BRADLEY ARANT BOULT CUMMINGS LLP **Fourth Quarter 2012**

CONSTRUCTION AND PROCUREMENT LAW NEWS

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

James F. Archibald, III
David H. Bashford (c)
Charlie Baxley
Ryan Beaver (c)
Aron Beezley (d.c.)
Axel Bolvig, III
Joel E. Brown
Stanley D. Bynum
Robert J. Campbell
Jonathan Cobb
F. Keith Covington
Joel Eckert (n)
Eric A. Frechtel (d.c.)
Ralph Germany (j)
Daniel Golden (d.c.)
John Mark Goodman
John W. Hargrove
Jonathan B. Head
Michael P. Huff (h)
Rick Humbracht (n)
Aman Kahlon (d.c.)
Michael W. Knapp (c)
Michael S. Koplan (d.c.)
Alex B. Leath
Arlan D. Lewis
Tom Lynch (d.c.)
Luke D. Martin
J. Wilson Nash
David W. Owen
Douglas L. Patin (d.c.)
Vesco Petrov
Steven A. Pozefsky (d.c.)
J. David Pugh
Bill Purdy (j)
Alex Purvis (j)
Jerry Regan (d.c.)
Lewis Rhodes (d.c.)
E. Mabry Rogers
Brian Rowlson (c)
Walter J. Sears III
Chris Selman
Eric W. Smith (n)
Frederic L. Smith, Jr.
H. Harold Stephens (h)
Robert J. Symon (d.c.)
Bethany A. Tarpley (j)
David K. Taylor (n)
D. Bryan Thomas
C. Samuel Todd
Darrell Clay Tucker, II
Paul S. Ware
James Warmoth (c)
Monica Wilson (c)

Ninth Circuit: Underbids Can Constitute False Claims

Recently, in the case of *Nyle J. Hooper v. Lockheed Martin Corp.*, the U.S. Court of Appeals for the Ninth Circuit ruled for the first time that underbidding or making false estimates in bids or proposals submitted in response to federal government solicitations may constitute violations of the False Claims Act. The agencies administering Federal contracts are increasingly insistent on enforcement of the requirement. The stated rationale is to assure the general contractor's "adequate interest and supervision of the work."

Inside:

In the *Hooper* case – a *qui tam* action filed by a former Lockheed Martin senior project engineer – Lockheed Martin allegedly defrauded the U.S. Air Force by intentionally underbidding on a cost reimbursement plus award fee contract that required it to install hardware and software to support space launch operations at Cape Kennedy in Florida and Vandenberg Air Force Base in California. Specifically, Hooper claimed that Lockheed Martin instructed its employees to lower Lockheed Martin's bids by almost half to improve its chances of winning the contract. Lockheed Martin was awarded the contract based on a bid of $432.7 million. By the time the court case was instituted, it had requested and been reimbursed over $900 million for its work on the contract, according to the Ninth Circuit's opinion.

Lockheed Martin argued that "[e]stimates of what costs might be in the future are based on inherently judgmental information, and a piece of purely judgmental information is not actionable as a false statement." The Ninth Circuit disagreed, stating that "[a]s a matter of first impression, we conclude that false

estimates, defined to include fraudulent underbidding in which the bid is not what the defendant actually intends to charge, can be a source of liability under the [False Claims Act], assuming that the other elements of a [False Claims Act] claim are met."

Having determined that False Claims Act liability may be premised on false estimates, the Ninth Circuit held that "there is a genuine issue of material fact whether Lockheed acted either knowingly, in deliberate ignorance of the truth or in reckless disregard of the truth when it submitted its bid." The Ninth Circuit's holding was based on testimony of Lockheed Martin employees who said that they were instructed to lower their estimate of costs, without regard to actual estimated costs, and that Lockheed Martin was "dishonest" in the productivity rates used to estimate costs for the contract. In addition, the Ninth Circuit cited the Air Force's own analysis of Lockheed Martin's bid which stated that the bid was "optimistic about some of its inputs . . . , resulting in an overstated potential for cost savings."

Contractors should heed the warning of the *Hooper* case: false statements and representations made in connection with bids or proposals may – in the right circumstances, such as the extreme allegations by the Hooper *qui tam* plaintiff – form the basis for liability under the False Claims Act, despite the lack of a formal contract with the governmental entity at the time such statements or representations are made.

By Aron C. Beezley

State Courts Limit CGL Coverage for Property Damage Arising From Defective Construction

Courts have generally recognized that property damage arising from faulty or defective work performed on a construction project constitutes an "occurrence" under commercial general liability (CGL) policies. In turn, contractors have frequently relied on these policies to provide insurance coverage for property damage claims arising from negligent work performed by their subcontractors. However, recent court decisions in a number of states have eroded the definition of an "occurrence," limited coverage under CGL policies, and altered the construction industry's widespread reliance on these policies as a risk-management mechanism.

The South Carolina Supreme Court issued one of the most publicized opinions on this issue in *Crossman Communities of North Carolina, Inc. v. Harleysville Mutual Insurance Company* ("*Crossman I*"). In *Crossman I*, a developer was sued by several homeowners in a condominium development located in South Carolina for defective construction. Specifically, the exterior components of the projects were negligently constructed, leading to water intrusion issues and subsequent damage to non-defective components of the projects. The developer settled with the homeowners and later sought coverage under its CGL policies for the damages incurred. The trial court found that the homeowners' property damage claims were an "occurrence" covered by the CGL policies. On appeal, the South Carolina Supreme Court overruled prior state precedent on the issue, and held that the water damage was a direct result of the faulty construction and therefore could not have been an unintended consequence of the negligent work. Coverage under the CGL policy was denied. The January 7, 2011 opinion received immediate and widespread criticism from the construction industry.

The South Carolina legislature quickly enacted Senate Bill 431 in the spring of 2011 in an attempt to counter the *Crossman I* decision. The new law provides that South Carolina CGL policies "shall contain or be deemed to contain a definition of 'occurrence' that includes: (1) an accident, including continuous or repeated exposure to substantially the same general harmful conditions; and (2) property damage or bodily injury resulting from faulty workmanship, exclusive of the faulty workmanship." Section 3 of § 38-61-70 also states that the Act applies to "any pending or future dispute" as to "commercial general liability policies issued in the past, currently in existence, or issued in the future." The statute's aim was apparently to remove all CGL policies from the grasp of the *Crossman I* decision.

On May 23, 2011, the South Carolina Supreme Court reheard the arguments from *Crossman I*, reversed course on its prior decision, and issued a new opinion in August 2011 ("*Crossman II*") finding coverage under the CGL policies. Without making reference to the new law, but essentially restating the statutory language, the *Crossman II* court stated its intent to clarify that negligent construction resulting in damage to non-defective components "may" constitute property damage subject to coverage as an occurrence under the policy. As provided by the newly-enacted statute, damage arising from the faulty workmanship itself would not be covered by the policy.

Legislatures in states such as Colorado, Hawaii, and Arkansas have passed similar legislation in response to court decisions limiting CGL coverage for property damage arising from defective construction. However, despite the apparent widespread opposition to these limitations on CGL policies, some state courts continue to rule in favor of limiting coverage. Recently the Supreme Court of Ohio in *Westfield Insurance Company v. Custom Agri Sys., Inc.* ruled that claims for defective construction did not constitute "property damage" caused by an "occurrence" under a CGL policy. While it remains to be seen whether the Ohio legislature will step in and counter the *Westfield* decision, the ruling is a reminder that construction industry participants must remain cognizant of the governing law on this issue in their respective jurisdictions. The failure to do so may be costly to contractors, who may be liable for property damage claims that have been covered by CGL policies in many states.

By Brian M. Rowlson

Construction Contractor Prevails in Court of Federal Claims Bid Protest Action

Recently, the U.S. Court of Federal Claims held in favor of a construction contractor in a bid protest action that was brought against the U.S. Postal Service ("USPS") in connection with the award of a firm, fixed-price contract for replacement of the heating, ventilation, and air conditioning system in the principal post office in Portland, Maine. The Court's decision in *J.C.N. Construction, Inc. v. United States* reaffirms that the Court has jurisdiction over claims for breach of the government's implied duty to fairly and honestly consider offerors' proposals and highlights little-known risks that exist when contracting with the USPS.

In *J.C.N. Construction, Inc*., the contractor argued that the USPS improperly evaluated offerors' proposals and acted arbitrarily and capriciously throughout the procurement. Specifically, after the contractor had successfully protested under the USPS's bid protest process, the contractor contended that the USPS treated it unfairly by allowing the awardee to have inside information about the true scope of work and relaxed scheduling requirements. Indeed, when the awardee's prior contract was not terminated for convenience after the contractor's initial success at the agency-level protest, the awardee was able to significantly reduce its price under the revised solicitation because its bid and insurance costs had already been purchased under the original contract award and because the public statement of work overstated the work, as the awardee knew privately. In short, the USPS's mishandling of the procurement provided an improper advantage to the awardee and constituted a breach of the government's implied duty to consider proposals fairly and honestly in the earlier solicitation for the same work.

In response to these claims, the USPS argued that the contractor waived its claim associated with inaccuracies in the second solicitation issued by the USPS by failing to raise these inaccuracies with the USPS before the close of bidding. In addition, the USPS argued that the Court did not have jurisdiction over the contractor's claim that the government breached its implied duty to fairly and honestly consider the contractor's proposal. The Court rejected these arguments, finding that the inaccuracies in the second solicitation were latent and, as a result, the contractor was not required to raise this issue before the close of bidding under the second solicitation. In addition, the Court held that it had jurisdiction over the contractor's claims for breach of the implied covenant of fair and honest consideration.

Despite the Court's finding in favor of the contractor on the merits of its claims, the Court declined to grant the contractor's request that the Court terminate performance of the awarded contract because the majority of the work required by the contract had already been performed by the time the Court issued its decision. The reason that the contract had neared completion was because the contractor was required by regulation to exhaust the USPS's unique protest process before filing suit in the U.S. Court of Federal Claims and the USPS's protest process, unlike some other US agencies, does not provide for an automatic stay of contract performance. However, the Court did order the USPS to pay the contractor's bid preparation and proposal costs, and there is still the possibility that the contractor will recover a portion of its attorneys' fees under the Equal Access to Justice Act.

This case is significant because it reaffirms that the U.S. Court of Federal Claims has jurisdiction over contractors' claims for breach of the implied duty to fairly and honestly consider offerors' proposals and highlights little known risks of contracting with the USPS.

[The editors note that this article's authors, Mr. Symon and Mr. Beezley, served as bid protestor's counsel in this successful bid protest.]

By Robert J. Symon and Aron C. Beezley

Save Your Own Bacon: Verify Davis-Bacon Act Certifications or False Claims Liability Could Follow

The Sixth Circuit Court of Appeals in *U.S. ex. rel. Wall v. Circle C Construction, L.L.C.*, recently found a general contractor liable under the False Claims Act ("FCA") for submitting certified payrolls which falsely declared that a subcontractor had paid its employees the wage rate required by the Davis-Bacon Act. The court imposed liability on Circle C Construction, L.L.C., the general contractor, even though Circle C had no first-hand knowledge regarding whether its subcontractor actually paid the required Davis-Bacon wages. This case makes clear that a contractor can be held liable under the False Claims Act if it wrongly certifies that a lower-tier contractor paid required Davis-Bacon Act wages when the subcontractor failed to do so, especially where the contractor takes *no action* to verify the accuracy of the certification.

The Circle C case involved a construction contract with the Army to perform work at Fort Campbell. As required by federal regulations, the contract required Circle C to submit complete and accurate certified payroll and to ensure that subcontractors paid employees according to the Davis-Bacon wage determinations in the contract. Although Phase Tech was Circle C's electrical subcontractor on the project, it performed this work without executing a subcontract. Circle C provided Phase Tech with the wage determination excerpts from its prime contract, but did not (1) discuss the Davis-Bacon requirements with Phase Tech; (2) provide a blank certified payroll form to Phase Tech; or (3) verify whether Phase Tech submitted certified payroll during project performance. According to the court, Circle C "lacked a protocol or procedure to monitor Phase Tech's employees' work on the Fort Campbell project and did not take measures to ensure payment of proper wages under the Davis-Bacon Act."

During the project (from 2004 to 2005), Circle C submitted certified payroll for every subcontractor except Phase Tech. In 2008, after the False Claims Act case was commenced, Circle C asked Phase Tech to submit new certified payrolls for 2004 and 2005. Circle C ultimately submitted the certified payrolls to the government without verifying the accuracy of the documents.

Each of the certified payrolls contained a certification that the court decided was false under the FCA. Based on this certification by Circle C, the government identified 62 false payroll certifications among the certified payrolls submitted by Circle C. The government alleged the certified payroll was false in two respects: (1) the payroll was not "complete" as certified because Circle C failed to submit payroll for Phase Tech employees; and (2) the 2008 payroll wrongly represented that Phase Tech employees were paid the required Davis-Bacon wage rate.

The Sixth Circuit agreed with the government that these payroll certifications constituted false certifications under the FCA and that Circle C was liable for damages. In making its ruling, the Sixth Circuit recognized an important legal distinction regarding contractor liability for false Davis-Bacon Act certifications; namely, the court held that a contractor can only be held liable under the FCA based on false Davis-Bacon certifications when the allegedly false statement is made about the *amount* of wages paid. Cases cannot be brought under the FCA where the false statement concerns the *classification* of employees under the Davis-Bacon Act, a determination that requires analysis of complicated federal regulations regarding how certain laborers are classified for the purpose of determining the applicable wage rate. This particular legal ruling is consistent with prior court cases on that issue.

The facts of the Circle C case show that Circle C could have avoided FCA liability by taking two precautions with respect to submitting certified payrolls to the government. First, the 2008 certified payroll submitted by Circle C clearly showed that the wages being paid by Phase Tech were below the amount required by the Davis-Bacon Act. A quick comparison of Phase Tech's payroll with the wage requirements of the statute would have made this fact apparent. Second, Circle C was held liable for falsely certifying that the certified payroll it submitted was "complete." Circle C could have avoided liability by ensuring that complete certified payrolls were submitted for all subcontractors.

BABC's lawyers are aware that the U.S. government is focusing on Davis-Bacon compliance throughout the

country. While the general contractor is not required to audit each weekly payroll by each subcontractor, it is prudent to adopt a protocol for checking for missing certifications, for spot-checking certifications for obvious errors (classifications of mechanics as laborers, for example), and, where a problem appears, arranging for interviews of randomly selected employees of one or more subcontractors. Subcontractors must also ensure compliance. While the general contractor may face generally only financial penalties, the subcontractor will often face the death-knell of debarment.

By Thomas Lynch

Is a Developer's Arbitration Clause Effective Against a Third Party Owners' Association?

The construction of large condominium and multi-home development projects presents a number of challenges for courts in interpreting the applicability of the various necessary agreements, declarations, restrictions, etc. among the competing interests on a project. In *Pinnacle Museum Tower Assoc. v. Pinnacle Market Development (US), LLC*, the California Supreme Court addressed just such a situation when a condominium developer sought to enforce an arbitration clause contained in its recorded declaration against the third party owners' association for the condominium.

In that case, the developer constructed a mixed-use residential and commercial common interest community in San Diego, California. Pursuant to the requirements of California law, the developer drafted and recorded a "Declaration of Restrictions" to govern its use and operation of the project. The declaration contained a number of easements, restrictions, and covenants, and established an owners' association which was responsible for managing and maintaining the project property. The declaration also included an arbitration clause which provided that, by accepting a deed for any portion of the property, the owners' association and each condominium owner agreed to waive their right to a jury trial and instead agreed to have any construction dispute resolved exclusively through binding arbitration. Further, the individual owners entered into purchase agreements that were signed subject to the terms and conditions of the declaration.

Following completion of the development, the owners' association filed a construction defect suit against the developer. In response, the developer filed a motion to compel arbitration, citing the arbitration clause in the declaration. Finding against the developer, the lower appellate court held that the arbitration clause could not be binding against the owners' association. The court reasoned that the agreement to arbitrate did not provide the owners' association sufficient notice, time to consider the agreement, or an opportunity to consent, because the association was not a party to the declaration and did not even exist when the developer first filed the declaration.

The California Supreme Court overruled and held in favor of the developer on the motion to compel arbitration. The Court reasoned that the authority of the owners' association to consent to the arbitration agreement was effectively delegated to the individual owners of the condominiums. Via the terms of the purchase agreements, the owners and the developer had an expectation that the terms of the declaration would govern their interactions, and the owners' association, which represented the interests of the owners, could not frustrate those expectations by claiming an exemption from the provisions of the declaration as a non-party. The Court was further influenced by the judicial and legislative interests that favor arbitration as an efficient and cost-effective alternative means to resolve disputes.

The Court's application of the arbitration clause to the third party owners' association demonstrates the lengths to which courts will often go to funnel parties into the use of agreed alternative dispute resolution methods. Planned community developers and owners should pay particular attention to this decision as they draft future declarations and other development-related instruments, but owners and contractors in other complex projects should also take heed when drafting or entering into complex agreements with multiple parties.

By Aman Kahlon

Contractor Recovers Delay Costs Despite No-Damage-for-Delay Provision

Despite a no-damages-for-delay provision in the construction contract, a North Carolina appellate court decided in *Southern Seeding Service, Inc. v. W.C. English, Inc.*, to allow a contractor's delay claim for additional labor and material costs under the contract's equitable adjustment provision.

Southern Seeding Service, Inc., a subcontractor, provided grassing work on a transportation project in

Greensboro, North Carolina, pursuant to a subcontract with W.C. English, Inc. The subcontract, which paid Southern Seeding a unit price for seeding and mulching services, contained two provisions relevant to payment for project delays: an equitable adjustment provision and a no-damages-for-delay provision.

The project was delayed 256 days beyond its originally scheduled completion date. Southern Seeding invoiced W.C. English for its additional unit costs for labor and materials arising from the delay. The trial court ruled Southern Seeding was barred by the no-damages-for-delay provision from any additional compensation due to the delay. Southern Seeding appealed.

The appellate court distinguished the no-damages-for-delay provision and the equitable adjustment provision, finding that each provision allocated distinct risks which should be treated separately. The no-damages-for-delay provision barred only damages resulting from delay to the extent such damages were not compensated to W.C. English by the project owner or another third party. The equitable adjustment provision, on the other hand, stated that the unit prices in Southern Seeding's subcontract were "based on the assumption that the contract will be completed within time as specified in the specifications at time of bidding. Should [Southern Seeding's] work be delayed beyond said time without fault on [Southern Seeding's] part, unit prices herein quoted shall be equitably adjusted to compensate" Southern Seeding for its increased cost.

The court ruled that the equitable adjustment provision allowed Southern Seeding to recover its "market driven cost increases associated with material and labor costs" incurred after the originally scheduled completion date. Such costs, it found, were the result of conditions which significantly differed from those indicated in the subcontract and contemplated by the parties, and as such, recovery of these costs was not prohibited by the no-damages-for-delay provision. The court also allowed Southern Seeding to seek recovery of such costs, to the extent not collected from W.C. English, under the payment bond for the project.

Contractors may note several important contracting pointers from the *Southern Seeding* opinion. First, a contractor should identify each contractual provision providing a basis for recovery in addition to the contract price. When a changed condition arises, or a project suffers delays, the contractor should ask whether the change implicates any entitlement provision to form the basis for recovery of its increased costs (noting that the condition may implicate more than one contractual provision). Second, as demonstrated by Southern Seeding's repeated letters to W.C. English in the above-described project, a contractor facing increased costs for a changed condition should follow all contractual notice requirements, citing every potential contractual basis for its claim (or, alternatively, citing no specific clause, but instead relying on "the contract and applicable law"), to prevent any allegation that the contractor waived its contractual right of recovery. Recovery seemingly barred under a no-damages-for-delay provision may in fact be permitted by an equitable adjustment clause or other similar provision in a construction contract.

Finally, for owners, contractors, and subcontractors, Southern Seeding "won" this argument when it successfully negotiated a contract adder that expressed the basic assumption for its unit prices. Absent that important provision to the changes clause, it is likely the general contractor would have prevailed, even if such a result might be deemed unfair.

By Monica L. Wilson

Are You Sure? Strict Construction of Conditions of the Performance Bond

A recent case from the Federal court that supervises the trial courts in New York, Connecticut, and Vermont, *Stonington Water Street Associates v. National Fire Insurance Company of Hartford*, is a caution to be mindful of the suretyship conditions contained in the AIA A-312 performance bond.

The case involved the construction of a $20 million condominium complex in Connecticut. Stonington, the owner, contracted with a local general contractor to build the complex. In return, the general contractor secured National Fire Insurance Company of Hartford to act as surety, and National Fire executed an AIA A-312 performance bond in favor of the general contractor. As is customary, the terms of the AIA A-312 performance bond provided that National Fire would assume the responsibilities of the general contractor for defective work and, if necessary, complete the project upon the occurrence of certain circumstances enumerated in the bond form.

The construction of the condominiums proved difficult. The project experienced three costly delays due

to a fire, installation of defective materials, and a burst sprinkler hose. As a result, the financial condition of the general contractor deteriorated to the point that Stonington considered declaring the general contractor in default. Ultimately, the general contractor ceased working, and the owner hired replacement contractors to complete the project.

Two months after the general contractor stopped working, Stonington notified National Fire that it was terminating the general contractor and asserted that National Fire was responsible for fulfilling the contract's obligations. National Fire denied coverage on the grounds that Stonington had failed to strictly comply with the terms of the performance bond. Stonington then filed suit in federal court.

The trial court agreed with National Fire. Construing the terms of the construction contract and the performance bond together, the trial court reasoned that the owner had to fulfill several conditions necessary to invoke the surety's performance. First, under Section 3.2 of AIA A-312, the owner must declare a contractor default and formally terminate the general contractor, a process that requires written certification from the architect and seven days notice to the surety. Additionally, under Section 3.3 of AIA A-312, the owner must agree to pay the surety the balance of the contract price.

Stonington had not fulfilled either of these conditions, which prejudiced the ability of National Fire to protect its interests. Specifically, the unilateral hiring of replacement contractors deprived the surety of the opportunity to mitigate its damages. National Fire did not have the chance to participate in the selection of the replacement contractors, which may have been more expensive than the contractors National Fire would have selected. Moreover, because the owner had paid the replacement contractors the balance of the contract price, the surety had no further protection against the owner. In other words, because the owner depleted the contract balance, the surety was exposed in the event it had to complete construction. As a result, the trial court held that the terms of the performance bond were materially breached.

Upon review, the appeals court affirmed without requiring a showing of prejudice. The court agreed that the surety's interests were compromised because the owner did not properly abide by the terms of the performance bond. They concluded that the requirements to give notice and pay the contract balance to the surety were conditions precedent to the surety's performance. Without satisfying the conditions precedent, the surety's obligations did not come into existence. Additionally, they concluded that prejudice in fact was shown, even though that showing was not required.

While there is some split among courts applying the AIA form language, this decision, from an important commercial area of the country, stands for the proposition that an owner must be faithful in adhering to the exact terms of the performance bond if there is any likelihood that it will need to be invoked. Moreover, many courts hold the claimant to strict compliance with the notice requirements of the bond, whether or not the surety is prejudiced by the lack of compliance.

By J. Wilson Nash

Economic Development Group Joins Bradley Arant Boult Cummings

Well-known economic development attorney Alex B. Leath has joined the firm as a partner, and he brings with him three associates: David H. Cooper, Jr.; Charles B. "Trey" Hill III; and Matthew A. Hinshaw. Mr. Leath and his colleagues join the Economic Development and Incentives Group and State and Local Tax Practice Group. These additions continue Bradley Arant Boult Cummings' strong strategic growth over the past year, during which more than 60 attorneys have joined.

Mr. Leath has played a significant role in numerous economic development projects in 23 states over the last two decades. Recently, he advised Volkswagen Group of America on the site selection process for the company's U.S. manufacturing headquarters. Mr. Leath has a history of partnering with construction firms in all stages of the economic development process to assist them in understanding the opportunities available when large construction projects are initiated by owners/ developers.

The addition of Mr. Leath's group helps expand the firm's footprint in the national and international markets enjoyed by the Construction and Procurement Practice Group.

Bradley Arant Lawyer Activities:

U.S. News recently released its "Best Law Firms" rankings for 2013: **BABC's Construction Practice Group** is ranked as Tier One nationally. The Birmingham, Nashville, Jackson, and Washington, D.C. offices received similar recognition in the metropolitan rankings.

Jim Archibald, Aron Beezley, Rick Humbracht, Russ Morgan, David Pugh, and Mabry Rogers are recognized by *Best Lawyers in America* in the category of Litigation - Construction for 2013.

Aron Beezley, **Ralph Germany**, **David Owen**, **Doug Patin**, **David Pugh**, **Bill Purdy**, **Mabry Rogers, Wally Sears,** and **David Taylor** are recognized by *Best Lawyers in America* in the area of Construction Law for 2013.

Mabry Rogers and **David Taylor** are also recognized by *Best Lawyers* in the areas of Arbitration and Mediation for 2013.

David Owen is declared by *Best Lawyers in America* as the "Lawyer of the Year" in Birmingham in Construction Law for 2013.

Jim Archibald recently published an article in the August edition of *Construction Executive* entitled "Executive Insights: How Can Contractors Minimize the Potential for Disputes?"

David Taylor became the Chair of the Tennessee Association of Construction Counsel in December.

Eric Frechtel, **Steven Pozefsky** and **Aron Beezley** will publish an article for the upcoming edition of *Federal Construction Magazine* on the U.S. Small Business Administration's ("SBA") Office of Inspector General's recent report on the SBA's Mentor-Protégé Program.

Michael Knapp, **Ryan Beaver**, **Brian Rowlson**, **James Warmoth** and **Monica Wilson** recently attended the ABC Carolinas Construction Conference in Wilmington, NC, where BABC's Charlotte office was recognized as the ABC Carolinas Associate Member of the Year for 2012.

BABC's Nashville Office hosted the Pulte Summit for national homebuilder PulteGroup November 13th through 15th.

Brian Rowlson recently authored an article summarizing North Carolina's latest lien law revisions that was selected for publication in the Florida Bar Journal and will also be published in the Division 7 newsletter for the ABA Forum on the Construction Industry.

Russ Morgan attended the Associated General Contractors of America luncheon on November 6.

David Taylor recently spoke in Phoenix, Arizona to the National Meeting of the Construction Specifications Institute (CSI) on "Allowances and Owner Contingencies".

Jerry Regan, **Steve Pozefsky**, **Tom Lynch** and **Aron Beezley** conducted a seminar on October 24th on The Fundamentals of Joint Venturing in Construction for the Associated Builders and Contractors, Inc.'s Metro Washington Chapter.

David Taylor spoke to the construction/production team on October 23rd at the Hemlock Semiconductor plant in Clarksville, Tennessee on "Tennessee Lien and Licensing Laws"

David Pugh was recently named as a member of the Board of Directors for Design-Build Institute of America's South Central Region.

Jim Archibald, Axel Bolvig, Ralph Germany, **Doug Patin**, **Bill Purdy**, **Mabry Rogers**, **Wally Sears**, **Bob Symon** and **David Taylor** were named to *Super Lawyers* for 2013 in the area of Construction, Real Estate, and Environmental Law.

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*.

For more information on any of these activities or speaking engagements, please contact Terri Lawson at 205-521-8210.

NOTE: YOU CAN FIND THIS NEWSLETTER AND PAST NEWSLETTERS ON OUR WEBSITE. IF YOU ACCESS THIS NEWSLETTER ON OUR WEBSITE, CASE-LINKS WILL BE AVAILABLE UNTIL THE NEXT NEWSLETTER IS PUBLISHED. WE DO NOT VIEW THIS NEWSLETTER AS WRITTEN FOR ATTORNEYS BUT RATHER FOR PRACTICING MEMBERS OF THE CONSTRUCTION INDUSTRY. IF YOU OR YOUR LAWYER WOULD LIKE TO KNOW MORE INFORMATION ABOUT A PARTICULAR ARTICLE OR WOULD LIKE THE CASE CITES, YOU MAY GO TO WWW.BABC.COM/PG_CONSTRUCT.CFM OR CONTACT ANY ATTORNEY LISTED ON PAGE 10 OF THIS NEWSLETTER.

READER RESPONSES

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

Your Name:

☐ I would like to see articles on the following topics covered in future issues of the BABC *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

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