

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

Emergency Arbitration Proceedings and How They Relate to Construction Disputes

A recent win by a team of Bradley construction attorneys highlighted the role emergency arbitration proceedings can play in a dispute subject to an arbitration agreement. The ongoing case involves the design and construction of a large international energy project, which is currently in arbitration before the International Chamber of Commerce ("ICC").

While many parties are aware that they may be bound to arbitrate disputes in lieu of litigation in state or federal court, not everyone is aware of the various forms those arbitral proceedings may take or the different purposes that can be served through such proceedings.

In some cases, the nature of a dispute requires immediate action to avoid irreparable harm. In traditional litigation, a party might seek a temporary restraining order or a preliminary injunction from a court to prevent another party from taking certain action. Similar remedies are often available to parties who have agreed to arbitrate their disputes via (1) emergency arbitration procedures before the appointment of an arbitrator and (2) via a request for interim measures after the appointment of an arbitrator.

In the United States, many construction disputes are resolved under the American Arbitration Association's ("AAA") Construction Industry Rules for Arbitration. Rule

R-39 under the AAA Rules permits a party to seek "emergency relief prior to the constitution of the panel." In such a case, the AAA must appoint a single emergency arbitrator who will then set an expedited schedule for consideration of the application for emergency relief. The emergency arbitrator will issue an interim order or award granting the requested relief if the arbitrator finds that "the party seeking the emergency relief has shown that immediate and irreparable loss or damage shall result in the absence of emergency relief." Any request to modify an interim award must be based on "changed circumstances" and directed to the emergency arbitrator until the arbitration panel is constituted, after which time, such a request must be made to the arbitrator.

Rule R-38 similarly provides for the imposition of interim measures, including "injunctive relief and measures for the protection or conservation of property and disposition of perishable goods" after the arbitration panel has been appointed.

On large international projects, it is common to see arbitration agreements that select the ICC as the administering body of an arbitrable international dispute. Article 29 and Appendix V to the ICC Arbitration Rules in effect as of January 1, 2021 also provide for the appointment of an emergency arbitrator to decide issues of "interim or conservatory measures that cannot await the constitution of an arbitral tribunal." And Article 28 of the ICC Rules permits a party to also seek interim or

www.bradley.com

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

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

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

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

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

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

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

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

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

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

conservatory measures once the arbitral tribunal has been constituted.

In cases before both the AAA and ICC, no party is precluded from also pursuing interim measures from a court and such actions do not necessarily constitute a waiver of the agreement to arbitrate. Under certain circumstances, the aggrieved party is within its rights to pursue both interim measures in arbitration and injunctive relief before a court.

Parties should consider the utility of emergency or interim arbitration proceedings and should be mindful that, in many cases, an agreement to arbitrate does not foreclose traditional remedies available in situations where irreparable harm is imminent. In short, when facing immediate events resulting in potential harm, one should closely examine all available avenues for relief and seek legal guidance as to the best path forward.

By: Alex Thrasher

Don't Overlook Your Subcontracts on Federal Projects

The Armed Services Board of Contract Appeals' ("ASBCA or "Board") decision in *Fluor Intercontinental, Inc.*, serves as an important reminder to prime contractors to be cognizant of the clauses they include in subcontracts for commercial products or services on federal projects.

In 2010, the Army Corps of Engineers (the "Corps") awarded Fluor and another contractor a multiple-award task order contract for electrical support services. The contract included two Termination for Convenience of the Government clauses: FAR 52.249-1, (Fixed-Price) (Short Form) and FAR 52.249-2 (Fixed-Price).

Fluor's contract also required two flow down clauses in its commercial-item subcontracts, including FAR 52.244-6, Subcontracts for Commercial Items, and the DFARS equivalent, DFARS 252.244-7000. Fluor's contract did not include FAR 52.212-4, the commercial items terms and conditions clause with the commercial items termination provision. Pursuant to FAR 52.244-6, however, Fluor was permitted to "flow down to subcontracts for commercial items a minimal number of additional clauses necessary to satisfy its contractual obligations."

In anticipation of a pending task order award in 2013, Fluor issued a commercial-item subcontract purchase order to Blanchard Machinery Company ("Blanchard") to immediately lease and ship generators, switches, and

control panels to an airfield in Afghanistan. Fluor's purchase order with Blanchard included the Short Form Termination for Convenience clause, FAR 52.249-1, and the two required commercial item flow down clauses, but did not include the commercial items terms and conditions clause at FAR 52.212-4.

After the electrical equipment was acquired and shipped, the Corps terminated Fluor's task order for convenience as a result of a competitor's post-award bid protest. The Corps directed Fluor to put together a termination settlement proposal and to settle its subcontractor termination proposals as quickly as possible. A portion of Blanchard's termination settlement proposal, which Fluor paid, included \$1.6 million of equipment depreciation costs related to the generators that were estimated "using five-year straight-line depreciation." This led to a dispute regarding which termination clause applied to the Blanchard's termination costs.

On appeal to the ASBCA, the Corps moved to dismiss Fluor's complaint, arguing that FAR 52.249-1, the short form termination for convenience clause, applied because that was the clause Fluor included in Blanchard's subcontract. The Corps maintained that because this termination for convenience clause applies and incorporates the FAR part 31 cost principles, Fluor was prohibited from recovering Blanchard's equipment depreciation costs under FAR 31.205-11, Depreciation.

Fluor argued that the cost principles were inapplicable because its subcontract with Blanchard was for commercial products, as evidenced by the two mandatory commercial-item flow down clauses incorporated in Blanchard's subcontract. Fluor maintained that the commercial items termination provision in FAR 52.212-4 applied instead and that it should recover Blanchard's equipment depreciation costs because this clause relieves contractors from complying with the cost accounting standards and cost principles.

The Board disagreed with Fluor's position, explaining that neither of the two required commercial item flow down clauses include termination provisions nor require a prime contractor to flow down FAR 52.212-4. The Board found that the required flow down clause FAR 52.244-6 specifically permitted Fluor to include the commercial items termination provision in FAR 52.212-4 in its purchase order with Blanchard, but Fluor instead flowed down the standard short form termination provision, which required compliance with the FAR part 31 cost principles. Ultimately, the Board applied the termination provisions

incorporated in the contract but denied the Corps' motion to dismiss holding that *Fluor* plausibly alleged a claim based on the termination cost principles rather than the depreciation cost principles.

Fluor serves as an important reminder that federal contractors must be conscious of the clauses they include in their commercial products or services subcontract purchase orders, particularly when afforded the discretion to add additional FAR clauses. If permitted by FAR 52.244-6, prime contractors should flow down FAR 52.212-4 in their commercial purchase orders rather than the standard fixed price termination for convenience clause.

By: Erik Coon

Big Government Projects, Big Labor Expectations

A final rule amending the Federal Acquisition Regulation, 48 C.F.R. 22.503, which governs "project labor agreements" on "large-scale construction projects," is expected in the near future. The Rule will incorporate President Biden's Executive Order 14063, signed on February 4, 2022. Under the Order, large-scale construction projects are defined as federal construction projects within the United States whose total estimated cost is \$35 million or more, adjustable with inflation. Under the Order, a federal agency awarding contracts for large-scale construction projects is now required to ensure contractors or subcontractors engaged in the project agree to enter into a project labor agreement.

Project labor agreements are a tool to help provide labor-management stability and ensure compliance with laws and regulations such as those governing safety and health, equal employment opportunity, and labor and employment standard. Contractors are not required to unionize. Instead, the project labor agreements are pre-hire collective bargaining agreements. Essentially, they are contracts between the contractor and one or more labor organizations that establish the terms and conditions for employment on a specific construction project.

Along with conforming to all federal statutes, regulations, and executive orders, the labor agreements must include the following requirements:

- bind all contractors and subcontractors through the relevant solicitations and contract documents;

- allow any contractor or subcontractor who is a party to a collective bargaining agreement to compete for contracts and subcontracts;
- provide guarantees against, strikes, lockout, and similar job disruptions;
- provide Alternative dispute resolution procedures to resolve labor disputes arising during the term of the project; and
- Provide mechanisms for labor-management on matters concerning mutual interest such as productivity, quality of work, safety, and health.

The Executive Order provides limited exceptions to the use of project labor agreements and the Final Rule is expected to contain the same exceptions. Specifically, a senior agency official may grant exceptions to the project labor agreement requirement on specific contracts if:

- the project labor agreement would not advance the Federal Government's interest in achieving economy and efficiency in federal procurements;
- based on market analysis, requiring a project labor agreement would substantially reduce the number of potential bidders so as to frustrate full and open competition; and/or
- Requiring the project labor agreement would be otherwise inconsistent with other federal statutes and regulations.

President Biden's Executive Order parallels President Obama's 2009 Executive Order 13502. However, under the 2009 Executive Order, Agencies were merely encouraged, but not required, to use project labor agreements on large-scale construction projects.

On August 19, 2022, The Department of Defense, General Services Administration, and National Aeronautics and Space Administration published the proposed rule to amend 48 C.F.R. 22.503 to reflect the new mandate. The public comment period ended on October 18, 2022, and the comments from the larger construction community on the proposed rule were generally critical of the project labor agreement mandate. Some organizations such as the International Brotherhood of Electrical Works and the National Electrical Contractors Association were supportive of the mandate.

Nevertheless, a Final Rule, in substantially the same form as the proposed rule, is expected soon. Contractors engaged in large-scale Federal Government construction projects should prepare now for a final rule mandating project labor

agreements to stay competitive when a Final Rule is implemented.

By: Christopher Odgers

Hell or High Water: Why Contractors Must Understand Contractual Risks

The Armed Services Board of Contract Appeals (“ASBCA”) recently denied a contractor’s claim for additional compensation as the contractor failed to establish its work was constructively suspended or that its contract was commercially impracticable when the contract placed the risk of high-water levels on the contractor. The appeal of *Phylway Construction*, arose out of a Mississippi River levee construction project with the United States Army Corps of Engineers (“USACE”) in 2019. Relevant to the appeal, Phylway’s firm-fixed-price contract with the USACE unambiguously stated that Phylway would not be permitted to perform levee work when the water level of the Mississippi River exceeded 11 feet. Further, the contract provided that in the event of high river levels, Phylway would only be entitled to non-compensable time extensions.

In 2019 and 2020, and during construction, the water level of the Mississippi River exceeded 11 feet on 230 and 171 days, respectively (compared to the 1987-2018 average of 80 high water days per year). During these high-water periods, Phylway’s subcontractor was unable to perform certain levee work, which resulted in a significantly higher cost of performance.

Pursuant to the contract, the USACE issued four contract modifications extending Phylway’s performance period by 372 days. The modifications stated that “[i]t is further understood and agreed that this adjustment constitutes compensation in full on behalf of [Phylway].” The modifications did not include any reservation of cost or claims by Phylway associated with the high-water delays. In response, Phylway requested that USACE allow Phylway’s subcontractor to perform work when the Mississippi River exceeded 11 feet and submitted a request for equitable adjustment associated with the high-water impacts. The USACE denied both requests.

In June of 2021, Phylway filed a Notice of Appeal with the ASBCA seeking compensation for delays due to the high-water levels. Phylway complained that the USACE constructively suspended Phylway’s work or that the contract was commercially impracticable, as they were forbidden from completing their work due to circumstances

(the high water) outside of their control. The ASBCA denied both Phylway’s claims stating that the “terms of the firm-fixed-price contract expressly allocated the risk of high river levels to Phylway.” While the water levels were unusual, nothing in the contract entitled Phylway to financial compensation for these delays. Additionally, the ASBCA held that even if Phylway established a constructive suspension of the work or that the contract was commercially impracticable, Phylway waived these claims in the releases to the contract modifications that added additional time to the performance of the contract.

The bottom line: It is critical that contractors fully understand and account for the unique risks a project presents before entering into the contract—especially when the contract is a fixed-price contract. Contractors must also proceed with caution when reviewing and before signing bilateral contract modifications, as you may inadvertently waive rights or claims.

By: Hunter Webb

Improper Application of Arbitration Clause Leads to Remand in Properplates Case

Indiana, like other states, has a strong policy favoring arbitration agreements, and Indiana courts construe arbitration clauses broadly to make matters arbitrable so long as they reasonably fit within the language of the clause. In *Haddad v. Properplates, Inc.*, the Indiana Court of Appeals identified a rare instance where a dispute did not reasonably fit within the language of the arbitration agreement.

The Haddads entered a construction contract with a contractor, Properplates. When a dispute arose, the Haddads filed a complaint in Indiana state court alleging various claims. Properplates denied those claims, filed counterclaims, and moved to dismiss without prejudice and compel arbitration of all claims. The trial court granted Properplates’ motion, and the Haddads appealed.

The Indiana Court of Appeals reversed finding that the Haddads’ claims did not fit within the arbitration clause at issue. The arbitration provision provided, in part, that “in the event CONTRACTOR has a dispute concerning this Contract, the CONTRACTOR must submit such dispute to either the American Arbitration Association or to such other private arbitration service which has been approved by the secretary of the Executive of Consumer Affairs and Business Regulations, and the consumer shall be required to submit to such arbitration as provided under current state

and federal laws.” The Court of Appeals found that the Haddads only agreed to arbitrate Properplates’ counterclaims. The arbitration agreement did not require the Haddads to submit their own affirmative claims to arbitration.

Properplates admitted that the Haddad’s claims were not arbitrable, but it argued that by denying those claims, Properplates created a Contractor “dispute” under the arbitration agreement. The Court of Appeals rejected that argument concluding it was contrary to the plain language of the contract, which contemplated certain disputes would not be arbitrable.

The Court of Appeals acknowledged there was overlap between Properplates’ counterclaims and the Haddads’ claims. However, Indiana Code Sec. 34-57-2-3(f) provides that a trial court may determine that claims not subject to the arbitration agreement may be litigated first before entering an order to arbitrate. Thus, the Court of Appeals reversed and remanded the case for the trial court to determine whether to delay the arbitration pending resolution of the Haddads’ claims.

Properplates is a reminder that there can be limits to typically broadly construed arbitration agreements. Any limits imposed by courts on such agreements will depend on the language of the agreements and the approach a particular state’s law takes with respect to arbitration and contract interpretation generally. The best way to avoid having to litigate these sorts of arbitrability disputes is by drafting an arbitration clause with clear, plain language that effectively delineates the parties’ agreed scope of arbitrable disputes.

By: Aman Kahlon

FAR Council Issues Final Rule on Accelerated Payments to Small Businesses

The Federal Acquisition Regulation (FAR) Council recently published a final rule to implement a policy that provides for accelerated payments to small business prime contractors and small business subcontractors. This noteworthy final rule became effective on March 16, 2023.

The Department of Defense (DoD), the General Services Administration, and the National Aeronautics and Space Administration published a proposed rule at 86 FR 53923 on September 29, 2021, to implement a policy that provides for accelerated payments to small business prime

contractors and small business subcontractors. This change implements section 873 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2020 (Pub. L. 116–92), which in turn amends 31 U.S.C. 3903(a).

Specifically, Section 873 requires federal agencies to establish an accelerated payment date for small business prime contractors, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. Section 873 also requires that, to the fullest extent permitted by law, the head of an agency establish an accelerated payment date for prime contractors that subcontract with small businesses, with a goal of 15 days after receipt of a proper invoice, if:

1. A specific payment date is not established by contract; and
2. The contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor.

The final rule implements both aspects of Section 873.

For DoD, however, the final rule implements Section 815 of the William M. (Mac) Thornberry NDAA for FY 2021, which amended 10 U.S.C. 2307(a)(2)(A) (now found at 10 U.S.C. 3801) by striking the language “if a specific payment date is not established by contract.” As such, this rule excludes that conditional language from DoD contracts and, instead, simply requires that an accelerated payment date be established with a goal of 15 days after receipt of a proper invoice.

By: Aron C. Beezley & Gabrielle A. Sprio

Safety Moment for the Construction Industry

Hazards with construction equipment and machinery are within the construction industry’s “fatal four” leading causes of death on job sites. Some of the dangers include falling material and loads, equipment operator blind spots, operator dismounts without proper braking, equipment rollover, and equipment not locked out during maintenance.

In addition to being trained and familiar with the equipment being operated or maintained, operators can help reduce the risk of injury or fatality associated with heavy equipment through safe practices. Ground workers also play a key role in minimizing the risk of heavy equipment-related injuries.

Construction personnel are around heavy equipment daily, and they can become accustomed to the presence of heavy equipment, without giving proper weight to the associated risks. Ensuring that workers understand and follow the rules, and are **frequently** reminded of the rules, can help everyone on site stay safe.

Bradley Lawyer Activities



Bradley's Construction and Procurement Practice Group

received the distinction of "Law Firm of the Year" in the area of Litigation-Construction in the 2023 edition of *U.S. News Best Lawyers*. Only one firm per legal practice receives this designation per year, and this is Bradley's fourth time to receive this distinction (2018, 2020, 2022, and now 2023). Bradley has held a national Tier 1 ranking in Construction Law since the list's inception and also earned Tier 1 metropolitan rankings in Construction Law in Birmingham, Charlotte, Houston, Jackson, Nashville, and Washington, D.C. Overall among all its practice groups, the firm earned four national Tier 1 rankings and 159 metropolitan Tier 1 rankings across all 10 of its offices. This recognition confirms, in a third party's objective analysis, that we are dedicated to seeing that our clients benefit from hiring Bradley to serve their needs.

Construction Executive ranked Bradley as the Number 3 law firm in the United States in its annual *Top 50 Construction Law Firms* rankings for 2022.

Chambers USA ranked Bradley as one of the top firms in the nation in Construction and in Government Contracts for 2022. The firm was also recognized as a top firm in Construction for the following locations: Alabama, North Carolina, Mississippi, Texas, Tennessee, and Washington, DC.

Chambers USA also ranks lawyers in specific areas of law based on direct feedback received from clients. **Jim Archibald, Ryan Beaver, Ben Dachevall, Ian Faria, Tim Ford, Ralph Germany, Jon Paul Hoelscher, David Owen, Doug Patin, Bill Purdy, Mabry Rogers, Bob Symon, and David Taylor** are ranked in Construction.

Aron Beezley is ranked in the area of Government Contracts.

In *Best Lawyers in America* for 2023, **Jim Archibald, Michael Bentley, Ralph Germany, and Bryan Thomas** were named Lawyer of the Year in Litigation – Construction, Arbitration and Construction Law, and Construction Law in their respective markets.

Jim Archibald, David Bashford, Ryan Beaver, Axel Bolvig, Jared Caplan, Jim Collura, Ben Dachevall, Monica Wilson Dozier, Ian Faria, Tim Ford, Eric Frechtel, Ralph Germany, John Mark Goodman, Jon Paul Hoelscher, Mike Koplun, David Owen, Doug Patin, David Pugh, Bill Purdy, Mabry Rogers, Wally Sears, Avery Simmons, Bob Symon, David Taylor, and Bryan Thomas have been recognized by *Best Lawyers in America* in the area of Construction Law for 2023.

Jim Archibald, David Bashford, Ryan Beaver, Michael Bentley, Axel Bolvig, Ben Dachevall, Hallman Eady, Ian Faria, Tim Ford, Jon Paul Hoelscher, Bailey King, Russell Morgan, David Owen, Doug Patin, David Pugh, Mabry Rogers, and Bob Symon were also recognized by *Best Lawyers in America* for Litigation - Construction for 2023.

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

Kyle Doiron, Amy Garber, Abba Harris, Anna-Bryce Hobson, Matt Lilly, Carly Miller, Marc Nardone, and Chris Selman have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and Construction Litigation for 2023.

Jim Archibald, Ryan Beaver, Ian Faria, Ralph Germany, Jon Paul Hoelscher, David Owen, Doug Patin, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, and David Taylor were named *Super Lawyers* in the area of Construction Litigation. **Jeff Davis** was named *Super Lawyer* for Civil Litigation. **Philip Morgan** was named Texas *Super Lawyers* "Rising Stars" in Civil Litigation. **Aron Beezley** was named *Super Lawyers* "Rising Star" in the area of Government Contracts. **Kyle Doiron, Abba Harris, Carly Miller, Chris Selman, and Bryan Thomas** were listed as "Rising Stars" in Construction Litigation. **Sarah Osborne** was named *Super Lawyers* "Rising Stars" for Civil Litigation. **Matt Lilly** was named North Carolina *Super Lawyers* "Rising Stars" in Construction Litigation. **Bill Purdy** was ranked as Top 50 in Mississippi *Super Lawyers*.

Ryan Beaver and **Anna-Bryce Hobson** were named to Business North Carolina's Legal Elite for 2023. Ryan was named in the category of Construction Law, and Anna-Bryce was named as a rising star.

Aron Beezley was named as Law360's 2022 MVP of the Year in Government Contracts. **Aron** was also recognized by *JD Supra* in its 2022 Readers' Choice Awards for being among the top authors and thought leaders in government contracts law. *(If you haven't read Aron's blogs, go to our website: www.buildsmartbradley.com to read them and all of our other construction related blogs.)*

Carly Miller was recently selected to serve on the Steering Committee of AGC's Construction Leadership Council for a three-year term beginning in 2023.

Anna-Bryce Hobson was selected to participate in the Mecklenburg County (N.C.) Bar Leadership Institute Class of 2023.

On April 12-14, 2023, **Tim Ford** and **Mason Rollins** attended the ABA Forum on Construction Law 2023 Annual Meeting on The Future of Construction Law in Vancouver, BC.

Aman Kahlon and **Carly Miller** attended the AGC National Convention in Las Vegas on March 13-16, 2023. Aman is on the AGC's national Diversity & Inclusion Committee, and Carly is on the national Construction Leadership Council.

Jim Archibald, **David Owen**, **Bill Purdy**, **Wally Sears**, and **Bob Symon** attended the 34th annual meeting of the American College of Construction Lawyers in Bonita Springs, Florida on February 23-26.

On February 25, 2023, **Jim Archibald** presented "Emerging Energy Sources and What that Means for the Construction Industry and for Existing Infrastructure" at the American College of Construction Lawyers' Annual Meeting.

Meghan McElvy spoke on "Hot Topics in Energy Litigation" as part of a panel at the upcoming 74th annual Energy Law Conference in Houston on February 16, 2023.

On January 27, 2023, **Bryan Thomas** presented "Preparing & Presenting the Construction Case for Hearing in Arbitration" at the Tennessee Bar Associations Construction Law Forum.

Charley Sharman attended the Houston Bar Association Law and Media Committee's President's Speaker Series on January 27, 2023, where he is a committee member.

Aron Beezley spoke on False Claims Act developments at PubK's GovCon Annual Review on January 12, 2023.

Jim Archibald presented "There Ain't No Cure for the Escalation Blues . . . or is there?" to the American College of Construction Lawyers' Public Contracts Committee on December 14, 2022.

On December 14, 2022, **Carly Miller** and **Alex Thrasher** presented "Practical Tips and Best Practices for Arbitrating Your Construction Claim" at the 9th Annual Construction Industry Summit for the Alabama State Bar Construction Industry Section in Birmingham, AL.

On December 8, 2022, **Monica Dozier**, along with labor and employment colleagues **Stephanie Gaston** and **Amy Puckett**, published "The clock is ticking on the IRA's prevailing wage and apprenticeship requirements" in PV Magazine USA, with guidance for developers and contractors' compliance with Inflation Reduction Act prevailing wage and apprenticeship requirements for renewable energy projects, following issuance of Treasury guidance.

On November 30, 2022, **Monica Dozier** moderated two panels at the Southeast Renewable Energy Summit in Charlotte, NC: New Directions for Clean Energy and Economic Development in the Tennessee Valley, and Duke's Carbon Plan Emerges and the Monumental Impacts of HB951 in North Carolina.

Bryan Thomas presented to the Tennessee Association of Construction Counsel on Tennessee's Construction Defect Statute and Strategies for Early Management of Defect Cases on November 11, 2022.

On November 7, 2022, **John McCool** moderated, with Bradley sponsoring, E4 Carolinas' Energy Technology Series webinar featuring Cormetech, a world leader in manufacturing of high-quality environmental catalysis.

On October 26, 2022, **David Taylor** spoke at the International Committee of Shopping Center's Annual Legal Conference on Using Arbitration to Resolve Real Estate Disputes.

Jim Archibald spoke at the University of Kentucky College of Law – Construction Law Institute on October 20, 2022 about Practical and Legal Challenges to Terminations for Default.

On October 7, 2022, **Monica Dozier** moderated the Commodity Prices and Trends panel at the Tennessee Valley Solar + Storage Conference in Knoxville, TN, addressing recent supply chain volatility and associated procurement strategy for developers and contractors of renewable energy projects.

Carly Miller and **Alex Thrasher** presented on October 6, 2022 at the AGC's Annual Construction Leadership Conference in Point Clear, Alabama on the topic of "Project Documentation and Legal Disputes."

NOTES

Disclaimer and Copyright Information

The lawyers at Bradley Arant Boult Cummings LLP, including those who practice in the construction and procurement fields of law, monitor the law and regulations and note new developments as part of their practice. This newsletter is part of their attempt to inform their readers about significant current events, recent developments in the law and their implications. *Receipt of this newsletter is not intended to, and does not, create an attorney-client, or any other, relationship, duty or obligation.*

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific acts or circumstances. The contents are intended only for general information. Consult a lawyer concerning any specific legal questions or situations you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our group whose names, telephone numbers and E-mail addresses are listed below; or visit our web site at www.bradley.com.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. ATTORNEY ADVERTISING.

NOTES

Disclaimer and Copyright Information

The lawyers at Bradley Arant Boult Cummings LLP, including those who practice in the construction and procurement fields of law, monitor the law and regulations and note new developments as part of their practice. This newsletter is part of their attempt to inform their readers about significant current events, recent developments in the law and their implications. *Receipt of this newsletter is not intended to, and does not, create an attorney-client, or any other, relationship, duty or obligation.*

This newsletter is a periodic publication of Bradley Arant Boult Cummings LLP and should not be construed as legal advice or legal opinions on any specific acts or circumstances. The contents are intended only for general information. Consult a lawyer concerning any specific legal questions or situations you may have. For further information about these contents, please contact your lawyer or any of the lawyers in our group whose names, telephone numbers and E-mail addresses are listed below; or visit our web site at www.bradley.com.

No representation is made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. ATTORNEY ADVERTISING.

Construction and Procurement Practice Group Contact Information:

James F. Archibald, III (Birmingham), Attorney.....	(205) 521-8520.....	jarchibald@bradley.com
Petar Angelov (Nashville), Attorney.....	(615) 252-3853.....	pangelov@bradley.com
David H. Bashford (Birmingham), Attorney.....	(205) 521-8217.....	dbashford@bradley.com
Ryan Beaver (Charlotte), Attorney.....	(704) 338-6038.....	rbeaver@bradley.com
Aron Beezley (Washington, D.C.), Attorney.....	(202) 719-8254.....	abeezley@bradley.com
Axel Bolvig, III (Birmingham), Attorney.....	(205) 521-8337.....	abolvig@bradley.com
Lee-Ann C. Brown (Washington, D.C.), Attorney.....	(202) 719-8212.....	labrown@bradley.com
T. Michael Brown (Birmingham), Attorney.....	(205) 521-8462.....	mbrown@bradley.com
Jared B. Caplan (Houston), Attorney.....	(713) 576-0306.....	jcaplan@bradley.com
Frank M. Caprio (Huntsville), Attorney.....	(256) 517-5142.....	fcaprio@bradley.com
Maria Carisetti (Charlotte), Attorney.....	(704) 338-6002.....	mcarisetti@bradley.com
Melissa Broussard Carroll (Houston), Attorney.....	(713) 576-0357.....	mcarroll@bradley.com
Ariella Cassell (Washington, D.C.), Attorney.....	(202) 719-8263.....	acassell@bradley.com
Gregory M. Clark (Houston), Attorney.....	(713) 576-0393.....	gclark@bradley.com
James A. Collura (Houston), Attorney.....	(713) 576-0303.....	jcollura@bradley.com
Timothy R. Cook (Houston), Attorney.....	(713) 576-0350.....	tcCook@bradley.com
Erik M. Coon (Washington, D.C.), Attorney.....	(202) 719-8258.....	ecoon@bradley.com
F. Keith Covington (Birmingham), Attorney.....	(205) 521-8148.....	kcovington@bradley.com
Ben Dacheppalli (Tampa), Attorney.....	(813) 559-5545.....	bdacheppalli@bradley.com
Ross A. Darville (Houston), Attorney.....	(713) 576-0375.....	rdarville@bradley.com
Jeffrey Davis (Houston), Attorney.....	(713) 576-0370.....	jsdavis@bradley.com
Kyle M. Doiron (Nashville), Attorney.....	(615) 252-3594.....	kdoiron@bradley.com
Monica Wilson Dozier (Charlotte), Attorney.....	(704) 338-6030.....	mndozier@bradley.com
Jennifer Morrison Ersin (Jackson), Attorney.....	(601) 592-9937.....	jersin@bradley.com
Ronald Espinal (Tampa), Attorney.....	(813) 559-5531.....	respinal@bradley.com
Ian P. Faria (Houston), Attorney.....	(713) 576-0302.....	ifaria@bradley.com
Cristopher S. Farrar (Houston), Attorney.....	(713) 576-0315.....	cfarrar@bradley.com
Matthew J. Flynn (Washington, D.C.), Attorney.....	(202) 719-8214.....	mflynn@bradley.com
Robert Ford (Houston), Attorney.....	(713) 576-0356.....	rford@bradley.com
Timothy C. Ford (Tampa), Attorney.....	(813) 559-5509.....	tford@bradley.com
R. Sumner Fortenberry (Jackson), Attorney.....	(601) 592-9922.....	sfortenberry@bradley.com
Mary Elizondo Frazier (Houston), Attorney.....	(713) 576-0371.....	mfracier@bradley.com
Eric A. Frechtel (Washington, D.C.), Attorney.....	(202) 719-8249.....	efrechtel@bradley.com
Amy Garber (Washington, D.C.), Attorney.....	(202) 719-8237.....	agarber@bradley.com
Ralph Germany (Jackson), Attorney.....	(601) 592-9963.....	rgermany@bradley.com
John Mark Goodman (Birmingham), Attorney.....	(205) 521-8231.....	jmgoodman@bradley.com
Nathan V. Graham (Houston), Attorney.....	(713) 576-0305.....	ngraham@bradley.com
Nathaniel J. Greeson (Washington, D.C.), Attorney.....	(202) 719-8202.....	ngreeson@bradley.com
John W. Hargrove (Birmingham), Attorney.....	(205) 521-8343.....	jhargrove@bradley.com
Abigail B. Harris (Birmingham), Attorney.....	(205) 521-8679.....	aharris@bradley.com
Anna-Bryce Hobson (Charlotte), Attorney.....	(704) 338-6047.....	aflowe@bradley.com
Jon Paul Hoelscher (Houston), Attorney.....	(713) 576-0304.....	jhoelscher@bradley.com
Karl V. Hopkins (Houston), Attorney.....	(713) 576-0310.....	khopkins@bradley.com
Kevin Hulbert (Washington, D.C.), Senior Advisor.....	(202) 719-8276.....	khulbert@bradley.com
Aman S. Kahlon (Birmingham), Attorney.....	(205) 521-8134.....	akahlon@bradley.com
Michael W. Knapp (Charlotte), Attorney.....	(704) 338-6004.....	mknapp@bradley.com
Michael S. Koplman (Washington, D.C.), Attorney.....	(202) 719-8251.....	mkoplman@bradley.com
Daniel L. Lawrence (Nashville), Attorney.....	(615) 252-3549.....	dlawrence@bradley.com
Matthew K. Lilly (Charlotte), Attorney.....	(704) 338-6048.....	mlilly@bradley.com
Melissa B. Mahle (Washington, D.C.), Senior Advisor.....	(202) 719-8286.....	mmahle@bradley.com
Lisa Markman (Washington, D.C.), Attorney.....	(202) 719-8291.....	lmarkman@bradley.com
Kevin B. Mattingly (Washington, D.C.), Attorney.....	(202) 719-8201.....	kmattingly@bradley.com
John S. McCool (Charlotte), Attorney.....	(704) 338-6050.....	jmccool@bradley.com
Meghan Dawson McElvy (Houston), Attorney.....	(713) 576-0314.....	mmcelvy@bradley.com
Kevin C. Michael (Nashville), Attorney.....	(615) 252-3840.....	kmichael@bradley.com
Carlyn E. Miller (Birmingham), Attorney.....	(205) 521-8350.....	camiller@bradley.com
Philip J. Morgan (Houston), Attorney.....	(713) 576-0331.....	pmorgan@bradley.com
E. Sawyer Neely (Dallas), Attorney.....	(214) 939-8722.....	sneely@bradley.com
Christopher A. Odgers (Tampa), Attorney.....	(813) 559-5503.....	codgers@bradley.com
Trey Oliver (Birmingham), Attorney.....	(205) 521-8141.....	toliver@bradley.com

Sarah Sutton Osborne (Huntsville), Attorney	(256) 517-5127	sosborne@bradley.com
David W. Owen (Birmingham), Attorney	(205) 521-8333	downen@bradley.com
Emily Oyama (Birmingham), Construction Researcher	(205) 521-8504	eyoyama@bradley.com
Douglas L. Patin (Washington, D.C.), Attorney	(202) 719-8241	dpatin@bradley.com
Sabah Petrov (Washington, D.C.), Attorney	(202) 719-8268	spetrov@bradley.com
Eve L. Pferdehirt (Houston), Attorney	(713) 576-0351	epferdehirt@bradley.com
Sinan Pismisoglu (Houston), Attorney	(713) 576-0317	spismisoglu@bradley.com
J. David Pugh (Birmingham), Attorney	(205) 521-8314	dpugh@bradley.com
Bill Purdy (Jackson), Attorney	(601) 592-9962	bpurdy@bradley.com
Alex Purvis (Jackson), Attorney	(601) 592-9940	apurvis@bradley.com
Patrick R. Quigley (Washington, D.C.), Attorney	(202) 719-8279	pquigley@bradley.com
Gabriel Rincón (Houston), Attorney	(713) 576-0399	grincon@bradley.com
E. Mabry Rogers (Birmingham), Attorney	(205) 521-8225	mrogers@bradley.com
Mason Rollins (Birmingham), Attorney	(205) 521-8157	mrollins@bradley.com
Brian Rowlson (Charlotte), Attorney	(704) 338-6008	browlson@bradley.com
Robert L. Sayles (Dallas), Attorney	(214) 939-8762	rsayles@bradley.com
Peter Scaff (Houston), Attorney	(713) 576-0372	pscaff@bradley.com
Justin T. Scott (Houston), Attorney	(713) 576-0316	jtscott@bradley.com
Walter J. Sears III (Birmingham), Attorney	(205) 521-8202	wsears@bradley.com
J. Christopher Selman (Birmingham), Attorney	(205) 521-8181	cselman@bradley.com
Charles L. Sharman (Houston), Attorney	(713) 576-0348	csharman@bradley.com
Saira Siddiqui (Houston), Attorney	(713) 576-0353	ssiddiqui@bradley.com
Lacey Spears (Houston), Attorney	(713) 576-0398	lspears@bradley.com
Gabrielle A. Sprio (Huntsville), Attorney	(256) 517-5191	gsprio@bradley.com
Robert J. Symon (Washington, D.C.), Attorney	(202) 719-8294	rsymon@bradley.com
David K. Taylor (Nashville), Attorney	(615) 252-2396	dtaylor@bradley.com
D. Bryan Thomas (Nashville), Attorney	(615) 252-2318	dbthomas@bradley.com
Alex Thrasher (Birmingham), Attorney	(205) 521-8891	athrasher@bradley.com
Slates S. Veazey (Jackson), Attorney	(601) 592-9925	sveazey@bradley.com
Sydney M. Warren (Houston), Attorney	(713) 576-0354	swarren@bradley.com
Loletha Washington (Birmingham), Legal Assistant	(205) 521-8716	lwashington@bradley.com
Charlotte E. Watters (Birmingham), Attorney	(205) 521-8651	cwatters@bradley.com
W. Hunter Webb (Birmingham), Attorney	(205) 521-8065	hwebb@bradley.com
Whitney Wester (Houston), Attorney	(713) 576-0358	wwester@bradley.com
Heather Howell Wright (Nashville), Attorney	(615) 252-2565	hwright@bradley.com

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.

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

You may also email your ideas to Emily Oyama at eyoyama@bradley.com.

To update your contact information or learn about the latest news, announcements and upcoming events on the topics that are important to you and your business, please visit: Bradley.com/subscribe

Your Name:

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

- Please add the following to your mailing list:

- Correct my name and mailing address to:

- My e-mail address: _____

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?

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 Streaming for later view

Comments:

Bradley Arant Boult Cummings LLP

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

Emily Oyama
One Federal Place
1819 Fifth Avenue North
Birmingham, AL 35203-2104