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Second Quarter 2022

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

United States Supreme Court Closes the Door to U.S. Discovery in International Commercial Arbitration

What did the Court decide?

The United States Supreme Court resolved a split among the federal appeals courts on the question of whether private international arbitration tribunals can be considered to be either "foreign" or "international" tribunals for purposes of a federal statute, 28 U.S.C. § 1782, which permits discovery from persons located in the U.S. "for use in a foreign or international tribunal."

In a unanimous opinion, the Court held this month in ZF Automotive, that the phrases "foreign tribunal" and "international tribunal" do not refer to private international arbitration tribunals.

Why does it matter?

U.S. companies and persons are no longer under the threat of having to comply with invasive and burdensome discovery requests related to international arbitration. Prior to this decision, not only could a party to an ongoing arbitration seek discovery in the U.S., but some federal courts allowed a party merely considering whether to initiate an international arbitration to obtain discovery from any U.S. entity or person. The flip side is that those U.S. companies faced with international arbitration as a required remedy have lost a tool that sometimes allowed broader discovery in the U.S. courts than was allowed in the international arbitration proceeding.

As a result, prior to the Court's decision in ZF Automotive, any designer, supplier, manufacturer, contractor, or indeed any person who engages in international trade or projects could have been forced to produce documents and submit to depositions even though their foreign counterparts were not subject to the same requirement under most international arbitration rules.

The Supreme Court has closed this door. U.S. parties will no longer be subject to more burdensome discovery than foreign parties and will not be required to produce documents or give testimony to aid a private foreign tribunal under the federal statute 28 U.S.C. § 1782.

By: Jennifer Ersin

Bilateral Modification Releases: A Mid-Project Trap for the Unwary

The Armed Services Board of Contract Appeals ("ASBCA") recently granted a motion for summary judgment, filed by the U.S. Army Corps of Engineers ("Corps") in *Odyssey International, Inc*. in which the Corps argued that the contractor's execution of a previous bilateral modification containing release language precluded the contractor's subsequent claim for increased costs. This decision serves as an important reminder to contractors to be cognizant of release language in bilateral contract modifications because they often act as a mid-project reset, foreclosing a contractor's ability to seek

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additional costs or time on any matters preceding the modification.

The contract involved in this case was for the construction of a building at the Letterkenny Army Depot in Chambersburg, Pennsylvania. The contract called for the use of "micropiles" in the foundation of the building. In Modification ("Mod") 2, the Corps compensated Odyssey for 8 of the 20 claimed additional micropiles. After being unable to reach an agreement on the remaining micropiles, the Corps issued unilateral Mod 3, which granted Odyssey some additional time to complete its scope of work. At the end of performance, the parties executed bilateral Mod 9, which, among other changes, converted Mod 3 into a bilateral modification. Mod 9 also included a general release of claims that covered everything attributable to the facts or circumstances giving rise to the changes ordered.

Odyssey later sought additional costs for extra micropiles. The Corps denied Odyssey's claim based on release in Mod 9, to which an Odyssey employee responded that the release in Mod 9 seemed to be a "trick, trap or typo."

On appeal to the ASBCA, the Corps quickly filed a motion for summary judgment, again citing the release in Mod 9. In response, Odyssey argued that there was no meeting of the minds and that the release language should not be given effect because the Corps "may have" inserted release language in Mod 9 to fraudulently induce Odyssey to sign the release. The ASBCA, however, disagreed and held that Odyssy had unambiguously released its right to additional costs for the micropiles because unliteral Mod 3 addressed the same micropile costs in Odyssey's claim and Mod 9 converted Mod 3 into a bilateral modification; therefore, the general release in Mod 9 covered everything related to Mod 3.

Odyssey serves as an important reminder that contractors must be attentive, and negotiate vigorously, when reviewing release language contained in contract modifications because such releases often act as a mid-project reset, foreclosing a contractor's ability to recover on anything preceding the modification. This can have profound impacts on later claims, and it can come as a surprise to subcontractors, if they were not informed of the mid-job claim nor given an opportunity to participate in its negotiation. A good practice in federal government contracts is to seek early legal advice about signing change orders and to negotiate and agree to a clear reservation of rights within bilateral modifications.

By: Erik Coon

Better Early than Never: Court of Federal Claims Dismisses Challenge to Default Termination as Five Years Late, Despite Contractor's Timely Appeal of Denial of Certified Claim

The Court of Federal Claims has confirmed that a termination for default is a contracting officer's final decision triggering the Contract Disputes Act ("CDA") appeal deadlines. The recent case of *Bowman Construction Co. v. United States* involved a contract between a contractor ("Bowman") and the National Park Service for the construction of a bicycle trail at a national park in Minnesota. In October 2012, the government terminated Bowman's contract for default. Bowman did not appeal the termination. In fact, after Bowman's surety settled with the government and sued Bowman for those costs, Bowman entered a confession of judgment, a legally binding pledge to pay those amounts to the surety. In October 2017, Bowman filed a certified claim challenging the termination for default. The contracting officer denied the claim, and Bowman appealed to the Court of Federal Claims less than one year later. Bowman's complaint contained counts for allegedly improper termination for default, breach of the duty of good faith and fair dealing, and nonpayment for work the government allegedly accepted before the termination for default.

The CDA requires a contractor to appeal a contracting officer's final decision to the Court of Federal Claims within 12 months of receipt of the final decision (within 90 days, if appealing to the Boards of Contract Appeals). Here, Bowman filed its appeal within 12 months of the contracting officer's 2017 decision, five years after the 2012 termination for default. The government moved to dismiss the complaint, and the court granted the motion (except for the allegations of non-payment, which fell under the CDA's general 6-year statute of limitations for contract claims). The court explained that any claims relating to the termination for default and confessed judgment amount were untimely because the 12-month statute of limitations ran from the October 2012 termination for default, not the denial of the 2017 certified claim. Thus, Bowman could not recover any costs that could have been recovered under a termination for convenience settlement, had it successfully and timely challenged the termination for default in 2013.

Contractors should be mindful that the Court of Federal Claims considers a termination for default letter as a contracting officer's final decision triggering the CDA appeals deadlines. Thus, contractors should raise any and all challenges relating to a termination for default pursuant to the CDA appeals timeline (12 months if the appeal is to the Court of Federal Claims and 90 days if the appeal is to the Board of Contract Appeals). The Court of Federal Claims is likely to dismiss as untimely any subsequent claim that involves a challenge to the termination for default, even if the contractor, like Bowman, otherwise properly follows the CDA claim and appeals process for that claim. When the contractor settles with the government, as it did in Bowman's case, this will require careful negotiations with the surety to allow the defaulted contractor to pursue its claim for wrongful termination against the government.

By: Amy Garber

Is It Too Late to Arbitrate? The Supreme Court Clarifies the Test for Whether a Party Has Waived Its Right to Arbitrate

When a party files a lawsuit in court despite agreeing in the contract to arbitrate the dispute, the Federal Arbitration Act (FAA) entitles the responding party to file a motion to stay, or pause, the lawsuit and compel the case to arbitration. While the responding party can demand that a court send the case to arbitration immediately once it is filed, occasionally the parties engage in months, or even years, of litigation before that demand is made. In those cases, courts are faced with the question of whether the demand to move the case to arbitration has come too late, such that the right to arbitration has been waived or lost.

In *Morgan v. Sundance*, the U.S. Supreme Court recently evaluated the standard by which courts should evaluate the timeliness of a request to send a case to arbitration. In that case, Robyn Morgan worked as an hourly employee at a Taco Bell franchise owed by Sundance. When applying for the job, she signed an agreement to arbitrate any employment dispute. While employed, Morgan filed a lawsuit alleging Sundance violated federal law regarding overtime pay. Sundance participated in the litigation for nearly eight months – including filing a motion to dismiss and participating in mediation – before moving to stay the litigation and compel arbitration under the FAA.

Traditionally, when considering whether a particular "right" has been waived by a party to litigation, federal courts will not consider if the delay has caused the parties any harm. However, in the arbitration context, most federal courts apply a rule of waiver that is specific to arbitration. These courts – including the federal Courts of Appeals covering Alabama, Florida, Mississippi, North Carolina, Tennessee, and Texas – have applied tests which require a showing that the conduct has prejudiced or harmed the other side. In Morgan's case, the trial court and the Eighth Circuit Court of Appeals applied one such test, which required Morgan to show that Sundance *actually prejudiced* Morgan through its inconsistent action of participating in litigation before opting to pursue arbitration.

The U.S. Supreme Court was asked to decide whether these "prejudice" requirements were consistent with the text of the FAA. It ruled they are not. Outside of the arbitration context, the court said, "a federal court assessing waiver generally does not ask about prejudice." Waiver is simply "the intentional relinquishment or abandonment of a known right." In order to decide whether waiver has occurred, "the court focuses on the actions of the person who held the right; the court seldom considers the effects of those actions on the opposing party."

The Supreme Court, therefore, ruled that the lower courts erred in requiring a showing that Sundance's conduct prejudiced Morgan when evaluating the waiver issue. The case was sent back to the lower courts to evaluate the waiver issue using the proper question: Did Sundance knowingly relinquish the right to arbitrate by acting inconsistently with that right?

The Supreme Court's decision in the *Morgan* case may alter the playing field for parties in the construction industry who find themselves in litigation involving contracts containing arbitration provisions. With the "prejudice" requirement removed, courts may give defendants less leeway to litigate cases before asking to enforce an arbitration provision. Previously, parties were sometimes able to leverage the "prejudice requirement" to engage in some litigation – for example, engaging in initial discovery or seeking a motion to dismiss – prior to demanding the case be moved to arbitration. In light of *Morgan*, courts may be more inclined to view this type of conduct as a waiver of the right to arbitration. The Supreme Court's ruling in *Morgan* will also force parties to be diligent in conducting their own review and investigation to determine whether a lawsuit may be covered by an arbitration provision – lest the power to invoke that provision be waived.

By: Matthew Lilly

Whatever Happened to that Federal Contractor COVID Vaccine Order?

More than ten months ago, on September 9, 2021, President Biden issued Executive Order 14042, which imposed a COVID-19 vaccine mandate on many federal contractors and subcontractors. As we have previously reported, the order intended to use the federal government's contracting power to increase the number of vaccinated people. Since then, 26 states have filed seven federal court cases that have resulted in six injunctions, one of which was nationwide. The United States now has appealed all six injunctions. Recently, the Eleventh Circuit was the first appellate court to hear oral argument in the Georgia case, the most significant of all the cases, because that is the one with the nationwide injunction.

Background

The order was one of several attempts by the government to push vaccines out broadly to the public. It directed federal agencies to begin amending solicitations and contracts to include a COVID-19 vaccination requirement for federal contractors and subcontractors. The order applies broadly to services, construction, leasehold interest, or concessions contracts performed in the U.S. and its outlying areas, and generally valued above $250,000.

The order, however, was challenged very soon after it was issued. A variety of private individuals and organizations filed suit, but the cases that have gotten the most traction were those filed by the attorneys general of 26 states who, in different coalitions, filed suits in the Eastern District of Kentucky, the Southern District of Georgia, the Eastern District of Missouri, the Western District of Louisiana, the Middle District of Florida, the Southern District of Texas, and the District of Arizona. The states filed these cases at the end of October and at the start of November 2021.

While arguing a variety of legal theories, the one argument common to all the state cases has been that the president exceeded his authority under the Federal Property and Administrative Services Act (Procurement Act), 40 U.S.C. § 101 et seq., when he issued the order. The Procurement Act has as its purpose the provision to the federal government of an economical and efficient system for procuring and supplying property and nonpersonal services. The argument has been successful.

- On November 30, 2021, in Kentucky v. Biden, the U.S. District Court for the Eastern District of Kentucky enjoined enforcement of the vaccine mandate in Kentucky, Ohio, and Tennessee, which are the state plaintiffs. The U.S. has appealed to the Fifth Circuit.

- On December 7, 2021, in Georgia v. Biden, the U.S. District Court for the Southern District of Georgia enjoined enforcement of the vaccine mandate nationwide. The state plaintiffs here are Alabama, Georgia, Idaho, Kansas, South Carolina, Utah, and West Virginia. The U.S. has appealed to the Eleventh Circuit, which recently heard oral argument, the first court to do so.

- On December 16, 2021, in Louisiana v. Biden, the U.S. District Court for the Western District of Louisiana enjoined enforcement of the order in contracts between the states of Indiana, Louisiana, or Mississippi, the state plaintiffs, or their agencies, and the federal government. The U.S. has appealed to the Fifth Circuit.

- On December 20, 2021, in Missouri v. Biden, the U.S. District Court for the Eastern District of Missouri enjoined enforcement of the order in Missouri, Nebraska, Alaska, Arkansas, Iowa, Montana, New Hampshire, North Dakota, South Dakota, and Wyoming, which are the state plaintiffs. The U.S. has appealed to the Eighth Circuit.

- On December 22, 2021, in Florida v. Nelson—for some reason, Florida listed the current NASA Administrator, who is a former Florida politician, first among the named defendants—the U.S. District Court for the Middle District of Florida enjoined enforcement of the Order in Florida, the only state plaintiff. The United States has appealed to the Eleventh Circuit.

- On January 27, 2022, in Brnovich v. Biden, the U.S. District Court for the District of Arizona enjoined enforcement of the order in Arizona, the only state plaintiff, by federal agencies. The U.S. has appealed to the Ninth Circuit.

- The case in Texas is an exception procedurally. In Texas v. Biden, the U.S. District Court for the Southern District of Texas stayed proceedings in a status conference that took place on December 10, 2021, three days after the Georgia court issued the nationwide injunction. Texas was the only state plaintiff in that case.

The Georgia appeal is the most developed procedurally, with oral argument having taken place on April 8, 2022, before an Eleventh Circuit panel comprised of Circuit Judges R. Lanier Anderson III, J.L. Edmondson, and Britt C. Grant. The government argued that there is a close nexus between the order and the Procurement Act's goals of economy and efficiency in federal contracting, making the order lawful. The government also challenged the nationwide scope of the injunction as overly broad. There

was active questioning from the bench about the order's permissibility, given prior Executive Orders involving non-discrimination policies. There were also the questions of whether, in a close case, the injunction constituted an abuse of discretion and whether the injunction was properly issued nationwide.

What is the takeaway?

Even if the government is successful at the Eleventh Circuit, it would then have to succeed individually on each of the other cases to reinstate its national COVID-19 vaccine policy, given the other injunctions. In light of what appears to be a decision by the Department of Justice to challenge adverse decisions across the board and the intensity of political feeling on the issue nationally, whatever the outcome at the Eleventh Circuit, it is likely that the validity of the order will finally be decided at the Supreme Court.

By: Patrick Quigley & Aron Beezley

Accord and Satisfaction: To Release, or Not Release? That is the Question.

Generally, an "accord and satisfaction" is an agreement between two or more contracting parties to accept an alternate agreement and performance in lieu of a preexisting contractual duty between the parties. The new agreement is the "accord," and the subsequent performance of the new agreement is the "satisfaction." The main difference between an accord and satisfaction and a contract modification is that a contract modification immediately discharges the preexisting contractual duty upon execution of the modification, while an accord and satisfaction only discharges the preexisting contractual duty when the alternate performance is completed.

The defense of accord and satisfaction is one that often arises during construction projects in the context of disputes concerning amounts owed. The defense of accord and satisfaction provides that the party receiving monies (or alternate performance) is doing so in full satisfaction of a disputed claim. An accord and satisfaction oftentimes uses language that operates as a release, such as "this payment (or alternate performance) is in full satisfaction of the obligations under the contract." As such, the language used in an accord and satisfaction is critical to determine the extent to which claims are being released or satisfied.

An example of the application of the affirmative defense of accord and satisfaction is found in *Harry Pepper & Assocs., Inc.*, which was a case recently decided before the Armed Services Board of Contract Appeals ("ASBCA"). There, the prime contractor had a $36.5 million contract with the government for the restoration of a test stand at the John C. Stennis Space Center in Mississippi. During construction, the prime contractor encountered differing conditions related to the testing of the welding work at the site that led the prime contractor to submit requests for information (RFI) seeking a change to the testing of the welding work. The government responded to the RFIs by issuing instructions on how to proceed with the proposed testing and omitting certain testing. The prime contractor submitted a field change request (FCR) that captured the change in the testing work and credited the government for the omitted testing. The government issued a bilateral contract modification that accepted the FCR and also contained language releasing the government "from any and all liability under this contract for further equitable adjustments attribute to the above change." As the project progressed, the prime contractor encountered additional differing conditions related to the actual welding work itself and submitted claims for equitable adjustment related to those conditions—which the government denied. The prime contractor proceeded to submit certified claims, which were denied by the contracting officer in their entirety, and the prime contractor appealed.

On appeal, the government moved for summary judgment based on its affirmative defense of accord and satisfaction and the prime contractor cross-moved for partial summary judgment against the government's affirmative defense of accord and satisfaction. The government argued that the work at issue in the requests for equitable adjustment was incorporated into the bilateral contract modification. The government further argued that "[t]he modification contained a release of future claims for equitable adjustment" and as such, barred the claims asserted by the prime contractor. The prime contractor argued that because the RFIs only concerned the testing of the welding work, there was no meeting of the minds to release any and all claims related to welding work.

The ASBCA denied the government's motion for summary judgment stating that the language in the bilateral modification only released the government from "any and all liability under this contract for further equitable adjustments attributable to the *above change*." The "above change" was only related to a small portion of work, the testing of the welding work, and did not encompass the actual welding work itself which was at issue in the equitable adjustment claims. As such, the ASBCA held that the release language did not affect the equitable adjustment claims and denied the government's motion for summary judgment and granted the prime contractor's cross-motion for partial summary judgment

against the government's defense of accord and satisfaction.

As this case demonstrates, an accord and satisfaction must be narrowly tailored to serve the needs of the parties and must unambiguously release the obligation in question to operate as a defense to future claims. It is critical for owners, prime contractors, and subcontractors to define, address and preserve claims precisely, so that they do not find themselves releasing (or not releasing) claims that they did not intend to. Without doing so, a party may release (or not release) unintended claims and find themselves on the hook for substantial unanticipated costs.

By: Ronald Espinal

A Ninth Corner? Texas Supreme Court Expands the Eight-Corners Rule to Allow Limited Consideration of Extrinsic Evidence

The Texas Supreme Court, in *Bitco Gen. Ins. Corp. v. Monroe Guar. Ins. Co.*, recently solidified an exception to the longstanding "eight-corners" rule, granting insurance carriers some potential reprieve to the detriment of policy holders. Texas has long abided by the "eight-corners" rule, requiring that insurance carriers look only to the four corners of the policy and the four corners of the complaint in determining if there is a duty to defend. That has now changed.

In this recent Texas case, Monroe Guaranty Insurance Company ("Monroe") and BITCO General Insurance Corporation ("BITCO") issued a general liability policy to 5D Drilling & Pump Service Inc. ("5D"). BITCO's policies were effective between October 2013 to October 2015 and Monroe's policies were effective between October 2015 and October 2016.

5D was sued in 2016 by a property owner for breach of contract and negligence causing damage to the owner's property. Specifically, the petition alleged that 5D entered into a contract with the property owner in 2014 to drill a commercial irrigation well and improperly drilled the well, causing the drilling bit to become stuck in a bore hole, thus rendering the well useless and causing damage to the land. The petition was silent on when this damage allegedly occurred or was discovered.

Monroe refused to defend 5D in the lawsuit on the basis that any property damage occurred before its policy coverage began in October 2015. Monroe relied on a stipulation that the insured's drill bit became lodged in the bore hole in or around November 2014, about ten months before the Monroe policy took effect.

Generally, the eight-corners rule prevents an insurance carrier from considering any extrinsic evidence when determining if a duty to defend exists. However, in the 2004 case of *Northfield Ins. Co. v. Loving Home Care, Inc.,* the Fifth Circuit held that Texas law recognized a limited exception to the eight-corners rule "when it is initially impossible to discern whether coverage is potentially implicated *and* when the extrinsic evidence goes solely to a fundamental issue of coverage which does not overlap with the merits of or engage the truth or falsity of any facts alleged in the underlying case."

In an effort to seek clarity, the Fifth Circuit in *Monroe* certified two question to the Texas Supreme Court. First, whether the *Northfield* exception to the "eight-corners" rule is permissible under Texas law; and second, whether the date of an occurrence is the type of extrinsic evidence that can be considered by the Court. The Texas Supreme Court held that Texas law permits consideration of extrinsic evidence provided the evidence (1) goes solely to an issue of coverage and does not overlap with the merits of liability, (2) does not contradict facts alleged in the pleading, and (3) conclusively establishes the coverage fact to be proved.

The Fifth Circuit, however, used the Texas Supreme Court's guidance to find that the exception did not apply here. Specifically, Monroe could not satisfy the first prong of the analysis because "[a] dispute as to when property damage occurs also implicates whether property damage occurred on that date, forcing the insured to confess damages at a particular date to invoke coverage, when its position may very well be that no damage was sustained at all."

Although not applicable in *Monroe*, the newly confirmed exception to the "eight-corners" rule provides insurance carriers with some clarification on when extrinsic evidence can be considered in making a determination on their duty to defend under Texas law.

By: Saira S. Siddiqui

Safety Moment for the Construction Industry

Propane is found on job sites all over the country and is used for a variety of reasons. As with any fuel or combustible material, following applicable codes and standards is critical in keeping workers safe and productive. Local suppliers usually help crews choose, set up, and inspect propane tanks. Here are six tips for safe propane usage on construction sites:

1) Proper container placement

2) Prevent tank damage
3) If used indoors, use propane heaters properly with adequate ventilation and barriers from contact with persons or flammable materials
4) Protect tanks during storms
5) Spot and and handle leaks appropriately
6) Protect against carbon monoxide arising from the use of heaters

Bradley Lawyer Activities

Bradley's Construction and Procurement Practice Group received the distinction of "Law Firm of the Year" in the area of Construction Law in the 2022 edition of *U.S. News Best Lawyers*. Only one firm per legal practice receives this designation per year, and this is Bradley's third time to receive this distinction (2018 and 2020). 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, the firm earned four national Tier 1 rankings and 156 metropolitan Tier 1 rankings across all 10 of its offices. This is recognition that we are dedicated to seeing that our clients benefit from hiring Bradley to serve their needs.

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 Dachepalli, 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 2022, **David Pugh** was named Lawyer of the Year in Construction for Birmingham, AL.

Jim Archibald, David Bashford, Ryan Beaver, Axel Bolvig, Jared Caplan, Jim Collura, Monica Wilson Dozier, Ian Faria, Eric Frechtel, Ralph Germany, Jon Paul Hoelscher, Mike Koplan, 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 2022.

Jim Archibald, David Bashford, Ryan Beaver, Michael Bentley, Axel Bolvig, Ian Faria, Jon Paul Hoelscher, 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 2022.

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.

Andrew Bell, **Kyle Doiron**, **Amy Garber**, **Matt Lilly**, **Abba Harris**, **Carly Miller**, and **Chris Selman** have been recognized as *Best Lawyers: Ones to Watch* in the areas of Construction Law and Construction Litigation for 2022.

Jim Archibald, Bill Purdy, Mabry Rogers, Wally Sears, Bob Symon, Ryan Beaver, Ian Faria, Jon Paul Hoelscher, Doug Patin, Ralph Germany, David Taylor, and **David Owen** 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. **Abba Harris, Kyle Doiron**, **Bryan Thomas**, **Carly Miller,** and **Chris Selman** 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*.

David Owen was recently accepted as a Fellow in the American College of Construction Lawyers. Other Fellows include **Jim Archibald**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, and **Bob Symon**.

Jim Archibald, **Axel Bolvig**, **Jim Collura**, **Keith Covington**, **Ben Dachepalli**, **Ian Faria**, **Tim Ford**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, **Bob Symon**, and **David Taylor** have been rated AV Preeminent attorneys in Martindale-Hubbell.

Jennifer Ersin was recently admitted as a Fellow to the Chartered Institute of Arbitrators.

Carly Miller was recently recognized as an AGC Alabama 40 Under 40 in Construction, recognizing the top 40 individuals demonstrating a high level of leadership, excellence and commitment to the industry. There will be an award celebtration on September 15, 2022 in Birmingham, AL.

Aron Beezley was recently recognized by *JD Supra* in its 2022 Readers' Choice Awards for being among the top authors and thought leaders in government contracts law during 2021.

Jennifer Ersin was named to the 2022 Class of Leadership in Mississippi. Leadership Mississippi is a leadership training program conducted by the Mississippi Economic Council which seeks to bring together business leaders from around the state. The goal of the program is to bring together and train future leaders who can use their training to improve the quality-of-life in Mississippi.

Jared Caplan was recently named the Co-Chair of the Houston Bar Association Civil/Appellate Bench Bar Conference Committee for the 2022-2023 Bar Year.

Trey Oliver was recently appointed as the DRI Young Lawyer's Construction Committee Liaison. In that role, he will be involved with the leadership team on DRI's Construction Committee and informing the Young Lawyer's Committee of opportunities to get involved within the Construction Law Committee.

Jared Caplan was recently named a Senior Fellow at the American Leadership Forum.

Carly Miller and **Alex Thrasher** will be speaking 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.

On July 13, 2022, **Mason Rollins** attended the First Annual Gulf Coast Construction Industry Conference for the Construction Industry Section of the Alabama State Bar in Mobile, Alabama.

Bryan Thomas was a panelist at the AGC of Tennessee's Legal Roundtable on June 7, 2022, during which he discussed contractual clauses addressing labor and material cost escalation.

On April 7, 2022, **Bryan Thomas** presented to the Tennessee Valley Public Power Association at the Purchasing and Materials Management Conference on contracting considerations for 2022.

On March 3, 2022, **Ian Faria** and **Gabe Rincon** published an article entitled "Divorce in the Marriage of Convenience (Otherwise Known as the Joint Venture)," which was featured during the Annual Texas Construction Law Conference in San Antonio, Texas.

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