



## Issue 1, 2020

### ● Welcome!

If we have learned anything, 2020 has been an unexpected year. The pandemic has impacted the construction industry -- as it has with all industries -- over the past several months. Another thing that we know is that commerce continues and that includes construction projects.

Our goal at Spilman is to look at trends, anticipate effects, and help our clients plan for the future. With that in mind, we have reconstructed this e-newsletter. Starting with issue 1, we are bringing you top news stories from the industry, but we also are turning to our attorneys to explain WHY those stories are important and how they can impact you and your business.

If there are certain topics on which you would like us to focus, please [let us know](#).

If you have a colleague that you believe should be reading this e-newsletter, let us know. You can simply [email us](#) their contact information with The Site Report in the subject line.

We hope you find this issue interesting and informative. As always, our attorneys are here to serve as an extension of your team. Feel free to contact us at any time with questions.

Thank you.

[Spilman Thomas & Battle Construction Practice Group](#)

---

### ● When Should Contractors Use COVID-19 Liability Waivers?

*"According to legal experts, pandemics could be added to those events that do not qualify for extensions of time under force majeure contract provisions."*

**Why this is important:** The COVID-19 pandemic should teach everyone that nothing should be taken for granted, and that especially is true with any type of commercial contract. Issues such as delays, force majeure, and other time/efficiency impacts need to be revisited with an eye towards widespread health issues.

Waivers are one issue that may be forgotten. These agreements can be between any number of parties, to include contractors and owners. For example, a mutual waiver can exist between owners and contractors where the parties can agree to not sue each other if employees come down with COVID-19 or any other illness. Whether that waiver will be enforceable against employees who actually get sick is another issue.

Generally, any waiver from an employee that attempts to exonerate an employer from responsibility is destined to fail. They can be asked to waive claims against non-employers, such as other contractors or an owner. Employees also can be required to wear protective equipment and agree to not come to work if they have certain symptoms.

As with any contract, especially those involving employees, an attorney familiar with state law issues should be consulted. --- [Julian E. Neiser](#)

---

## ● [How Climate Change is Changing the Way We Build](#)

*"These different load conditions brought about by an area's local weather conditions affect various aspects of a building's design, from the support structure to the materials used in construction."*

**Why this is important:** In the immortal words of Bob Dylan, "the times they are a-changin'." As noted in this article, design professionals will be required to take into consideration the effects of climate change when designing and constructing the buildings of the future. There are more intensified and frequent hurricanes on the East and Gulf Coasts, more devastating wildfires on the West Coast, and more frequent powerful tornados in the heartland. Mother Nature has been particularly cruel to the United States since the new millennium. Putting aside the politics involved with climate change, the bare facts reveal in the past 20 years we have seen more frequent category 5 hurricanes, F5 tornados, 100-year floods and devastating wildfires. As with most devastating events, both manmade or otherwise, we as a society have to learn from past experience and improve our society both culturally and the physically. This means as climate change advances, building codes will continue to evolve, the standard of care for design professionals will change, and the historical data that is utilized by various governmental entities for permitting, zoning and city planning will have to take into account the changing climate.

It would be foolhardy and inviting a claim for a design professional or construction professional to turn a blind eye to climate change. As a result, consulting with an attorney about your contracts in terms of what the design specifications are for a building that takes into account sea level rise, wind resistance, and load impacts from increased precipitation could prevent a future claim but also educate you on the ever-evolving standard of care for the construction industry and the impact of climate change on said standard of care. --- [Matthew W. Georgitis](#)

---

## ● [Oregon Convention Center Renovation: A Model for Equity in Public Projects](#)

*"By starting with an equity lens framework, the procurement process led to a fair and competitive response resulting in the largest public improvement contract awarded to a BIPOC Prime Contractor in Oregon at the time of the award."*

**Why this is important:** The completion of the Oregon Convention Center renovation project in Portland, Oregon shined a bright light on the important contributions that minority- and women-owned businesses can make to the rebuilding of our nation. The Convention Center Renovation Project was the most inclusive public project in the history of the Portland region. With the leadership of Colas Construction, the Metro Council, Raimore Construction, and National Association of Minority Contractors - Oregon dedicated to making a difference in the community by utilizing a more equitable workforce, this renovation was completed within the budget and schedule deadlines with a workforce that was 40 percent people of color. Moreover, 47 percent of subcontract dollars went to minority-owned businesses, and 4 percent of subcontract dollars were awarded to women-owned businesses. Projects like this further the dismantling of systematic racism in the construction industry, promoting inclusion and the use of local workforces to complete major public projects. Click [here](#) for NAMC's full equity report for the project. --- [Stephanie U. \(Roberts\) Eaton](#)

---

## ● [Licensing Board Offers Virtual Continuing Education Courses](#)

## for General Contractors Amid COVID-19

*"In light of COVID-19, the Licensing Board has opened registration for 'live' virtual continuing education classes, enabling general contractors to complete all eight hours of required continuing education from the comfort of their own home or office."*

**Why this is important:** North Carolina-licensed contractors should act quickly to take advantage of newly available online options to obtain their continuing education hours before the end of the year. Starting for the first time in 2020, at least one qualifier for a North Carolina-licensed building contractor must complete eight hours of continuing education each year, two of which must be comprised of a North Carolina Licensing Board-approved curriculum. The qualifier must either (1) attend an approved, in-person, live class, or (2) view an approved live or recorded video or internet presentation in an environment where it could be verified that the qualifier viewed the presentation. If a licensee fails to have at least one qualifier complete the continuing-education requirements, the licensee risks its license becoming invalid. When a contractor's license is invalid, it is prohibited from entering into any new construction contracts, so obtaining the requisite continuing education hours is very important.

COVID-19-created limitations on the number of people that can gather indoors, stay-at-home restrictions, and general health concerns have limited qualifiers' ability and willingness to attend in-person training. As a result, the Board has sped up its timeline to ensure that it had a process in place by which all North Carolina qualifiers would have access to Board-approved online classes with which to complete their continuing-education requirements. The Board recently has approved the use of Zoom, WebEx, GoToMeeting, and other videoconferencing programs as acceptable internet platforms for qualifiers to use to obtain the necessary continuing education hours. These are not on-demand classes, and each one has a limited class size. So, with only four months left in 2020 and access to in-person classes continuing to be dicey, licensees should take advantage of these programs as quickly as possible or face the risk of having the Board declare their license to be invalid. --- [Lee D. Denton](#)

This is an attorney advertisement. Your receipt and/ or use of this material does not constitute or create an attorney-client relationship between you and Spilman Thomas & Battle, PLLC or any attorney associated with the firm. This e-mail publication is distributed with the understanding that the author, publisher and distributor are not rendering legal or other professional advice on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use.

Responsible Attorney: Michael J. Basile, 800-967-8251