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# The Site Report

## Construction Law Insights

**July 26, 2022**

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

We are extremely pleased to announce that several of the firm's practice groups and attorneys were recognized in the 2022 edition of *Chambers USA*, a directory of leading law firms and attorneys published annually.

Chambers and Partners annually researches the strength and reputation of law firms and individual lawyers across the globe. The research process for the United States includes interviewing lawyers and their clients, including influential general counsel at Fortune 100 companies, high-profile entrepreneurs and significant purchasers of legal services. Considerable credence is given to the opinions of clients. It is always an honor to be recognized for excellent work! You can learn more by visiting our [website](#).

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

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**[The Pain of Inflation: Construction Companies Feel the Pinch as Prices Rise](#)**

*"A recent report from the Associated General Contractors of America states that, from April 2021 through the first quarter of 2022, the price of nonresidential construction components, or inputs, has risen 21%."*

**Why this is important:** What are contractors supposed to do when diesel fuel prices increased 86 percent, plastic-based material costs increased 30 percent, and insulation product prices increased nearly 20 percent from April 2021 through the first quarter of 2022? This article highlights the very real issues of inflation impacting the costs of construction projects. However, many construction contracts do not specifically address what the parties are to do with inflation that has risen more than 20 percent for some non-residential materials. It is important for parties in the bidding and negotiation phase of contracts to identify and specifically address price increases (and supply chain issues) for materials needed for a job, especially if there will be a greater than 30-day period of time between bidding and the project commencement. Some contractors have even begun to stop price guarantees longer than 24 hours. Other contractors have turned to fabrication of parts of the construction project off-site, in fabrication facilities, where conditions and labor pricing can be more easily controlled. Still other contractors have stockpiled certain key materials needed to complete the jobs to ensure the price will not change during a project.

It is also worthwhile for parties with projects in progress to review their contracts to identify any price adjustments, escalation clauses, force majeure events or other contractual provisions that may allow for price adjustments during the term of a contract, even if prices were set for an established period of time. That way, it may be possible for the contract pricing to be adjusted, with the requisite notice and communications among the contracting parties required by the contract, and thereby prevent one or more contracting parties to suffer serious financial consequences. If you have questions about whether your bid, draft contract, or contract for a project in progress may allow for price adjustments, then contact our Construction Practice Group leaders. --- [Stephanie U. \(Roberts\) Eaton](#)

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## **Here's When Construction Costs Should Return to More Normal Levels**

*"In 2023 and 2024, CBRE expects annual increases will return to historical averages between 2% and 4%."*

**Why this is important:** It is no secret that the construction industry has been particularly hard hit by the increase in cost for raw materials and labor shortages that began when the pandemic hit in 2020. So when can we expect the prices to return to normal levels? This article provides insights from CBRE's Construction Cost Index Report, and it theorizes that prices will return to normal levels by mid-2023 and 2024. Obviously, not all raw materials will see the same timeline for normalization as others, but at least there is possibly light at the end of the tunnel. --- [Matthew W. Georgitis](#)

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## **New Pennsylvania Law Empowers Localities to Address Affordable Housing, Blight**

*"It allows taxing authorities more options to pass tax abatements or incentives to build or fix up affordable housing."*

**Why this is important:** For every 100 people who need affordable housing in Pennsylvania, an average of only 42 will get it. The Affordable Housing Unit Tax Exemption Act, recently signed into law by Governor Wolf, hopes to increase the amount of affordable housing in Pennsylvania by allowing taxing authorities more options to pass tax abatements or incentives to build or fix up said housing. Through the Act, municipalities now have more power to grant tax incentives to spur affordable housing. This is important because the Act simultaneously addresses two unique housing issues. First, housing prices jumped in Pennsylvania by 14 percent from 2020 to 2021. Second, in areas where population is shrinking, blighted properties are driving down property values. Essentially, cities and counties aren't building enough housing to meet demand, but don't have funding to tear down or renovate blighted properties. Under the Act however, townships, boroughs, or cities are able to grant 10-year tax exemptions on multi-unit buildings where 30 percent of units qualify as affordable housing or when a project repairs a blighted property. Residential property owners and developers, especially those situated in urban areas, should take notice of the Act and review their current property tax liability. Ultimately, those with a stomach for red tape who want to reduce their liability can then do so by identifying qualifying projects and seeking written exemption from the local taxing authority. --- [Jonathan A. Deasy](#)

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## **By Putting Partisanship Aside, North Carolina Ranks No. 1 in America's Top States for Business, with the Nation's Strongest Economy**

*"The Tar Heel State has always been a contender in CNBC's annual competitiveness rankings, rarely finishing outside the top 10 since the study began in 2007.*

**Why this is important:** North Carolina has worked hard to incentivize commercial development in the state, and those efforts are paying off. This new ranking puts North Carolina at number one in the nation, garnering the state even more attention. New businesses means new construction projects, and many of the projects anticipated in North Carolina will involve specialized facilities that could present new opportunities for both in- and out-of-state contractors. With these new projects on the horizon and many out-of-state contractors coming to North Carolina for the first time, project owners, general contractors, and subcontractors should all update their contract forms and/or preferred contract revisions to ensure they comply with North Carolina law. --- [Steven C. Hemric](#)

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## **An Efficiency-First Approach to Decarbonizing Commercial Buildings**

*"But today, there is a growing consensus among commercial building owners and thought-leader engineers that energy efficiency measures should be the first actions taken in any decarbonization and energy transition effort, because efficiency measures are often the lowest hanging fruit, offering quick wins and both short- and long-term economic benefits."*

**Why this is important:** This article is important because it highlights the significant impact that can be made within the construction industry, and among commercial building owners, with the implementation of energy efficiency measures to reduce carbon emissions to net zero by 2050 on a national, if not global, scale. Examples of energy efficiency measures include replacement of inefficient HVAC equipment before it fails, installing sufficient insulation for the climate, use of smart thermostats, and deployment of LED lighting. Implementation of energy efficiency measures where possible, even in existing buildings, can result in big reductions in energy usage. As a case in point, during the period from 2017-2021, Walmart Inc. reduced its annual kWh consumption from one of its South Carolina utility providers by almost 20 percent by implementing its own self-funded and extensive energy efficiency programs, including a change to LED lighting.

While "green" building construction is not a new concept, the emphasis on revisions to building codes to require more efficient building construction has come to the forefront with national and state legislation mandating reduction in carbon emissions to reach net zero emissions by a set future date. For example, in North Carolina, Session Law 2021-165 ("HB 951") led to the North Carolina Utilities Commission's November 19, 2021 Order Requiring Filing of Carbon Plan. Thereafter, on May 16, 2022, North Carolina utility companies Duke Energy Progress, LLC ("DEP") and Duke Energy Carolinas, LLC ("DEC") filed a Petition for approval of their Carbon Plan. On page 6 of their Petition, DEP/DEC explain that their "proposed Carbon Plan is a system-wide plan for the Carolinas designed to aggressively pursue development of new [energy efficiency and demand side management] to 'shrink the challenge' of transitioning the Companies' supply side-resources to a less carbon-intensive" portfolio of electric facilities. On pages 13-14 of Appendix G to their plan, DEP/DEC state that "Fast-tracking the State's adoption of commercial building energy codes will ensure energy efficiency is used at the time of construction or retrofit." Once energy efficiency measures are implemented on a more widespread basis in new and existing buildings, efforts to reach net zero carbon emissions will become more attainable in a shorter amount of time. --- [Stephanie U. \(Roberts\) Eaton](#)

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## **The Tech Treadmill: How Rapidly is the Construction Industry Treading Towards Innovation?**

*"To obtain better utility from public and private investment in large and small construction projects, governments and concerned authorities should assist in implementing innovative technology within the industry to help it enter a new age."*

**Why this is important:** This article makes a compelling case for project owners to help incentivize adoption of new technologies in the construction industry. A number of new technologies exist that span almost the entire industry, but it can be a big risk for a contractor to be the “test case” for an emerging technology on a large project. This risk has slowed contractors’ adoption of many technologies, but cooperation—or even incentivization—from project owners could speed the adoption of beneficial technologies. Participants in projects can address new technologies and the potential risks/rewards to the project associated with using them by including special provisions in their contracts. These provisions can share risk or add incentives for effective use of particular tools. If a project owner identifies a new technology they believe will benefit one of their upcoming projects, they can sometimes incentivize use of that technology by giving preference to bidders that plan to implement the new technological solution, as well. --- [Steven C. Hemric](#)

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## Featured Attorney Profile



**[Glen A. Murphy](#)**  
**Member**  
**Charleston, WV**  
**office 304.340.3840**  
**[gmurphy@spilmanlaw.com](mailto:gmurphy@spilmanlaw.com)**

Glen Murphy is a Member in our Charleston, West Virginia office. His primary areas of practice are general litigation, insurance coverage, insurance bad faith law, and administrative matters before the West Virginia Offices of the Insurance Commissioner. Glen represents insurance clients in litigation, coverage and bad faith disputes in West Virginia. The construction industry can be a true “can of worms” for insurance issues. A prime example is, what is an insurer’s obligation to provide coverage and/or a defense for a claim when a contractual indemnity agreement between a sub-contractor and general contractor is involved? Issues such as these need lawyers who understand and frequently navigate the relationship between contractual agreements and insurance agreements.

Glen received his B.A. from the University of Mississippi, and his J.D. from Cumberland School of Law of Samford University. He is admitted to the West Virginia State Bar, West Virginia Supreme Court of Appeals, United States District Courts for the Northern and Southern Districts of West Virginia, and the United States Court of Appeals for the Fourth Circuit.

Professionally, he has been continually nominated by his peers, since 2017, for inclusion in The Best Lawyers in America in the area of Litigation – Insurance. He is counsel for the West Virginia/Ohio Guaranty Association, is a member of the West Virginia Bar Association, the Kanawha County Bar Association, DRI, and Defense Trial Counsel of West Virginia.

Personally, he is involved in a varied group of organizations including serving as Chair of the Board of Directors for the Regional Contracting Assistance Center, Inc., serving on the Board for the Laurence Jones, III Childhood Language Center, serving on the Board of the West Virginia University Rite-Care Foundation, is an Elder at Bream Memorial Presbyterian Church, and currently serves as the Personal Representative to S.G.I.G., the Illustrious H. Jackson Yost, for the Ancient & Accepted Scottish Rite, Valley of Charleston, West Virginia. He is married to a practicing lawyer, and he and his wife have four children.



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