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The Site Report

Construction Law Insights

April 25, 2022

Welcome to the fourth issue of 2022 of *The Site Report*.

We are very pleased to announce that our Construction Practice Group is growing as we have recently welcomed three new attorneys who will be assisting clients in this area of law.

[Jonathan A. Deasy](#) is an Associate in our Pittsburgh office. His primary area of practice is litigation, with an emphasis on commercial and corporate litigation. Jonathan routinely represents product manufacturers, distributors, contractors, and employers at all stages of litigation up until time of trial in defense of toxic tort, products liability and premises liability claims. In addition, he handles general liability matters involving the defense of personal injury, property damage, and loss of business income claims. He received his B.S. from Pennsylvania State University and his J.D. from Duquesne University School of Law. Jonathan is admitted to the Pennsylvania Bar, West Virginia State Bar and the United States District Court for the Western District of Pennsylvania.

[Jacquelyn N. Miner](#) is an Associate in our Winston-Salem office. Her primary area of practice is litigation. Jacquelyn received her B.A. from Mars Hill University and her J.D. from The College of William and Mary Marshall Wythe School of Law. She is admitted to the North Carolina State Bar.

[Kelsie A. Wiltse](#) is an Associate in our Winston-Salem office. Her primary areas of practice are litigation and employment law. She received her B.A. from University of North Carolina at Charlotte and her J.D. from Elon University School of Law. Kelsie is admitted to the North Carolina State Bar and will be swearing in tomorrow. Congratulations to her!

At Spilman, we are dedicated to providing the services needed to address all of your legal issues. The addition of these three attorneys helps us attain an elevated level of service. Please join us in welcoming them to the firm!

As always, thank you for reading.

[Stephanie U. Eaton](#) - Co-Chair, [Construction Group](#); Vice Chair of Southern Offices, Litigation Department; Editor, *The Site Report*

and

[Julian E. Neiser](#) - Co-Chair, [Construction Group](#); Vice Chair of Northern Offices, Litigation Department

Lessons in Arbitration Construction Dispute

By [Lee D. Denton](#) and [Alexander L. Turner](#)

In December 2021, Alex Turner, Jeff Patton, and Lee Denton in Spilman's Winston-Salem office arbitrated a construction dispute in Norfolk, Virginia on behalf of Sure Lift, Inc. The arbitration, required by the parties' contract, resolved Sure Lift's claims against the general contractor on a Virginia Department of Transportation ("VDOT") project for breach of contract, breach of the covenant of good faith and fair dealing, and payment under the payment bond. The project involved the jacking and repair of five pairs of bridges along I-64 in Williamsburg, Virginia. However, due to poor project management by the general contractor and the general contractor's failure to perform necessary preliminary work for Sure Lift's scope of work, Sure Lift was delayed by more than a year in completing its original scope of work. As a result, Sure Lift sought approximately \$1,100,000 in contract damages because of the general contractor's failure to pay Sure Lift all of the contract amounts due under the subcontract. At arbitration, Sure Lift not only proved that the general contractor improperly withheld contract amounts that were due to Sure Lift under the subcontract, but it also successfully defended against the general contractor's counterclaim for its inflated back charges.

There were significant lessons to be learned from this arbitration. The biggest was the need for accurate and timely record keeping, and getting everything in writing. Oral agreements or statements have very little evidentiary weight in comparison to contemporaneous, written communications and documentation. If there is a change to your scope of work, cost of your scope of work, or time to complete your scope of work, a timely written change order is an absolute requirement! Even if the change order is not granted, putting the contractor or owner on notice of the change will significantly help you recover amounts due to you if you have to sue in the future. The change order should include both the increase in cost and time needed to complete the change in the scope of work. It is also very important to keep detailed, organized written daily notes about everything the on-site crew did each day on the project, including what the crew did, who did it, where they did it, and who told them to do it. These daily notes should include any interruptions or disruptions you experienced each day to your scope of work, and who, if anyone, you told about those interruptions or disruptions. Moreover, if you are experiencing issues or delays on a project, you must communicate that in writing as well, either by email or by letter, to show that you put the contractor and/or owner on notice of the problem. Often, providing timely notice of problems is required by the contract, so it is important that you read and understand the provisions of the contract before it is signed. Even after the contract is signed, be sure that the project supervisors and foreman read and understand the contract requirements so that they know how to comply with them. Additionally, if the higher level subcontractor or general contractor sends a self-serving letter that does not accurately reflect the realities of the project and blames you for delays or substandard work, a written response or objection must be sent. If you do not address issues or make change orders in writing, then it is easy for the higher level subcontractor or general contractor to say that the change or contract modification did not happen. Good contemporaneous documentation is key to being successful in future litigation. It may seem to be a waste of time and a hassle when you are in the thick of the project, but you will be happy you did it if a problem arises and you have to sue or are being sued as a result of that problem. If you remember nothing else from this article, let it be this: **Put everything in writing.**

[What are the 5 Biggest Companies, Factories Bringing New Jobs to North Carolina?](#)

"Just last month, economic developers and Gov. Roy Cooper announced the latest boon for the NC job market: an automaker's arrival."

Why this is important: North Carolina has made it a point to court large companies to build new facilities in the state through aggressive economic development incentives. The group of companies cited in this article is only a fraction of the facilities being built in the near future, with more recent announcements from companies like Nucor Steel. Construction businesses should be on the lookout for RFPs and other opportunities to participate in these projects, some of which will entail highly specialized work and materials. --- [Steven C. Hemric](#)

New Law Offers Home Construction Incentives to Compliment Economic Development Push

"New West Virginia home construction incentives could offset housing shortages for middle-class, skilled workers."

Why this is important: West Virginia has long suffered from a lack of housing for middle class, skilled workers, which has complicated economic development programs that seek to introduce new business and industries into areas that lack appropriate housing. Educated and skilled workers are already difficult to locate and attract in today's market, and housing issues make hiring such workers even more difficult. Seeking to remedy this problem, Governor Justice recently signed the Build WV bill, a piece of legislation that includes property tax credits for individuals, Business and Occupation ("B&O") tax exemptions for businesses, and housing construction incentives for builders and developers. Time will tell if these efforts can be sufficient to spur a wave of new construction in a state that sorely needs it. --- [James E. Simon](#)

Who Should Shoulder the Cost of Construction Delays?

"Global supply chain disruptions are wreaking havoc on the construction industry, but who is ultimately responsible when materials shortages cause delays?"

Why this is important: The answer to this question lies in your construction contract. The contract language determines who is responsible for delays. That is why it is so important to carefully review and understand your contract. In the wake of the Bipartisan Infrastructure Law, and increased demand for commercial and residential construction projects, construction materials are in high demand. At the same time, COVID-19 impacted the global supply chain for construction materials, and these disruptions are having a lingering impact on current and pending construction projects. Given the material shortages and high cost for materials that are available, all parties to a construction project need to meet and discuss existing and anticipated materials shortages, as well as acceptable workarounds, before signing on the dotted line. --- [Stephanie U. \(Roberts\) Eaton](#)

US Construction Tech Firms Brace for Increased Cyberattacks

"Experts worry hackers could target the structural integrity specs listed for projects in automated systems."

Why this is important: At first blush, most people may not associate cybersecurity with the construction industry. When considering it, thoughts may run to industries like banking. However, the article discusses why cybersecurity is quickly becoming a concern for those in the construction industry. During the manufacturing process, construction companies use automation to mix and measure materials or chemicals. During post-manufacturing, companies use automation to test the structural integrity of materials. Those automated processes leave vulnerability points cyberattackers like to target. Material failure is a real possibility if cyberattackers can compromise them. The article discusses how the construction industry generally has been considered a laggard when it comes to implementing cybersecurity solutions. However, that may change. Several companies discussed in the article are taking steps to improve their cybersecurity, including adding cybersecurity employees to their team and, in one instance, acquiring a cybersecurity-based company. The possibility of cyberattacks was already a concern at the beginning of the year. Commentators warn that the possibility has increased after Russia invaded Ukraine and the U.S. and others imposed severe economic sanctions on it. There is a real fear that Russia may use cyberattacks to retaliate. Those in the construction industry need to consider how they can implement cybersecurity solutions into their businesses. --- [Nicholas P. Mooney II](#)

[3D Printed Homes will be the Teslas of Housing, Says ICON CEO](#)

"On top of that, this decrease in quality hasn't enabled the quantity we need; the US builds two million fewer homes than needed each year."

Why this is important: In the wake of the COVID-19 pandemic, supply chain backups as a result of the increase in cost of materials and labor shortages have led construction companies to innovative solutions. In an effort to find cost effective ways to meet the current demands of the housing market, ICON Build created a gantry-styled 3D printer, operated from a smart device, to build architecturally innovative homes. Using a 3D printer to build homes can decrease both the cost of labor/materials and construction time without jeopardizing the structural soundness of the home. Additionally, the use of 3D printers significantly reduces the amount of waste on each site. As 3D printed homes become increasingly more common, construction companies should review warranty provisions in purchase and leasing contracts for 3D printers. Finally, because of the rapidity of 3D printed homes as opposed to the process of human labor for stick-built homes, construction companies should assess scheduling in order to mitigate potential for delays and liability exposure. --- [Kelsie A. Wiltse](#)

[Fort Bliss' New Barracks will be the Largest 3D-Printed Building in the Western Hemisphere](#)

"While there may not be a cool name for the project, the goal is pretty cool: three 5,700 square-foot buildings to be used as barracks on Fort Bliss, Texas, completed in just 10 months."

Why this is important: The use of 3D printing technology to construct housing facilities for the U.S. Army solidifies that 3D printed buildings are no longer a fringe construction technique. The facilities had to meet the U.S. Department of Defense's Unified Facilities Criteria for additive concrete construction. Further, the barracks are also substantially larger than homes that have been printed using this technology. This type of construction -- which reduces some of the site construction labor -- comes at a time when firms are having trouble locating salaried and hourly construction labor. Moreover, 3D printing lacks some of the material supply chain problems facing traditional stick-built construction. With these positive attributes, 3D printing is likely to be used on other military facilities and for other types of multi-family residential buildings, growing Texas-based ICON's business nationwide and making 3D construction mainstream. --- [Stephanie U. \(Roberts\) Eaton](#)

[SOUTHEAST CAISSONS, LLC, Plaintiff, v. CHOATE CONSTRUCTION COMPANY, CHOATE CONSTRUCTION GROUP, LLC, and FALCON ENGINEERING, INC, Defendants](#)

Why this is important: This case has a long history that provides a multitude of lessons for both construction businesses and lawyers. From the perspective of active and future projects, this most recent opinion from the North Carolina Court of Appeals highlights the importance of, among other points, not starting work without a signed contract; ensuring all parties understand the role/responsibility of the inspectors, engineers, and architects involved on the project; and independently documenting added costs and their causes. The plaintiff subcontractor in this case was not able to recover on its claims in large part because it (1) started work without a signed subcontract; (2) misinterpreted the role of the engineer inspecting the subcontractor's work; and (3) relied on the documentation of other parties to justify its claims, rather than independently documenting its extra work and costs as the project progressed. Speaking to a construction attorney about best practices in documenting ongoing projects and potential claims, as well as auditing standard operating procedures, can be a great way to avoid these types of issues when a dispute develops in the future. --- [Steven C. Hemric](#)

Featured Attorney Profile

[Alexander L. Turner](#)

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Alex is a Member in our Winston-Salem office. His primary area of practice is complex litigation, including commercial and construction litigation.

Alex's experience includes representing clients in commercial and construction litigation covering all aspects of contract and construction disputes in Federal and State Courts, before the West Virginia Mass Litigation Panel, the Supreme Court of Appeals of West Virginia, and the Supreme Court of North Carolina. His experience before these courts includes managing the prosecution and defense of complex matters, including crafting and implementing litigation strategy, taking and defending fact and expert witness depositions, arguing motions before both Federal and State Courts, and trying State Court matters.

Alex is a member of the American Bar Association, The West Virginia State Bar, Virginia Bar Association, DRI – The Voice of the Defense Bar, and the Defense Trial Counsel of West Virginia. He received his B.S. from Washington and Lee University and his J.D. from Pace University School of Law. Alex is admitted to the Virginia State Bar; West Virginia State Bar; North Carolina State Bar; the United States District Courts for the Eastern, Middle, and Western Districts of North Carolina; the United States District Court for the Eastern District of Virginia; and the United States District Courts for the Southern and Northern Districts of West Virginia.



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