BRADLEY ARANT BOULT CUMMINGS LLP **Fourth Quarter 2015**

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

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Risky Business: Implied Warranty of Design in Construction Manager at Risk Agreements

In *Coghlin Electrical Contractors, Inc. v. Gilbane Building Company*, the Massachusetts Supreme Court explored the applicability and scope of an implied warranty regarding the sufficiency of designs and specifications in the context of a construction manager at risk contract with a public owner. In *Coghlin*, a contractor entered into a guaranteed maximum price ("GMP") construction manager at risk ("CMAR") agreement with a public owner to build a psychiatric facility. Under the contract, the owner held design responsibility, while the contractor/CMAR was slated to provide consultative services and recommendations regarding that design. Once design was approximately 60% complete, the CMAR would begin construction of the facility.

The CMAR hired an electrical subcontractor to complete the electrical work on the project. The project encountered delays when the electrical subcontractor discovered that the design did not adequately account for the installation of overhead mechanical and electrical work in the second building in the facility. The design issues and other delays caused the electrical subcontractor to suffer impacts, and the subcontractor filed suit against the CMAR for damages associated with these impacts. The CMAR, in turn, filed a third-party complaint against the project owner alleging

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breach of the implied warranty that the designs and specifications would be free of defects.

The trial court dismissed the CMAR's third-party complaint, concluding that the CMAR accepted some of the design responsibility making the implied warranty inapplicable to the proceeding. On appeal, the Supreme Court of Massachusetts disagreed with the trial court and reversed the ruling below. The court concluded that while the CMAR arrangement altered the relationship of the owner and contractor, it did not so alter it as to completely discharge the owner's implied warranty of the sufficiency of design. Instead, the court determined that the implied warranty existed between the owner and CMAR, but on a limited basis. In the typical design-bid-build context, an implied warranty of design covers damages caused by design defects where the contractor has acted in good faith reliance on the design. In the CMAR context, the court added an additional requirement that the contractor must act reasonably in light of its own design responsibilities as the CMAR.

The good faith reliance standard requires a contractor that encounters obvious defects in the design to take steps through investigation and owner inquiries to resolve gaps in the design documents before an implied warranty of design is applicable. The additional duty to act reasonably imposed by the court requires that a contractor acting as a CMAR must show that its reliance on an owner's design was reasonable in light of the CMAR's own responsibilities. The greater the design responsibility of the CMAR, the harder it becomes for the CMAR to demonstrate reasonable reliance on the owner's design.

In the context of the *Coghlin* case, the court noted that the use of the GMP pricing mechanism and the CMAR's responsibility for consulting on design and making design recommendations demonstrated some acceptance of design risk. The use of a GMP suggested that the owner and CMAR expected that the CMAR would price some of the risk of design defects into the overall price, but the court noted that the CMAR agreement was executed when only 60% of the design was complete. The CMAR could not be expected to account for all design risk when nearly 40% of the design was incomplete at the time of contracting. Additionally, the court determined that the owner retained control over the design and was under no obligation to accept recommendations from the CMAR. The court concluded that these factors weighed in favor of creating a limited implied warranty of design, but the intensely factual analysis of this particular contract arrangement suggests that not all CMAR agreements will be addressed similarly.

The court in *Coghlin* described the construction management at risk arrangement as an evolving construction delivery method that creates uncertainty around the applicability of traditional construction law principles and the interpretation of contract documents. Notwithstanding the direct applicability of this case only in Massachusetts and the benefits to this method of construction contracting, contractors and owners may want to account for the inevitable blurring of the design responsibility and draft such agreements with a focus on both the express terms of the contract and any duties that may be implied from the express undertaking. When the CMAR involves subcontractors in the pre-finalization review process, the blurring becomes more pronounced, and the parties should, to the extent feasible, draft contracts that address the resulting risks.

By Aman Kahlon

Geotechnical Report in Solicitation Bars Federal Contractor's Recovery for Unfavorable Soil Conditions

In *Old Veteran Construction, Inc. v. United States*, the U.S. Court of Federal Claims dismissed a federal contractor's claim for damages, which the contractor contended were due because of unexpected soil conditions encountered during its construction of an Army Reserve Center. The Court rejected the contractor's differing site conditions claim on the basis that the actual soil conditions encountered were not materially different from those described in the Government's solicitation, because a geotechnical report included with the solicitation had adequately informed the contractor about the likelihood of varying seasonal soil conditions.

In April 2011, the U.S. Army Corps of Engineers ("Corps") issued a solicitation for the construction of an Army Reserve Center in Quincy, Illinois. The Government's solicitation included a "Report of Geotechnical Investigation," which contained information regarding the engineered fill to be used for the building pad. This Report stated that the "on-site lean clay will not be suitable for use as engineered fill during the colder and wetter months of late fall, winter, and spring" and recommended "using an imported granular fill if earthwork operations are performed during these

months." The Report also recommended that the earthwork operations be performed during the summer, if possible, "to limit the costs associated with importing granular fill and/or stabilizing the on-site lean clay."

OVC, the successful bidder, submitted a schedule projecting that the excavation and fill work would take place from December 24, 2011 through January 22, 2012. OVC commenced work January 13, 2012.

Shortly after starting, OVC submitted a Request for Information to the contracting officer, requesting approval to use three-inch gravel for the building pad because of the wet, frozen conditions of the site clay. The contracting officer's representative sent a reply indicating that OVC's proposal was acceptable "but only if performed at no additional cost to the Government."

OVC used three-inch gravel for the engineering fill, and submitted a Request for Equitable Adjustment, based on the "fact [that it had] bid the project anticipating favorable weather conditions, given that the award date was never identified." OVC claimed that, because the contract was not awarded until September 20, 2011, it had no option but to perform the excavation and fill work during the winter months, leading to "substantial cost impacts." The contracting officer denied this claim on the basis that OVC had "unreasonably assumed that if awarded the Contract [it] would start work … during the summer months of 2011" and that OVC "should have calculated [its] proposal to include the likelihood of a winter start date instead of assuming a definite summer start date."

OVC filed its complaint, and the Government responded by filing a motion for a summary decision, asserting that, as a matter of law, OVC could not prevail on its claim because the soil conditions encountered by OVC were fully anticipated in the geotechnical report provided to OVC during the bid process.

The Court agreed. It characterized the claim as a Type I differing site conditions claim under FAR 52.236-2, and stated that, to prevail on this type of claim, "a contractor must prove … that the conditions encountered at the project site materially differed from those represented in the contract documents, the conditions must have been reasonably unforeseeable to the contractor based on the information available to the [contractor] at the time it submitted its bid, and the [contractor] must show that it reasonably relied upon its interpretation of the contract and the contract-related documents." In dismissing OVC's claim, the Court relied heavily on the Geotechnical Report in the Government's solicitation, which had specified that the soil conditions would likely vary between the seasons and stated that performing the earthwork during the winter months would likely require the contractor to use imported granular fill in lieu of the on-site lean clay. Thus, according to the Court, the wet soil conditions that OVC encountered in January 2012 were not "at odds" with the conditions represented in the contract documents.

The Court rejected OVC's argument that it expected to perform the site work in the summer, deeming it unreasonable. When OVC submitted its bid on June 30, 2011, there was a known 90 day period for the award (the Government in fact awarded on September 20), meaning that OVC should have known that summer excavation was unlikely.

In short, OVC "could have projected that it would not have been able to begin work during the summer and could have adjusted its bid accordingly, prior to its final submission on June 30, 2011." OVC, however, did not adjust its bid at any time prior to that final submission date.

Differing Site Conditions, including the impact of winter weather, are often in play in private and public contracts. Prudent bidders must gauge the award date in providing firm prices. In a private context, a bidder might qualify its bid as contingent on a certain award date or construction window. In public contracts, that choice is usually not available, so the final bid should reflect the most likely actual construction period and conditions, or the company should "no bid."

By Keith Covington

The New Texas Two-Step: Construction Defect Litigation by Condominium Owners' Associations

On June 17, 2015, Texas adopted amendments to the Texas Uniform Condominium Act by requiring condominium unit owners' associations ("Association") to take specified procedural steps prior to initiating a construction defect or design lawsuit or arbitration. In sum, the Act (effective September 1, 2015) prevents an Association made up of eight or more units from commencing litigation without engaging the unit owners, fully disclosing the potential claims to the unit owners, and obtaining the agreement of the majority of the unit owners to pursue the claims. This process

involves two primary steps: (1) procuring a third-party inspection and written report from a licensed professional engineer regarding the claim or claims; and (2) thereafter providing notice to and obtaining approval of a majority of the unit owners prior to commencing litigation.

Ten days before the inspection, the Association must notify each party subject to a claim and allow those parties a chance to attend the inspection. The notice must identify the engineer conducting the inspection, identify the specific units or common elements to be inspected, and include the date and time of the inspection. Once the report is prepared, the Association must then provide a copy of the report to each affected unit owner and each party subject to a claim, and allow 90 days after completion of the report to inspect and correct any condition identified in the report.

Before the Association can proceed with litigation, more than 50 percent of the unit owners must vote to approve that action. Among other requirements, the Association must give the owners the name of its proposed lawyer, an estimate of the legal fees, costs, and expenses, and how the Association proposes to raise the money to pursue the action.

Condominium litigation is a known risk to many of our clients. The Texas procedure is perhaps designed to reduce the likelihood of such litigation, but it has many ambiguities yet to be addressed: If the Association simply makes a demand on the original developer, who then brings the lawsuit, does any of the procedure apply? What if a single owner pursues the builder, and is then joined by other named owners, but not the Association? Does the contractor benefit from an airing out of all the complaints by various condo owners? One principle stands out, though, that is useful in any jurisdiction: If the contractor (or developer or sub-contractor) has the chance to learn about and view alleged defects, it should do so. A complaint about a defect—even an exaggerated one—can sometimes fester if not tended to.

By Slates Veazey

The Tangled Mess: Apportioning Delay and Proving Damages

A recent case in North Carolina serves as a good reminder of the legal principles involving delays and overruns, specifically regarding the responsibility for apportioning delay and proving damages. In *Flatiron-Lane v. Case Atlantic Co.*, the general contractor Flatiron-Lane ("FL") hired Case Atlantic Co. ("Case") as its casing subcontractor for the drilling and installation of casings and associated concrete work. Case's subcontract was based on unit prices and its commitment to complete its work in sixteen weeks. Poor communications with the designer, poor productivity, incorrect assumptions regarding the costs to implement Case's stated means and methods of installation, and various other issues resulted in a 30 to 40 week delay to the project. The delay and purported changes resulted in both parties incurring millions of dollars of additional costs. Litigation ensued with each party blaming the other for the entire delay and all of its associated costs.

The Court concluded that both parties contributed to the delay. This conclusion was fatal to the parties' respective claims for delay-related damages as both took an all-or-nothing approach to the delay during trial and presented no evidence to allow the Court to apportion the responsibility for the delay. The Court reminded the parties, "where both parties contribute to the delay neither can recover damages, unless there is proof of clear apportionment of the delay and expense attributable to each party." Thus, the Court refused to award any time related costs.

With respect to FL's other claims, the Court also provided reminders about proving damages. While implicitly approving of the "measured mile" approach commonly accepted for proving productivity impacts and associated damages, the Court refused to award FL damages for a loss in productivity because FL had not disclosed an expert to testify regarding the measured mile calculations (which was required in the Court's view), and because the testimony from FL's damages expert did not support the measured mile analysis presented by FL's employee. The Court then denied FL's claim for additional direct costs incurred by FL because FL failed to introduce evidence of modifications or breaches of the subcontract and failed to present any witness with personal knowledge of how and why the costs were incurred with any reasonable certainty. These proof issues can often be mitigated by keeping good project documentation.

The Court denied all of Case's counterclaims. The Court denied one of the counterclaims because Case failed to provide contractual notice. The Court also addressed and dismissed Case's catch-all claim which

utilized the "modified total cost" method. While acknowledging that a "total cost" or "modified total cost" method for calculating damages can be appropriate, the Court repeated the principle that "the party seeking damages [under a total cost or modified total cost claim] must first demonstrate 'the impracticability of proving actual losses direct.' [] Where a party simply fails to preserve records that with diligence it could have kept, impracticability cannot be shown." In addition to questioning the underlying cause of Case's damages, the Court essentially concluded that a measured mile approach to directly calculate actual losses was practical under the facts and that Case's failure to present such an analysis required the dismissal of its modified total cost claim.

This case serves as a reminder that an objective assessment of the delay and appropriate documentation are important in evaluating claims for delay and impact. Specifically, is it advisable to provide an allocation in a delay situation and take some responsibility, if appropriate, even if the allocation is only presented as an alternative to complete responsibility? Have notice provisions been met, waived, or otherwise excused? Can you document the damages, are there weaknesses in the damages backup, and, if so, can you explain those weaknesses? It often is prudent to seek the assistance of a seasoned construction lawyer or consultant to assist in this evaluation.

By Bryan Thomas

Subcontractor Not Entitled to Payment after it Refused to Perform Disputed Work

In yet another case from Massachusetts, the Massachusetts Appeals Court in *Acme Abatement Contractor, Inc. v. S&R Corp.* found that a general contractor was justified in not paying its subcontractor, even after the subcontractor had performed the majority of its work, because of the subcontractor's refusal to perform work that it believed fell outside of its scope of work.

The case involved a public project in which S&R Corporation ("S&R") was awarded a prime demolition contract by the Town of Weymouth (the "Town"). Part of S&R's scope of work involved the demolition of bleachers at an athletic field. S&R subcontracted the asbestos abatement work to Acme Abatement Contractor, Inc. ("Acme"). Part of Acme's scope of work included removing paint containing asbestos from the bleachers prior to demolition. After Acme commenced work, it informed S&R that it would not remove the paint from the bleacher risers because it believed that its subcontract only required it to remove materials containing asbestos. Because the paint on the risers did not contain asbestos, Acme believed the work fell outside of its scope. S&R disagreed, taking the position that removing the paint from the risers fell within Acme's scope of work because the subcontract was based on the assumption that the riser paint contained asbestos. S&R directed Acme to complete the work under protest and to later litigate whether the work was within its scope.

Acme performed all of its obligations under the subcontract except removal of the riser paint. Acme then left the project. In an attempt to avoid falling behind schedule, S&R hired a substitute contractor to remove the riser paint. Although Acme had completed all of what it considered to be its work under the subcontract prior to abandonment (but only 2/3 of the work if its belief was wrong), S&R refused to pay Acme anything, on the basis that Acme had materially breached its subcontract by refusing to remove the riser paint.

In Acme's ensuing lawsuit, S&R won in the trial court, on the basis that the subcontract required Acme to remove the riser paint, the subcontract required Acme to perform the disputed work under protest, and its failure to do so was a material breach of the subcontract. Acme could not recover for the work it performed under the theory of quantum meruit because it did not substantially complete its subcontract obligations.

The Massachusetts Appeals Court agreed. Instead of addressing Acme's arguments regarding its scope of work, the Appeals Court held that Acme breached the subcontract by not performing the disputed work as required by the subcontract. The subcontract provision that Acme violated stated:

> In the event of any dispute, controversy or claim between [S&R] and [Acme], [Acme] agrees to proceed with the Work or extra work without delay and without regard to such dispute, controversy, claim or the tendency (sic) of any proceeding in relation to the same. The failure of [Acme] to comply with the provisions of this paragraph shall constitute a material breach of this agreement…

Because Acme admitted that it refused to comply with S&R's direction to remove the paint from the risers, the Court found that it violated this provision and materially breached the Subcontract.

Acme argued that, even if it breached the subcontract, it was still entitled to payment in equity for having substantially performed the requirements of its subcontract. The Appeals Court disagreed, explaining that recovery under the theory of *quantum meruit* is appropriate when "there is an honest intention to go by the contract, and a substantive execution of it, but some comparatively slight deviations as to some particulars provided for." Acme, however, intentionally failed to comply with the provision of its Subcontract that required it to perform immediately and argue later. By failing to comply, Acme "intentional[ly] depart[ed] from the contract in a material matter without justification or excuse…" The Appeals Court further found that the value of the disputed work, which Acme did not perform, consisted of up to one-third of Acme's subcontract price. Accordingly, the Appeals Court held that Acme's deviation from the subcontract was not slight and that Acme did not substantially perform under the terms of the subcontract. As a result, Acme was not entitled to be paid for the work it performed.

This case demonstrates the importance of the "directive power" in contracts, and of carefully evaluating a disputed directive. It is one thing to refuse to comply with a relatively minor item after substantially completing the work. It is very risky, however, to refuse to comply with a directive when there is a substantial issue as to the work, and the work itself is substantial. Legal counsel can advise whether the facts justify stopping work, abandoning the project, and, in some cases, betting the company

By Jasmine K. Gardner

Beware the Landmines: New and Coming Labor and Employment Laws

From 2014 to 2016 there has been an explosion of labor & employment "laws" through Executive Orders, new regulations and proposed regulations. Some of the requirements apply to all employers, while those issued by Presidential Executive Order and related regulations apply to federal government contractors and subcontractors. In this article, we provide, in summary fashion, an update on the status of the 2014-2016 laws and regulations.

1. Minimum wage for federal government contractors and subcontractors: Executive Order 13658 was effective January 1, 2015 and raised the hourly minimum wage to $10.10 for workers on federal construction and service contracts, with a cost of living adjustment procedure put in place for future years. It has already been announced that the new minimum wage for January 1, 2016 will be $10.15.

2. Non-retaliation for pay disclosure: Executive Order 13665 was one of the proposals by President Obama to break the "glass ceiling" based on race and gender. Employees, applicants, and supervisors (a broader category than covered under existing law under the National Labor Relations Act) are protected to talk about their pay and benefits with each other, unless dealing with pay and benefits is one of the "essential job functions" of the employee, such as a payroll department employee.

3. Summary "Equal Pay" reports on employee compensation: Regulations were proposed in 2014 with comments taken through January 5, 2015, but no regulations have issued at this time. Federal contractors and subcontractors will be required to submit an annual "Equal Pay Report" to the Office of Federal Contract Compliance (OFCCP) generally based on the race, ethnic, and gender provisions under the EEO-1 report. This is the second "glass ceiling" initiative by Presidential order.

4. Sexual orientation and gender identity is now protected: Under Executive Order 13672, effective April 8, 2015, government contractors and subcontractors are now subject to non-discrimination based on an applicant's or employee's sexual orientation and gender identity. Government contractors should already have new wording in their non-discrimination policy language. Similar enforcement positions are being taken generally against all employers as publicly stated by the OFCCP and Equal Employment Opportunity Commission (EEOC). Considerable litigation is expected by employers who are not government contractors because the position taken by the federal agencies arguably conflicts with legislative history when the 1964 Civil Rights Act was passed by Congress.

5. Section 503 of the Rehabilitation Act of 1973: For government contractors, another new rule prohibits discrimination against disabled employees, and notably establishes a nationwide 7% utilization goal for

qualified individuals with disabilities. Detailed reports and remedial action plans are required if a contractor fails to meet the goal.

6. The veterans employment annual report: This new report became effective as a final rule in 2014, creating a new federal veterans employment report (VET-4212) to provide the government with more information about contractors' employment of veterans beginning with annual reports filed in 2015. The rule uses a "benchmark" rather than "utilization goals" as under the Section 503 regulations, require additional data collection and record keeping. Applicants must be invited to self-identify as veterans, but the rule does not establish required actions for contractors who fail to meet the benchmark.

7. The Labor Day surprise gift: On Labor Day 2015, the President signed an Executive Order requiring federal government contractors and subcontractors to begin providing their workers paid sick leave beginning January 1, 2017. At least one paid hour of sick leave will be required for every 30 hours worked or approximately 70 annual hours of paid sick leave for a 40 hour employee. The paid time may be used to care for the employee's self, family member or "another loved one." The sick leave mandate also covers absences resulting from domestic violence, sexual assault, or stalking. Note, the new paid sick leave requirements will be in addition to Davis Bacon or Service Contract Act paid leave benefit provisions.

8. Salaried exempt employees under the federal Fair Labor Standards Act (FLSA): As most of you know, the controversial proposed regulations were issued by the Department of Labor in a rather broad open-ended form during 2015. A new record may have been set on the number of millions of comments that were received by the government on this broad law of general application, which may increase the salary (over $50,000) and duties test (possibly 51% of all work time on executive, professional or high level administrative duties) for an employee to be exempt from overtime pay. The best educated guess based on Dept. of Labor statements, the number of comments, timing during an election year, and the President's stated intent to leave his mark on this law, is that the final regulations will likely be issued in the second or third quarter of 2016.

If you or your company has not completed a federal compliance audit recently and performs substantial work in the federal arena, please contact your laywer or a member of the CPPG to discuss.

By Tony B. Griffin

New Rule Requires Federal Contractors to Disclose Federal Tax Delinquencies and Felonies

On December 4, 2015, the Department of Defense, General Services Administration and the National Aeronautics and Space Administration issued an interim rule amending the Federal Acquisition Regulations to implement sections of the Consolidated and Further Continuing Appropriations Act, 2015. The interim rule prohibits the Federal government from entering into contracts with any corporation that (1) has any unpaid federal tax liability that has been assessed for which all judicial and administrative remedies have been exhausted or lapsed and which is not being paid in a timely manner; or (2) was convicted of a federal criminal violation under any federal law within the preceding twenty-four months. The interim rule requires that all offerors responding to federal solicitations make representations as to whether it is a corporation with a delinquent tax liability or a felony conviction under federal law. If an offeror answers in the affirmative, the contracting officer is required to request additional information from the offeror and notify the agency official responsible for initiating debarment or suspension action. The contracting officer may not make an award to the corporation unless the agency official responsible for debarment or suspension actions has considered debarment or suspension and determined that this action is not necessary to protect the interests of the Government.

The rule also adds a "Certification Regarding Tax Matters" for contracts that exceed $5,000,000 (including options). The certification requires an offeror to certify that it has (1) filed all federal tax returns during the preceding three years; (2) not been convicted of a criminal offense under the Internal Revenue Code; and (3) not, more than 90 days prior to certification, been notified of any unpaid federal tax assessment that remains unsatisfied.

The interim rule is scheduled to take effect February 26. 2016. Contractors would be wise to assess their status before this time and take steps to remedy any defects which would require them to make an affirmative representation (regarding an unpaid tax liability or felony conviction) or which would prevent

them from making an affirmative certification that all of the requirements are met. As we stated above, if you are a Federal contractor, you should consider an audit of your compliance with Federal requirements. Remember this: if you duck the requirement here, get the contract, and then make a payment application, you may be making a false claim, which is a possible civil and criminal violation.

By Lisa Markman

Bradley Arant Lawyer Activities

In U.S. News' "Best Law Firms" rankings, **BABC'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.

Mabry Rogers was recently recognized as one of only four 2015 BTI Client Service Super All-Star MVPs for consistently setting "the standard for outstanding client service."

Jim Archibald has been elected to membership in the American College of Construction Lawyers, to be formally inducted in February 2016.

Doug Patin, **Bill Purdy**, **Mabry Rogers** and **Bob Symon** were recently listed in the *Who's Who Legal: Construction 2015* legal referral guide. **Mabry Rogers** has been listed in Who's Who for 20 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**, and **David Taylor** were recognized by *Best Lawyers in America* in the area of Construction Law for 2016.

Mabry Rogers and **David Taylor** were recognized by *Best Lawyers in America* in the area of Arbitration for 2016. **Keith Covington** and **John Hargrove** were recognized in the area of Employment Law – Management. **Frederic Smith** was recognized in the area of Corporate Law.

Tony Griffin was recently selected (for the 18th consecutive year) for *Best Lawyers in America* for 2015 in the following areas: Employment Law-Management, Labor Law-Management, and 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. In addition, **Monica Wilson** and **Tom Lynch** were listed as "Rising Stars" in Construction Litigation and **Aron Beezley** was listed as a "Rising Star" in Government Contracts.

David Taylor was recently named Nashville's *Best Lawyers* 2016 Lawyer of the Year in the area of Arbitration.

Mabry Rogers was recently selected as Birmingham'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.

Mabry Rogers was recognized by *Law360*, in February, as one of 50 lawyers named by General Counsel as a top service provider.

Bill Purdy and **David Taylor** were recently recognized as *2014 Mid-South Super Lawyers* in the area of Construction Litigation. **Alex Purvis** was selected as a *2014 Mid-South Rising Star* in the area of Insurance Coverage. The Mid-South region includes Arkansas, Mississippi and Tennessee.

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.

Jim Archibald was installed as President of the Alabama Construction Bar Forum.

On December 10, 2015 **Keith Covington** spoke at a seminar on the interrelated employer obligations under the Family and Medical Leave Act, the Americans with Disabilities Act, and state workers' compensation statutes.

On December 3, 2015 **Beth Ferrell** spoke on a panel on the topic of "Price Realism" at the 2015 Nash & Cibinic Report Roundtable.

Jim Archibald and **David Pugh** spoke on "Recent Developments in Building Information Modeling and Virtual Design and Construction" and "Alternative Delivery Methods for Public Works Projects," respectively, at the Second Annual *Construction Law Summit* for the Construction Law Section of the Alabama State Bar in Birmingham on December 1, 2015.

On November 23, 2015, **Aron Beezley** published in the Westlaw Government Contracts Journal an article titled "Preparing for Mandated Paid Sick Leave for Federal Contractors."

In November 2015, **Aron Beezley** published on *Law360*'s Government Contracts "Expert Analysis" section two articles titled "OMB Cybersecurity Plan: What Government Contractors Should Know" and "GAO Invokes Rare Exception To Protest Timeliness Rules."

Jasmine Gardner became licensed to practice in South Carolina in November 2015.

Jim Archibald joined an international panel at a recent client training day in Houston and spoke on the topic of Consequential Damages.

In November 2015, **Aron Beezley** authored an article on intervening in bid protests that is scheduled to be published in the next edition of the Bloomberg BNA Federal Contracts Report.

On September 30, 2015, **David Taylor** and **Bridget Parkes** spoke at CSI's National "construct" meeting in St. Louis, Missouri on the topic of "Issues and Myths on Payment and Performance Bonds."

Keith Covington co-authored an article, with **John Rodgers**, entitled "Employee or Independent Contractor: the DOL Weighs in on Worker Misclass-ification" that was published in the Bloomberg BNA Daily Labor Report on September 1, 2015.

Michael Knapp presented on proper techniques and procedures for "Project Documentation" at the Federated Electrical Contractors annual project manager meeting in Las Vegas, NV, on August 21, 2015.

Arlan Lewis was elected to the 12-member Governing Committee of the American Bar Association's Forum on Construction Law during its Annual meeting in April in Boca Raton, Florida.

Christopher Selman joined the 2015 class of the ABC Future Leaders in Construction.

David Pugh has been named to the lawyer position on the Jefferson County Board of Code Appeals, which governs issues concerning the interpretation and application of the International Building Code in Jefferson County. He replaces **Mabry Rogers,** who served on the Board for over a decade.

Mabry Rogers was reappointed by the Birmingham City Council to another 7 year seat on the Birmingham Code Appeals Board.

Eric Frechtel recently spoke in New York at the American Conference Institute's 2nd Forum on Construction Claims and Litigation on "Duty of Good Faith and Fair Dealing in Administering a Contract, Interpreting the Court's Ruling in *Metcalf*, Level of Proof and Breach of Contract Issues."

Michael Knapp was recently asked to serve as an adjunct faculty member for University of Alabama at Birmingham to teach Construction Liability and Contracts in its Engineering Department's graduate level Construction Management program.

Brian Rowlson was recently named co-chair of the newly formed Ethics and Legislative Affairs Committee of the North Carolina Bar's Construction Law Section and **Brian** was recently named vice chair of the Associated Builders and Contractors of the Carolinas (Charlotte Division) Education Committee for 2015.

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*.

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