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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:

Contractor's Failure to Timely Submit Claims as Committed in Pass-Through Agreement Results in Direct Liability to Subcontractor Beyond Subcontract Terms

A recent opinion issued by a trial court in New York, *Rad and D'Aprile, Inc. v. Arnell Construction Corp.*, demonstrates the risks of a general contractor's failure to pursue a subcontractor's claims pursuant to a pass-through, or liquidating, agreement between the parties.

In 2001, prime contractor Arnell Construction Corp. ("Arnell") entered into an agreement to build two sanitation garages in Brooklyn for New York City's Department of Sanitation. Arnell subcontracted the masonry work to Rad and D'Aprile, Inc. ("Rad"). Rad's commencement of work was delayed because the City had not yet obtained ownership or access to the entire site. Once work began, Rad's work continued to be impacted by the City's site access restrictions. Rad notified Arnell of a claim for delay and inefficiencies in the performance of work, and requested additional compensation under the subcontract.

Rad's subcontract contained a no-damages-for-delay provision. Nevertheless, in 2002, Arnell sent a letter to Rad confirming Arnell would increase Rad's subcontract price by $100,000, and that Rad's "additional costs, due to delays," would be incorporated into Arnell's claim to the City. Rad prepared its nearly $2.1 million claim in coordination with Arnell, and submitted it formally to Arnell in October 2005. Rad continued to ask Arnell about the status of its claim from 2006-2008, and Arnell continued to tell Rad that the claim was being reviewed by the City. In fact, after the project was completed in December 2007, Arnell waited three years – until December 2010 – to assert its $15 million claim to the City. Arnell's claims were dismissed as beyond the

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prime contract's six-month statute of limitations provision.

During Arnell's appeal of the dismissal, in 2013 Arnell and the City reached a settlement for a substantial discount on Arnell's claims. Arnell received approximately $3.6 million, consisting of its prime contract balance and the release of security in lieu of retainage. Arnell's settlement included dismissal with prejudice of all other claims – including Rad's claim. Arnell did not inform Rad of the settlement. In 2014, Rad brought an action against Arnell alleging Arnell breached the subcontract, breached its fiduciary duty to pass Rad's claims through to the city, breached its duty of good faith and fair dealing with respect to the pass-through claims, and owed Rad under the theory of *quantum meruit*.

After filing its action, Rad learned of Arnell's settlement with the City. Rad then amended its action, alleging breach of the subcontract as well as Arnell's letter promising to pass Rad's claims through to the City. The court dismissed Rad's claims of breach of contract and breach of fiduciary duty as untimely and barred by New York's statutes of limitation. The court also dismissed Rad's claim under the theory of *quantum meruit* because the claims arose under a valid and enforceable subcontract, but were time-barred.

However, the court granted summary judgment in favor of Rad's claim for breach of the duty of good faith and fair dealing by Arnell. The court found that (1) Arnell's pass-through letter to Rad was a liquidating agreement (also known as a pass-through agreement) that required Arnell to take proper steps to protect and assert Rad's claim to the City; (2) the letter created a new, separate and later-dated agreement between the parties, overriding the no-damages-for-delay provision in Rad's subcontract; and (3) Rad's claim of breach of the duty of good faith and fair dealing by Arnell was timely, because it only accrued after the statute of limitations on Arnell's claims against the City expired without Arnell appropriately asserting Rad's claim pursuant to the pass-through agreement.

As a result, the court held that Arnell's breach of the covenant of good faith and fair dealing "by failing to timely present a subcontractor's claims to the owner, pursuant to the liquidating agreement, will result in a general contractor's liability for the subcontractor's full damages." Rad was therefore entitled to seek its full damages based upon Arnell's breach.

The *Rad and D'Aprile* opinion provides valuable lessons for general contractors seeking to limit liability against subcontractors, and for subcontractors seeking to preserve their right to assert entitlement to damages for owner-caused delays. General contractors often use pass-through, or liquidating, agreements as an effective solution to resolve subcontractor claims. They are also often included in the subcontract via a disclaimer to pay any subcontractor claims arising from owner actions, but only to the extent paid by owner, and agreeing that the contractor will in good faith present a valid claim to the owner on the subcontractor's behalf. Pass-through agreements provide the benefit of aligning the general contractor and the subcontractor's interests in pursuing a claim against an owner, allowing the general contractor and subcontractor to productively collaborate in the assertion of a strong claim against the owner.

Pass-through agreements are not, however, without risk. Notably in the *Rad and D'Aprile* action, the court held that Arnell's pass-through agreement superseded and modified Rad's subcontract terms by promising to pursue recovery for Rad's "additional costs, due to delays." This indicated, "independently of the subcontract, that Rad's delay damages would be paid to Rad in this manner."

Of course, the general contractor should reasonably pursue the subcontractor's claim according to the pass-through agreement – something Arnell clearly failed to do, both by misleading Rad as to the status of the claim submission and by allowing its claims against the City to become time barred. Once a general contractor agrees to pass through a subcontractor's claims to the owner, the general contractor would be wise to communicate with (and even, in some circumstances, include) the subcontractor in its claim and settlement negotiations. A pass-through agreement can provide the general contractor a powerful tool in the form of subcontractor support and assistance, both in preparation for and prosecution of claims against the owner, and it is usually in the general contractor's best interest to leverage this subcontractor support.

General contractors should use caution when negotiating a pass-through agreement to protect

against any argument that the pass-through agreement binds the general contractor to additional substantive obligations above and beyond the terms of the subcontract.

For subcontractors, Rad's experience offers a valuable lesson in preserving the right to assert claims pursuant to a pass-through agreement. First, a subcontractor should understand the general contractor's deadline to submit claims under the prime contract, as the contractor's deadline will be a key factor in the subcontractor's potential recovery. Second, a subcontractor should confirm and verify with the general contractor that the subcontractor's claim has been received and included in the general contractor's submission to the owner. And third, a subcontractor should consider whether to assert a formal claim against a general contractor prior to the expiration of the applicable statute of limitations on subcontract claims, to avoid the expiration of statute of limitations deadlines pending resolution of pass-through claims.

Pass-through agreements can be a useful and productive form of dispute resolution on construction projects. That said, general contractors and subcontractors should be aware not only of their benefits, but also their risks – risks that may be mitigated by careful agreement drafting and sophisticated claims management.

By: Monica Wilson Dozier

New York Courts Continue to Uphold Enforceability of No Damages for Delay Clauses

A New York trial court recently upheld the enforceability of a no-damages-for-delay clause in a contract between a general contractor and its subcontractor. In *Hailey Insulation Corp., v. WDF, Inc*., the subcontractor ("Hailey") filed a complaint against the general contractor ("WDF"), alleging that it was due $1.3 million under the subcontract along with additional delay damages. WDF moved to dismiss the lawsuit on the basis of a contractual no-damages-for-delay clause, which the court granted.

In granting WDF's motion to dismiss Hailey's claim for delay damages, the court recognized that while no-damages-for-delay provisions are generally enforceable, there are exceptions to the enforceability of such provisions. However, the court ultimately found that Hailey failed to properly allege any such exception applied.

Specifically, the court outlined the following exceptions in which damages may be recovered, despite the inclusion of a no-damages-for-delay clause in the controlling contract:

> (1) delays caused by the contractee's bad faith or its willful, malicious, or grossly negligent conduct, (2) uncontemplated delays, (3) delays so unreasonable that they constitute an intentional abandonment of the contract by the contractee, and (4) delays resulting from the contractee's breach of a fundamental obligation of the contract.

No-damages-for-delay clauses are enforceable in many jurisdictions. However, courts in some of those jurisdictions have carved out exceptions to the enforceability of such clauses, and several states have statutory provisions limiting the enforceability of no-damages-for-delay clauses or rendering them void. For example, California, Colorado, Louisiana, Minnesota, Missouri, North Carolina, New Jersey, Oregon, and Virginia, among others, have passed legislation limiting or rendering "no damage for delay" clauses unenforceable in public contracts. Arizona and Massachusetts mandate a contractual provision permitting damages for delay in contracts between public owners and contractors. Ohio and Washington have statutory provisions limiting the clauses or rendering them unenforceable in both public and private contracts. And, Kentucky prohibits such clauses in both public and private contracts, but allows limitations on the types of damages recovered.

Contractors and owners should, therefore, become familiar with the applicable common law and statutory schemes related to no-damages-for-delay clauses before incorporating them in their contracts.

By: Lee-Ann Brown

A Second Level of Protection to Indemnitees?

It is not uncommon for indemnitees to attempt to add language to indemnification provisions providing

additional liability protections from the indemnitor. And courts and legislators are wary of language in indemnity agreements that create obligations on the indemnitor to indemnify the indemnitee for its own acts or omissions and create restrictions on the indemnitee's rights to do so. A recent Florida court attempted to strike a balance between an indemnitee's right to indemnification generally and protecting an indemnitor from indemnifying the indemnitee for its own fault.

In *CB Contractors, LLC v. Allens Steel Products, Inc.*, a general contractor of a condominium project brought a contractual and common law indemnification action against its subcontractors arising out of a construction defect action brought against the contractor by the condominium association.

The subcontract's indemnity clause stated: "Subcontractor's indemnity obligations hereunder shall apply regardless of whether or not the claims, damages, losses, and expenses or causes of actions are caused in part by a party indemnified hereunder […]." In essence, the subcontract, on its face, allowed the general contractor to seek indemnity for claims, damages, and losses as a result of its own fault.

Florida Statute § 725.06 (2004), which applies to construction of buildings, states that "[a]ny portion of any agreement […] promis[ing] to indemnify or hold harmless the other party to the agreement […] for damages to persons or property caused in whole or in part by an act, omission, or default of the indemnitee […] shall be void and unenforceable unless the contract contains a monetary limitation on the extent of the indemnification that bears a reasonable commercial relationship to the contract […]."

Applying this statute, the lower court found that the entire indemnity clause was void and unenforceable. The general contractor appealed the trial court's decision.

On appeal, the appellate court disagreed and found that the entire indemnity clause was not void and unenforceable, but instead concluded that only the specific portion of the indemnity clause purporting to impose indemnity obligations for the contractor's own acts or omissions was unenforceable.

This ruling, which reflects the same middle-of-the-road approach followed by many jurisdictions, provides protection to the indemnitor without completely voiding the parties' indemnification agreement. This decision could have been different under a different state's stricter law regarding indemnity. Contracting parties should carefully consider the extent of indemnity included in their contracts, especially in light of the relevant jurisdiction's law regarding those protections.

By: Trey Oliver

GSA Proposed Rule to Provide Guidance on the Construction Manager-as-Constructor Project Delivery Method

A GSA proposed rule, if adopted, will provide direction for the "construction manager as constructor" ("CMc") project delivery method. CMc is widely used in the private sector – the American Institute of Architects ("AIA") has an entire family of template contracts dedicated to CMc – and GSA has entered CMc contracts. But the GSA regulations, as of now, lack any real guidance on this method.

The proposed rule includes a robust definition of CMc: "design and construction are contracted concurrently through two separate contracts and two separate contractors. Unlike the traditional design-bid-build delivery method, under the CMc delivery method, the Government awards a separate contract to a designer (*i.e.*, architect-engineer contractor) and to a construction contractor (*i.e.*, CMc contractor) prior to the completion of the design documents. The Government retains the CMc contractor during design to work with the architect-engineer to provide constructability reviews and cost estimating validation. The CMc contract includes design phase services at a firm-fixed-price and an option for construction at a guaranteed maximum price."

The cornerstone of CMc is the early engagement of the contractor. Design-phase collaboration between the contractor and designer is intended to facilitate innovation, reduce the number of design-related change orders during the construction phase, and promote early detection of errors and conflicts in the drawings. CMc also has economic advantages, set

forth in GSA's Economic Impact Analysis ("EIA"): GSA estimates that the rule will result in net deregulatory savings of $238,535 per year.

There is also evidence that CMc reduces schedule growth, on average saving 71 calendar days, which reduces administrative costs. The contractor can share savings of the cost reductions when it completes the construction work for lower than the guaranteed maximum price. The GSA's EIA determined that CMc facilitates conversion to firm-fixed-price contracts, especially in tight labor or material markets, and has lower "sunk costs" and barriers to entry than design-build contracts.

This proposed rule should be no surprise to the contracting industry, and it appears to be a welcome change. According to GSA, the proposed rule reflects the expressed needs of the construction industry. If adopted, the new rule will provide much-needed guidance and potential cost saving measures to GSA contracts. Comments closed on January 7, 2019, though GSA has not yet adopted the rule.

By: Amy Garber

Creative Legislative Solutions to Bond off Mechanic's Liens

Whether you are the owner or the general contractor, dealing with mechanic's liens filed by subcontractors or suppliers can be frustrating and, in some cases, present the very real threat of having to pay twice for work or materials. Many states' lien laws provide that prior payment, whether by owner to contractor or contractor to subcontractor, are not a legal defense to a lien filed by a lower tier subcontractor or supplier who has not been paid. While there may be legal penalties for filing improper or exaggerated liens, when a lien is filed, it causes a ripple effect upstream. It is almost certainly a violation of the owner's mortgage. In addition, the failure to pay that led to the lien may be a default under the owner/ contractor and contractor/subcontractor agreement. In a sense, as to the clouding effect, it makes no initial difference if the lien is legitimate or illegitimate, because once filed it is a cloud on title and will delay or preclude refinancing, sale, or the approval by a lender of the owner's next construction draw (which can then delay payment and cause more liens to be filed). (Note that a wrongful lien is punishable via statutory or common law actions, but proving such an allegation takes time, and the cloud remains until the allegations are proved.)

Most states have statutes that allow such liens to be "bonded over," but that means going to a surety company for the bond, which may require full cash collateral. Bonds not only cost money, but also absorb bond capacity that is then no longer available for other projects until the liens are released. If an owner has to bond off a lien, it normally does not have a relationship with a surety company and has to go through a complete financial disclosure process to qualify for a bond. Finally, some states (Texas and Arkansas, for example) mandate that the amount of the lien bond has to be twice the amount of the filed lien. Such a requirement can cause serious issues, particularly where the underlying lien is arguably invalid.

But, what if there is an existing payment bond already in place for the project, normally provided by the prime contractor (the costs of which were passed through to the owner)? That bond does not prevent the filing of liens, but simply gives the lien claimant another way to try to get paid. Most claimants will make a formal claim against the bond but also assert liens. One answer: States should follow the lead of Tennessee, which allows a copy of an existing payment bond, if it meets certain criteria, to be filed of record in the same place as the filed lien, and the filing of the bond automatically "discharges" the lien of record, just like a separate filed lien bond. No separate lien bond from a surety is needed. While the underlying dispute must still be resolved, at least the cloud on the title to the real property of the project is removed. The owner is happy. The payments continue to be made. The claimant is normally happy to now be able to sue on the payment bond. The Tennessee statute is located at T.C.A. 66-11-142(b).

If your state does not have such a statute, consider lobbying for a change. The local chapters of the various construction trade associations, such as ABC and AGC, may be willing to provide legislative support.

By: David Taylor

Watching the Watchmen: Ninth Circuit Clarifies Courts' Role in Reviewing Arbitration Awards

In the words of Judge Milan D. Smith, Jr. of the Ninth Circuit, "[w]e have become an arbitration nation." Nonetheless, arbitration is a creature of contract, and there are limits to what an arbitrator may do. In *Aspic Engineering v. ECC Centcom Constructors LLC*, the Ninth Circuit clarified that a court can vacate an arbitrator's irrational award where the arbitrator expressly disregards the plain language of a contract without justification. *Aspic Engineering and Construction Company v. ECC Centcom Constructors LLC, et al*.

ECC Centcom Constructors LLC ("ECC") had two prime contracts with the U.S. Army Corps of Engineers ("USACE") for the construction of various buildings and facilities in Afghanistan. ECC awarded Aspic Engineering ("Aspic") two engineering subcontracts related to ECC's work for USACE (the "Subcontracts"). The Subcontracts incorporated many Federal Acquisition Regulation ("FAR") clauses, including the FAR clauses related to terminations for convenience and settlement of claims. During the course of ASPIC's work pursuant to the Subcontracts, USACE terminated its prime contracts with ECC for convenience. Thereafter, ECC notified Aspic that it was likewise terminating the Subcontracts for convenience. Following ECC's termination of the Subcontracts, disputes arose between ECC and Aspic related to amounts ECC owed Aspic. When ECC and Aspic were unable to resolve those disputes, Aspic initiated arbitration proceedings against ECC.

Following the arbitration hearing, the arbitrator issued an award finding that ECC was liable for Aspic's claimed damages, which were more than one million dollars. As part of the arbitration award, the arbitrator found that Aspic was not required to comply with the FAR provisions that were incorporated into the Subcontracts on the grounds that it would not be reasonable to hold Aspic, as an Afghani subcontractor, to the strict FAR provisions incorporated into the Subcontracts. Aspic filed a petition in California state court seeking to confirm the arbitration award. ECC removed the matter to federal court in the Northern District of California. The federal district court judge issued a decision vacating the award on the grounds that it conflicted with the Subcontracts. Aspic appealed the district court's decision to the Ninth Circuit Court of Appeals.

The Ninth Circuit articulated that courts' ability to review arbitration awards is "both limited and highly deferential" but clarified that a court may vacate an arbitration award where an arbitrator exceeded their powers by issuing an award that is "completely irrational" or exhibits a "manifest disregard of the law." Going further, the Ninth Circuit explained that an arbitration award is "completely irrational" where the arbitrator's award "fails to draw its essence" from the contractual agreement that is the subject of the arbitration.

Looking specifically at the arbitration award, the Ninth Circuit found that the arbitrator exceeded his power by finding that Aspic did not need to comply with the FAR provisions. The Ninth Circuit noted that an arbitrator may interpret the contract through evidence demonstrating the parties' intentions and may find that the parties' conduct modified the text of a contract. What the arbitrator may not do, however, is disregard contractual provisions to achieve a desired result. The Ninth Circuit found that the Subcontracts incorporated numerous FAR provisions, including provisions governing termination of contracts for convenience and the settlement of claims. In examining Aspic and ECC's course of conduct, the Ninth Circuit found that Aspic and ECC had not taken any actions to demonstrate that they intended to set aside the FAR provisions or not comply with them. In fact, the Court specifically noted that neither Aspic nor ECC had made any arguments that the FAR provisions were inapplicable to the Subcontracts. As a result, the Ninth Circuit held that the arbitrator exceeded his authority by concluding that Aspic did not need to comply with the FAR requirements and affirmed the district court's finding that the arbitration should be vacated.

The limited bases for vacating an arbitrator's award when the contract involves interstate commerce can be found in 9 U.S.C. §§ 10 and 11, the Federal Arbitration Act. Generally, a party must show that the award was procured by corruption, fraud, or undue means; that there was evident partiality or corruption of an arbitrator; that the arbitrator(s) refused to hear evidence or otherwise failed to provide the parties due process; or that the arbitrator somehow exceeded his or her powers and ruled in a way not envisioned by the contract. "Manifest disregard of the law," referenced by the Ninth Circuit in *Aspic Engineering*, is connected to this last prong. This basis for vacating an arbitral award has been applied quite narrowly, to the point that it is essentially not

recognized in some jurisdictions. However, *Aspic Engineering* shows that manifest disregard of the law may still be a valid basis for vacating an award in special cases.

By: Justin T. Scott

Safety Moments for the Construction Industry

Exposure to excessive heat may cause heat exhaustion and other serious health problems such as heat stroke. Symptoms of heat exhaustion may include dizziness, heavy sweating, muscle cramps, and general lethargy.

To prevent heat exhaustion:

- Drink plenty of fluids (non-alcoholic) even if you are not thirsty;
- Find shade or breeze to work in when possible;
- Wear lightweight clothes;
- Use sunscreen with a high SPF to protect against sunburn.

If you begin to experience symptoms of heat exhaustion, take action to cool yourself down by:

- Resting;
- Finding shade or breeze;
- Hydrating; and
- Advise your coworkers or supervisor if you are feeling unwell.

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. The 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, Ian Faria,** and **Ryan Beaver** are ranked in *Construction*. **Aron Beezley** was ranked nationally as "Up and Coming" for *Government Contracts*.

Also in *Chambers USA* for 2019, Bradley's Construction Practice was ranked nationwide as a "Leading Firm" for Construction Law. The firm's Washington D.C. and North Carolina offices were also so recognized.

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. **Jeff Davis** was recognized for Commerical Litigation and Product Liability – Defendants.

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**, **Andrew Stubblefield**, **Jon Paul Hoelscher**, **Bryan Thomas, Aman Kahlon, Carly Miller, 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 named 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 as Vice President of the Birmingham Chapter of the National Association of Women In Construction. She has been serving on the Board of Directors and will be installed as Vice President in September 2019.

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.

Abba Harris is currently participating in the 2019 class of Future Leaders in Construction with 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.

Ian Faria and **Jon Paul Hoelscher** became board certified by the Texas Board of Legal Specialization in Construction Law. Only 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, members of Bradley's **Construction and Procurement Practice Group** provided complementary Construction Law 101 seminars to industry members in which our construction lawyers shared timely advice and practical suggestions on reducing the exposure to risk when key issues arise in construction projects.

In June, **Bryan Thomas** and **David Taylor** presented a "Primer on Tennessee Lien and Retainage Laws" to developer clients in Nashville, TN.

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

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, TX.

In August, **Monica Dozier** will present a seminar on legal approaches to manage renewable generation risks as part of E4 Carolinas' Renewable Generation Risk Management Seminar, hosted in Bradley's Charlotte office.

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