

SHARE:



[Join Our Email List](#)



[View as Webpage](#)

spilman
thomas & battle

The Site Report

Construction Law Insights

October 29, 2021

As we all know, the COVID-19 pandemic has caused us all to focus in different directions. That has been the case here at Spilman as well. But as we wind down 2021, we wanted to reach back out to our clients and friends with construction industry news. What we have done is looked at trends in the construction industry via news articles. What is different is that we have selected those topics and then explained WHY they are important.

On occasion, we will bring you long-form articles regarding topics that we find important - such as our first and second articles below about climate change and mandatory vaccinations.

It's important to us that you let us know what you think about our insights. We welcome you to reach out any time with thoughts, questions and suggestions.

We hope you enjoy reading *The Site Report*.

[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

[The Effect of Our Changing Climate on Building Design](#)

By [Matthew W. Georgitis](#)

Over the past couple decades, building codes have responded to disasters, rather than averting them. Resilience is now an essential design element needed to withstand our changing climate.

In the immortal words of Bob Dylan, "the times, they are a-changin'." Intensified and more 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 from the past 20 years reveal that 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 physically in the world we inhabit. This means building codes will continue to evolve, the standard of care for design professionals will change, and the historical data used by various government entities for permitting, zoning, and city planning will have to take into account the changing climate as climate change advances.

How does the legal system play a role in climate change? As with all changes in our society, from women's emancipation to the civil rights movement and the development of the information age, our legal system will be the battleground and place of adaption as our climate changes. The evolving building codes and standards of care for design professionals will be directly affected and indeed are already feeling the effects of climate change.

Click [here](#) to read the entire article.

Employer Considerations in Mandating Vaccines and Other Measures

By **Jeffrey D. Patton**

With COVID-19 cases ongoing precisely as employers are seeking to return employees to the workplace, many companies are assessing what steps to take in response. While many companies already have announced mandatory vaccination policies, many more are actively evaluating whether to take this step, to re-impose mask wearing and social distancing measures, or other potential options. Our Labor and Employment Group is actively benchmarking with businesses across industry lines and working closely with those who are weighing this important decision.

Click [here](#) to read the entire article.

The Dotted Line: Careful Wording of Contracts can Combat Price Escalations

"Rising materials prices make it more important than ever for contractors to limit risk in their agreements with owners."

Why this is important: As all are aware, the pandemic continues to cause supply chain problems in the construction industry, ranging from wild material price swings (plywood pricing being a popular social media phenomenon) to the inability to receive certain products at all for many weeks. To avoid suffering losses and potential litigation, it is imperative that builders and contractors ensure that their contracts contain provisions that protect them against these uncertainties. Force majeure clauses have become very popular as parties seek to clarify that their contractual obligations end where "acts of God" and unexpected emergencies begin, but other more mundane provisions can also mean the difference between realizing a profit versus being chained to a loss. Material substitution and price acceleration clauses should be considered, as those can protect contractors from market volatility by either permitting the contractor to use a reasonable substitute for a hard-to-get material, or to pass any price increase costs on to the customer. Additionally, while many form contracts contain some version of termination-for-cause and for-convenience provisions, contractors would do well to ensure that these termination provisions are tailored to permit exit in situations where extreme market changes render the job impossible or impracticable.

All of this to say: builders, contracts, and customers alike should be encouraged to read the contract before signing. When the pandemic first took off in early 2020, many were forced to quickly scramble to read their form contracts to see what exactly they were bound to, and under what conditions could their performance be adjusted or excused. Those in the construction industry would be wise to learn from the hard lessons of the past two years and ensure that their current and future contracts contain protections against the unknown. --- [James E. Simon](#)

[Ongoing Supply-Chain Issues to Constrain US Building Product Sales](#)

"Supply chain challenges in the US building products and materials sector are taking longer than expected to normalize, limiting companies' ability to fully benefit from strong end-market demand and grow sales."

Why this is important: This is important to the construction industry because, despite the pandemic, there has been a strong demand for new residential, infrastructure and commercial construction contracts. As a result, the construction industry has provided steady employment where other industries have faced challenges. However, these supply chain clogs and raw material and construction product shortages threaten to stifle this positive momentum for continued construction industry growth. To keep projects going, the parties involved in ongoing construction projects must communicate with each other about the realistic impact of the specified building material delays on the timing and scope of the remaining work. As soon as contractors learn about delays in construction materials, they need to notify those higher in the construction chain and the owner. Collaboration among the designers, engineers, owners and contractors on relaxed completion dates, alternative materials and/or alternative designs may prevent extensive litigation over the construction team's ability to timely complete the project per the original construction plans and specifications. Clear and timely documentation of all new agreements altering plans and specifications and the reason for same will be essential to foreclose litigation over those changes as the projects are completed, so the construction industry can maintain its positive momentum for the U.S. economy. --- [Stephanie U. Eaton](#)

[How Contractors Can Create a Consistent Collection Strategy](#)

"Before providing work or materials on credit, contractors need to consider that there may be collection issues in the future."

Why this is important: Payment claims are some of the most common across every segment of the construction industry. Contractors and suppliers should take advantage of available resources and strategies to set themselves up for success in the event an upstream party delays payment or a payment dispute develops. The strategies discussed in this article, including waiting for a signed contract before starting work, being cognizant of lien and claim deadlines/requirements, and engaging legal counsel early, can help contractors and suppliers of all kinds collect on problem projects. The most important point is to have a collection strategy in mind up front, instead of waiting until a dispute develops to start scrambling for solutions. Keeping an eye on collectability from the outset of a project and documenting new developments quickly and accurately will better position contractors and suppliers when a payment dispute comes about. Contractors and suppliers should also be paying close attention to their contracts with upstream parties and working to negotiate unreasonable provisions prior to execution. A little extra effort to review and redline a contract on the front end can save contractors and suppliers a lot of extra work and headache when it comes time to collect. --- [Steven C. Hemric](#)

[Plan to Create Private Building Inspectors in NC Raises Safety, Conflict-of-Interest Concerns](#)

"House Bill 865 would allow builders to select a private inspector of their choice, instead of local officials, to sign off on their work."

Why this is important: Claiming that local municipalities are overworked and unable to provide sufficient building inspectors, certain North Carolina state legislators have proposed a bill that would permit builders to utilize private building inspectors instead of local governmental officials. This proposal, House Bill 865, would allow individuals to obtain certification from the North Carolina Code Officials Qualification Board, and then provide private building inspection services while enjoying governmental immunity from liability for mistakes or negligence. Unsurprisingly, the backlash has been swift, with opponents arguing that privatizing building inspection would open the door to underhanded dealing and de facto bribery. For the time being, H.B. 865 has not made much progress since it was first filed in early May, but if it starts to make its way through House committees, it is expected that this controversy will intensify. --- [James E. Simon](#)

[NYC Lawyer Who Resisted Return-to-Office Advances Firing Lawsuit](#)

"A New York City real estate management company must face discrimination claims by an in-house attorney who says he was fired for refusing to return to the office during the Covid-19 pandemic, according to a Manhattan federal judge's ruling."

Why this is important: When employers ask their workforce to return to the office after months working at home due to the pandemic, they may see an uptick in disability accommodation requests from employees who want to continue teleworking. As with any accommodation request, the employer is entitled to understand the disability-related limitation that forms the basis for the requested accommodation. If there is no disability-related need for telework, the employer does not have to permit the employee to work remotely as an accommodation. When there is a disability-related need for an accommodation, an employee's prior telework experience may be relevant to their request to continue working from home, such as the employee's ability to successfully perform the essential functions of the job while working remotely. Of course, if the employer can effectively address the employee's need with another type of reasonable accommodation at the workplace, the employer may choose that accommodation instead of telework. All accommodation requests should be followed by cooperative dialogue between the employer and employee as part of the interactive process. --- [Sarah E. Kowalkowski](#)

Featured Attorney Profile



[Steven C. Hemric](#)
Associate
Winston-Salem, NC
office 336.631.1063
shemric@spilmanlaw.com

Steven Hemric is an Associate in our Winston-Salem office. His primary area of practice is litigation with a focus on construction law and commercial litigation. His experience includes assisting clients in general commercial disputes at all stages, including litigation, alternative dispute resolution and postjudgment practice; advising construction industry clients in negotiations of commercial and residential construction contracts; advising construction industry clients on resolution of jobsite disputes on public and private construction projects; representing construction industry clients in a variety of disputes, including scheduling and delay claims, defect claims and payment claims; and advising insurance carriers on coverage and financial responsibility obligations in a variety of coverage situations and industries.

Steven has been named to the North Carolina Super Lawyers "Rising Stars" list and is listed in The Best Lawyers in America 2021 - 2022 in North Carolina for Construction Law and Litigation—Construction as "One to Watch" issue. He is the Chair of the Minority Contractors Liaison Committee for the North Carolina Bar Association Construction Law Section. He is also a member of the Forsyth County Bar Association, Young Lawyers Division. In addition, he is a member of the City of Winston-Salem M/WBE Citizen Advisory Committee.

Steven received his B.S., Mathematics, magna cum laude, from Wake Forest University and his J.D. from Wake Forest University School of Law. He is admitted to the North Carolina State Bar; South Carolina State Bar; United States District Courts for the Eastern, Middle and Western Districts of North Carolina; and the United States District Court for the District of South Carolina.



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: Eric W. Iskra, 800-967-8251