, floor by floor, exterior to interior, building by building. Suffolk accepted Central's bid and entered into a subcontract agreement that contained a NDFD clause:

> The Subcontractor agrees that it shall have no claim for money damages or additional compensation for delay no matter how caused, but for any delay or increase in the time required for performance of this Subcontract not due to the fault of the Subcontractor, the Subcontractor shall be entitled only to an extension of time for performance of its Work.

The project coordination did not go according to the original schedule, and Central could not start on various phases at the expected times. Suffolk failed to coordinate the work of other trades; failed to establish proper control lines; failed to timely coordinate the delivery of hollow metal door frames; and failed to provide winter protection. Suffolk refused to grant any monetary relief, and also refused to grant the subcontractor any time extensions. Instead, it insisted that Central increase the onsite labor, at its cost, to meet the original project schedule.

Central brought suit claiming Suffolk's breaches caused loss of productivity. Suffolk argued that an

award of such damages was barred under the NDFD clause. The lower court disagreed and awarded Central loss of productivity damages.

The Massachusetts Appeals Court upheld the lower court's decision, even though it recognized that a NDFD clause is enforceable under Massachusetts law. The Court held that the clause was inapplicable because, even if Central could be deemed to be seeking damages "for delay," Suffolk had deprived Central of its only remedy under that clause by refusing to grant requested extensions of time. Furthermore, the Court found that the "no damages for delay" clause must be strictly construed and, therefore, found that Central was not seeking damages because it had been delayed, but, rather, because it had been forced to increase its workforce due to compression of the schedule occasioned by Suffolk's breaches of its obligations. The Court noted that "Suffolk's breaches did not affect Central's ability to complete its work on time… but, rather, its ability to complete its work on budget."

There are two lessons from this case. First, given this decision, owners, contractors, and subcontractors should pay close attention to the language set forth in a NDFD clause. In particular, they should be aware that in some states such clauses either will be held breached if a time extension is NOT granted OR the NDFD clause may be strictly construed to allow recovery of lost productivity damages in instances where the owner or general contractor causes delays on the project and refuses to grant requested time extensions to the affected contractors and subcontractors. Second, many times how the "claim" is initially characterized (change order, letter, email) can affect potential recovery when there is such a clause. Familiarity with your contract and involving counsel early in the dispute process will often help increase the chances of recovery.

By Bridget Parkes

Pay Attention to Your Surroundings: Contractor Denied Recovery for Differing Site Conditions Where Condition was Well-Known in the Area

The Civilian Board of Contract Appeals ("Board"), the court with jurisdiction over the General Services Administration and other non-defense executive agencies, denied a contractor's claim for increased labor and equipment costs resulting from what the contractor claimed were differing site conditions. In *Tucci & Sons, Inc. v. Dept. of Transportation*, the FHWA Western Federal Lands Highway Division (WFLHD) solicited bids for the reconstruction of a roadway in Mount Rainer National Park and for the installation of a utility trench in part of the road. The solicitation contained project drawings that showed undisturbed native material outside the trenches and encouraged prospective bidders to inspect the location of the work. During its site investigation, the contractor observed cobbles and boulders alongside the road, but did not think the presence of the boulders would have much effect on its estimate because he assumed the boulders had been purposefully placed on the roadside for aesthetic reasons or resulted from an avalanche. During the hearing, the contractor's project superintendent stated that he did not rely on the observed conditions of the area as an indicator of the subsurface conditions.

The contractor's fixed-price contract contained the Federal Acquisition Regulations ("FAR") standard Differing Site Conditions clause, which provides in pertinent part as follows:

> (a) The Contractor shall promptly, and before the conditions are disturbed, give a written notice to the Contracting Officer of --
>
> (1) Subsurface or latent physical conditions at the site which differ materially from those indicated in this contract; or
>
> (2) Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in the contract.
>
> (b) The Contracting Officer shall investigate the site conditions promptly after receiving the notice. If the conditions do materially so differ and cause an increase or decrease in the Contractor's cost of, or the time required for, performing any part of the work under this contract, whether or not changed as a result of the conditions, an equitable adjustment shall be made under this clause and the contract modified in writing accordingly.

FAR 52.236-2.

The contract also included FAR clause 52.236-3 which states in pertinent part that

> (a) The Contractor acknowledges that it has taken steps reasonably necessary to ascertain the nature and location of the work, and that it has investigated and satisfied itself as to the general and local conditions which can affect the work or its cost, including but not limited to: ...
>
> (4) the conformation and conditions of the ground; and
>
> (5) the character of equipment and facilities needed preliminary to and during work performance.
>
> The Contractor also acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site, including all exploratory work done by the Government, as well as from the drawings and specifications made a part of this contract.

On the contractor's first day of work it encountered subsurface boulders which impeded the excavation of the utility trench. Each time the contractor encountered a boulder it would deter-mine the extent of the obstruction and then attempt to remove it with the excavator. If the boulder could not be removed with the excavator, the contractor brought in a hydraulic rock breaker to break the boulder into small enough pieces to be removed by the excavator. This process slowed the contractor's work schedule significantly.

The contractor notified WFLHD of the subsurface boulders by letter and alleged that the boulders were a differing site condition that was unanticipated at the time of bid. WFLHD disagreed with the contractor, and denied the claim.

The contractor appealed, but the Board denied the contractor's appeal, finding that the subsurface boulders were not a differing site condition. The Board based its decision, in part, on the more than 100 photographs contained in the bid solicitation that showed rocks, cobbles, and boulders in the immediate vicinity of the road. The Board reasoned that "[t]he photographs clearly establish that boulders and bedrock should be expected in undisturbed native material at Mount Rainer National Park." The Board also found that because the project drawings accompanying the bid solicitation showed undisturbed native material outside the trenches, the contractor "was aware or should have been aware from the surrounding site conditions that it might encounter boulders in the undisturbed native material under the pavement." The Board went further to hold that "the possibility of excavating rock was far from remote; in fact, it was obvious and apparent."

This case reaffirms the importance of thoroughly investigating a site prior to submitting a bid. Although differing site conditions clauses are a comfort to contractors, they must be read carefully in conjunction with the site inspection clause.

By Jasmine Gardner

Negotiating Complex Agreements

Sunvalley Solar, Inc. ("Sunvalley"), is a solar equipment distributor in California. It brought an action in California state court against CEEG (Shanghai) Solar Science & Technology Co., Ltd. and China Sunergy (Nanjing) Co., Ltd. (together, the "Chinese manufacturers") for breach of a distribution agreement due to failure to provide crystalline photovoltaic (PV) modules compliant with Underwriter Laboratory (UL) labeling and inspection standards. Sunvalley thought it had a fair claim in California state court, because the distribution agreement contained a choice of law provision designating California as its governing law.

The distribution agreement, however, was a master agreement that contemplated execution of individual, project-specific purchase orders for the PV modules. Sunvalley and the Chinese manufact-urers executed multiple purchase orders, each of which included an arbitration provision mandating disputes be arbitrated before the Chinese International Economic and Trade Arbitration Commission. The distribution agreement was silent as to a method of dispute resolution. It contained an order-of-precedence provision noting that "the stipulations set forth in [the distribution agreement] apply in the case of any contradiction with {a} purchase order."

The Chinese manufacturers removed Sunvalley's California state action to federal court, relying on a federal statute that provides federal jurisdiction for disputes relating to an international arbitration agreement. The Chinese manufacturers then moved

to compel arbitration of Sunvalley's claims, arguing that the arbitration provisions in the purchase orders applied to the distribution agreement as well.

The appeals court that supervises federal trial courts in California agreed with the federal trial court's opinion granting the Chinese manufacturers' motions to compel arbitration. The appeals court held that the distribution agreement "cannot be read in isolation"; that the project-specific purchase orders must be considered as well; and that, because the arbitration provisions in the purchase orders did not directly conflict with the distribution agreement, the arbitration provisions governed the dispute between Sunvalley and the Chinese manufacturers.

This opinion highlights inherent risks in complex agreements, especially master agreements and all agreements that incorporate or reference separate documents. Documents clearly anticipated by a master agreement – including future, later-negotiated task or purchase orders – may be deemed an essential part of the parties' agreement. An order-of-precedence provision, which generally specifies the prevailing terms in the event of an inconsistency or contradiction between different contract documents, may not be sufficient to resolve conflicts where one document does not directly address the other document's specific terms. Courts will attempt to interpret contract documents together – and to the extent that a contractual interpretation is possible between both documents, courts will choose the compatible interpretation over an interpretation finding that two contract documents conflict.

The lesson? One can never be too careful negotiating complex agreements – and beware the additional terms in referenced documents.

By Monica Wilson Dozier

Postal Service Contractor? Would-be Contractor? A Look inside the U.S. Postal Service Bid Protest Process

Most sophisticated government contractors know that the Government Accountability Office (GAO) does not have jurisdiction over bid protests challenging procurements or proposed procure-ments by the U.S. Postal Service (USPS). However, few government contractors are aware that the USPS has its own bid protest (or "disagreement") process, and even fewer govern-ment contractors know the details of the USPS's protest process. This article provides a user-friendly overview of the USPS's bid protest process.

General Overview

The GAO's Bid Protest Regulations state, in relevant part: "Protests of procurements or proposed procurements by agencies such as the U.S. Postal Service . . . are beyond GAO's bid protest jurisdiction as established in 31 U.S.C 3551-3556" (*see* 4 C.F.R. § 21.5(g)). The U.S. Court of Appeals articulated the reason that the GAO does not have jurisdiction over protests challenging USPS procurements in a 2001 decision *in Emery Worldwide Airlines, Inc. v. United States*:

> The GAO's protest jurisdiction is defined by the Competition in Contracting Act ("CICA") of 1984, 31 U.S.C. § 3551 *et seq*. The USPS is exempted from all federal procurement laws not specifically enumerated in 39 U.S.C. § 410(a). [] Because the [CICA] is not specifically enumerated in 39 U.S.C. § 410(a), the CICA does not apply to the USPS and therefore the USPS is not subject to GAO review.

Despite the fact that the GAO cannot decide protests involving USPS procurements, the USPS has its own unique bid protest process, and the U.S. Court of Federal Claims (COFC) has consistently held that it has jurisdiction over protests involving USPS procurements. The USPS's disagreement resolution procedures are set out in 39 C.F.R. Part 601. These regulations establish a process by which a contractor can file a protest concerning the USPS's acquisition of services or property. The USPS "disagreement" process is essentially a two-step process that usually should be exhausted before a contractor files a bid protest action at the COFC.

Step One: Lodging the Disagreement with the Contracting Officer

The first step in the USPS process is to "lodge" (*i.e.*, file) the disagreement with the contracting officer. The protester must lodge its disagreement within 10 days from when it first became aware of the grounds for disagreement. If, on the other hand, a protester is challenging the terms of a solicitation, then it must lodge – and "the contracting officer must receive" – the disagreement before offers are due. The USPS's regulations do not provide for an automatic stay of the contract award upon the receipt of a timely filed protest. However, the USPS's

current Supplying Principles and Practices state that "[w]hile a disagreement is pending an award will not be made unless compelling circumstances so require" (*see* SP&Ps, § 7-4.4). Once a protester lodges its disagreement, the contracting officer has up to 10 days to review the challenge and issue a response. In addition, an alternative dispute resolution mechanism may be used if the parties so desire. If the protester is satisfied with the resolution of the matter, then the process ends. If, however, the contractor is not satisfied with the contracting officer's resolution of the disagree-ment, or if the contracting officer has not respond-ed within 10 days after the disagreement was lodged, then the contractor may proceed to the second step of the process.

Step Two: Lodging the Disagreement with the SDRO

Next, the protester lodges the disagreement with the Supplier Disagreement Resolution Official (SDRO) at USPS Headquarters in Washington, D.C. Contractors must lodge the disagreement with the SDRO within 10 days after the contracting officer issues a decision on the protest, or within 10 days of when the contracting officer should have issued a decision. The SDRO may grant an extension of time to lodge a disagreement, but any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the SDRO on or before the time for lodging a disagreement lapses.

Upon receipt of a disagreement, the SDRO will provide a copy of the disagreement to the contracting officer, who, in turn, will notify other interested parties. The SDRO will then review the disagreement and, if necessary, obtain further information from the protester and the contracting officer. Notably, the USPS's regulations state that the SDRO "may also meet individually or jointly with the person or organization lodging the disagreement, other interested parties, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the disagreement" (*see* 39 C.F.R. § 601.108(e)). Next, the SDRO will issue a written decision – which typically happens within 30 days after the SDRO's receipt of the disagreement.

The SDRO may grant various remedies, such as: (a) directing the USPS to terminate the contract award; (b) directing the USPS to issue a new solicitation; (c) directing the USPS to conduct a re-competition of the USPS's requirements; and (d) directing the USPS to conduct a reevaluation of proposals.

If a protester is not satisfied with the SDRO's decision, the decision "may be appealed to a Federal court with jurisdiction based only upon an alleged violation of the regulations contained in [39 C.F.R. Part 601] or an applicable public law enacted by Congress" (*see* 39 C.F.R. § 601.108(h)). Although this particular regulatory provision seems to limit the issues that may be "appealed" to a federal court, the COFC takes jurisdiction over issues that do not fall neatly under this provision. The COFC reasons that it, not the USPS, decides the extent of its jurisdiction over bid protest actions.

Furthermore, the regulations governing the USPS disagreement process seek to require contractors to "exhaust" their administrative remedies before bringing a challenge in federal court. While some commentators have suggested that this regulatory provision is, in effect, unenforceable since the COFC determines the extent of its bid protest jurisdiction, many practitioners opt to exhaust the USPS disagreement process out of an abundance of caution and because they potentially can save their clients money if they achieve a satisfactory result at the less-expensive USPS level.

Although the USPS disagreement process generally is a cheaper route than pursuing a protest at the COFC, there are drawbacks to the USPS process. For example, as mentioned above, the USPS's regulations do not provide for an automatic stay of the contract award upon the receipt of a timely filed protest. Additionally, protesters oftentimes have little access to the procurement record during the USPS disagreement process.

The FAR Does Not Apply to the USPS

In prosecuting a disagreement before the USPS, remember that the Federal Acquisition Regulation (FAR) – which is the government-wide regulation that governs the federal contracting process for most agencies – does not apply to the USPS. Instead, the USPS's Supplying Principles and Practices govern most of the contracting process.

The USPS has taken the position that because the Supplying Principles and Practices have not been formally issued as regulations, they are not binding on the USPS. The fact that the USPS's Supplying Principles and Practices may be viewed as non-binding can present some difficulty for protesters challenging the USPS's conduct at the COFC,

because the USPS can argue that any violation of the Supplying Principles and Practices is not "arbitrary and capricious" conduct. Nevertheless, protesters can argue that actions by the USPS that are contrary to the USPS's Supplying Principles and Practices are evidence of "arbitrary and capricious" conduct.

Conclusion

If you are a contractor for, or want to be a contractor for, the USPS, you need to be aware of how to protect yourself from a defective solicitation or from an unreasonable evaluation and award. You and your lawyer must know the USPS protest process and the time limitations to protect yourself against what you may perceive is unreasonable procurement conduct by the USPS.

By Aron C. Beezley

The Importance of Careful Coverage Analysis

Ohio has joined the majority of jurisdictions in holding that a general liability policy may provide coverage for claims made by a project owner for property damage allegedly caused by the defective work of a subcontractor. In *Ohio Northern Univ. v. Charles Constr. Serv., Inc.,* an Ohio appeals court found coverage. It distinguished a 2012 decision of the Ohio Supreme Court, *Westfield Ins. Co. v. Custom Agri Systems, Inc.* that seemed to hold, broadly, that "claims of defective construction or workmanship brought by a property owner are not claims for 'property damage' caused by an 'occurrence' under a commercial general liability policy." A close comparison of the two cases reveals their consistency and demonstrates that the "devil is in the details" of any coverage analysis.

Coverage for Defective Work

Most commercial general liability policies are written on standardized forms developed by the Insurance Services Offices. The standard general liability policy provides that it applies to "property damage" caused by an "occurrence." Whether faulty or defective workmanship constitutes an "occurrence" under the general liability policy is a state specific question, and courts across the country are divided on this issue. While some states have held that faulty workmanship or improper construction is not an "occurrence" because it can never be an "accident," others have held that faulty workmanship can be an "accident" if the resulting damage occurs without the insured's expectation or foresight. The recent trend has been for courts to find that construction defects or faulty workmanship satisfy the "occurrence" and "property damage" requirements under a general liability policy, and that losses sustained as a result of such defects may be covered.

The Ohio Cases

Ohio Northern University (the "Owner") contracted with Charles Construction Services, Inc. (the "Contractor") to build a luxury hotel and conference center on the Ohio Northern campus (the "Project"). The Contractor subcontracted most of the work to various trade and supplier subcontractors. After construction was complete, the Owner discovered evidence of water intrusion and moisture damage to wall coverings, dry wall, and insulation. Remediation of the damage led to the discovery of additional structural defects.

The Owner sued the Contractor, who, in turn, filed claims against its subcontractors. The Contractor's insurer, The Cincinnati Insurance Company (the "Insurer"), intervened in the lawsuit and sought a declaration that it had no obligation to defend or indemnify the Contractor. In a motion for summary judgment, the insurer relied on the Ohio Supreme Court's decision in *Custom Agri* to support its claim that it had no duty to defend or indemnify the Contractor. The trial court held in favor of the insurer holding that, under *Custom Agri*, defective construction was not an occurrence and, therefore, that there was no coverage.

On appeal, the Court of Appeals explicitly rejected the Insurer's argument that *Custom Agri* stood for the "expansive proposition that *all* claims for defective workmanship, regardless of who performed it, are barred from coverage under a [general liability] policy because such claims" can *never* constitute a claim for "property damage" caused by an "occurrence" under a general liability policy. The Court of Appeals noted that, unlike *Custom Agri*, the property damage sustained by Ohio Northern was caused by the defective work of subcontractors, not by the work of the insured Contractor. Moreover, the property damage occurred after the project was completed. Thus, the property damage was within the "Products-Completed Operations Hazard," and the insured Contractor had paid supplemental premiums to obtain "Products-Completed Operations Hazard" coverage. In considering each of these facts, the Court of Appeals reversed the trial court's entry of summary judgment for the Insurer.

Conclusion

Comparison of these two Ohio cases demonstrates the necessity of conducting a close review of the facts and procedural posture of any coverage case to identify possible bases for establishing coverage.

By Heather Howell Wright

Safety Moments for the Construction Industry

Safe lifting procedures and load-carrying techniques are crucial to preventing painful and expensive injuries in the workplace. Unfortunately, most workers do not consistently use back safety practices, at great risk to their personal well-being. Back injuries are often caused by unsafe lifting and carrying of heavy or awkward objects, but are easily prevented.

Bradley Arant Lawyer Activities

In U.S. News' "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. The Birmingham, Nashville, Jackson, and Washington, D.C. offices received similar recognition in the metropolitan rankings.

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**, **David Taylor**, **Jim Archibald** and **Eric Frechtel** were recently recognized by *Best Lawyers in America* in the area of Construction Law for 2017.

Mabry Rogers and **David Taylor** were recognized by *Best Lawyers in America* in the areas of Arbitration and Mediation for 2017. **Keith Covington** and **John Hargrove** were recognized in the area of Employment Law – Management. **Frederic Smith** was recognized in the area of Corporate Law. **Keith Covington** was also recognized in the area of 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. **Bryan Thomas** was selected as a 2016 Mid-South Rising Star in the area of Construction Law and Construction Litigation.

Brian Rowlson was named a 2017 North Carolina *Super Lawyers* "Rising Star" in Construction Litigation.

Aron Beezley was named a 2017 Washington, DC *Super Lawyers* "Rising Star" in Government Contracts Law.

Jon Paul Hoelscher, **Ryan Kinder**, and **Justin Scott** were named 2017 Texas *Super Lawyers* "Rising Stars."

Wally Sears was recently named Birmingham's *Best Lawyers* 2017 Lawyer of the Year in the area of Construction Law.

David Taylor was recently named Nashville'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.

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

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.

Keith Covington was honored by *Birmingham Magazine* as a 2016 Top Attorney for Immigration. The magazine's annual Top Attorneys list recognizes attorneys in 35 practice areas and is selected through a peer review survey of approximately 4,000 local attorneys registered with the Birmingham Bar Association.

Arlan Lewis has been appointed to lead the Division Chairs Standing Committee of the American Bar Association Forum on Construction Law. This committee manages the operations of the Forum's 14 substantive divisions. Arlan's tenure as committee chair began during the Forum's June 2017 leadership retreat in Park City, Utah.

David Pugh was recently installed as the President of the Alabama Chapter of the Associated Builders & Contractors for the 2017 calendar year.

Arlan Lewis was selected to participate in the Associated Builders & Contractors of Alabama's 2017 *"Future Business Leaders: Advanced Organizational Leadership – The Masters Course."*

Carly Miller was selected to participate in the 2017 class of Future Leaders in Construction with the Alabama Chapter of the Associated Builders & Contractors.

David Taylor was recently reappointed to the Executive Committee of the Tennessee Bar Association's Construction Law Committee.

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

David Taylor, **Bridgett Parkes** and **Bryan Thomas** have given seven Lunch & Learn seminars on Tennessee retainage laws to clients in their offices over the past month.

On June 21, 2017, **Aron Beezley** will be conducting a webinar titled "Cyber Hot Topics: Recent Developments for Government Contractors."

On May 26, 2017, **Aron Beezley** and **Emily Unnasch** published a *Law360* "Expert Analysis" article titled "Risks for Contractors with New Info after Proposal Submission."

David Taylor spoke about Tennessee Retainage laws at the Spring meeting of the Tennessee Association of Construction Counsel on May 8 in French Lick, Indiana.

David Taylor and **Bridgett Parkes** spoke at the firm's 16th Annual Commercial Real Estate seminar in Nashville on Architect and Engineer's Contracts on May 3, 2017.

The Construction & Procurement Practice Group hosted our annual Construction Seminar Series in our offices on the following dates: **Charlotte, NC** on May 5, **Nashville, TN** on May 12, **Birmingham, AL** on May 19, and **Houston, TX** on May 26.

David Taylor recently published an article in the April edition of the Tennessee Bankers magazine entitled: "Update on Tennessee Retainage Law—What Bankers Need to Know."

Keith Covington presented a seminar on April 18, 2017 on Form I-9 compliance and internal audits for the DeKalb County Economic Development Authority HR Professionals Group in Ft. Payne, Alabama.

In April, **Aron Beezley** was elected to join the Fellows of the America Bar Foundation, which is an honorary organization recognizing attorneys, judges, law faculty and legal scholars who have demonstrated outstanding dedication to the welfare of their communities and to the highest principles of the legal profession.

On April 4, 2017, **Keith Covington** spoke on Contractor Immigration Compliance and Human Resources Best Practices at an immigration law symposium conducted by the Associated Builders & Contractors of Alabama.

Jim Archibald, **Bill Purdy**, and **Wally Sears**, and attended the American College of Construction Lawyers annual meeting on March 16-19, 2017 in Amelia Island, FL.

On March 16, 2017, **Arlan Lewis** conducted a seminar on construction project management for an owner client in Birmingham, AL.

On February 24, 2017, **Bryan Thomas** presented "Public Private Partnerships (PPP); What a Municipal Lawyer Needs to Know" at the Tennessee Municipal Attorneys Association's Winter Summit.

Aron Beezley and **Emily Unnasch** published a *Law360* Expert Analysis article on February 23, 2017 titled "New FAR Rule Requires Self-Reporting of Reduced or Untimely Payments to Subcontractors."

Axel Bolvig, **David Pugh** and **Mabry Rogers** attended the annual induction ceremony of the State of Alabama Engineering Hall of Fame, on February 18, 2017. Brian D. Barr (Brasfield & Gorrie) and Bill L. Harbert (BL Harbert International) were among those inducted. Mr. Harbert was inducted posthumously.

On February 15, 2017, **Beth Ferrell** spoke about Performance Issues at the Government Contracts Year In Review Conference in Washington, DC.

Beth Ferrell and **Aron Beezley** published an article titled "The Most Important Government Contract Disputes Cases of 2016" on February 8, 2017 in *The Government Contractor*.

Our Practice Group's annual Learning Day was held in Houston, TX on January 13, 2017, with a featured luncheon speaker of Rhonda Caviedes, Associate General Counsel at CB&I.

Arlan Lewis was the Governing Committee Liaison for the ABA Forum on Construction Law Midwinter meeting entitled *"Earth, Wind, Fire & Water: Sustainable Construction in a Changing Environment"* held February 2-3, 2017 in Palm Desert, CA.

Bryan Thomas presented the topic of "Warranty Claims" at the TBA's Annual Construction Law Seminar on January 27, 2017. **David Taylor** was also a speaker and coordinator of the event.

Axel Bolvig spoke at the Construction CPM Conference in Orlando, FL on January 12, 2017 in a program titled "Box-Out Schedules – Regain Contractor Focus." He presented with two client representatives.

Daniel Murdock, **Jim Archibald**, and **David Owen** spoke on January 11, 2017 on the topic of "Defining Subsurface Risk Allocation among Project Participants" at the 4th Annual EPC Contract & Risk Management Conference in Houston, TX.

Arlan Lewis served as an Adjunct Instructor for Cumberland Law School's "Negotiation Workshop" held on January 5-6, 2017.

On January 4, 2017, *PubKLaw* published a feature interview with **Aron Beezley** about significant 2016 legal developments regarding bid protests.

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.

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*.

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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READER RESPONSES

If you have any comments or suggestions, please complete the appropriate part of this section of the *Construction & Procurement Law News* and return it to us by folding and stapling this page which is preaddressed.

Your Name:

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

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

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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

Comments:

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