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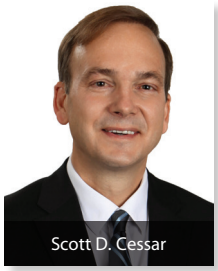
Construction Law

In This Issue…

Tips for owners in negotiating contracts with architects


Scott D. Cessar

Any number of times, we have clients call to tell us that they have hired an architect and have had conceptual design drawings prepared, or even construction-level drawings, and are now ready to proceed to hiring contractors and breaking ground. The client asks our help in setting up a contractual delivery system that will manage risk and protect the client from cost overruns and schedule delays. This is great news and we welcome the opportunity to help.

However, if disputes on the project do arise, we have found that the terms of that agreement the owner negotiated with the architect will often proscribe the owner's rights and remedies in effectively addressing those disputes, particularly if the architect's services were potentially part of the problem.

With that in mind, here are some common "problem terms" that our over-eager owner clients should negotiate prior to signing that form contract presented to them by the architectural firm.

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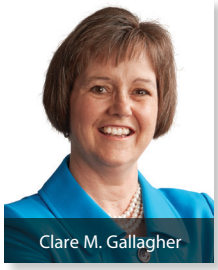
Assessing the viability of biometric technology as a new method of timekeeping in the construction industry


Clare M. Gallagher

The newly available biometric technology measures genetic characteristics such as fingerprints, iris or retina patterns, facial characteristics, and hand geometry, providing companies with a mechanism to ensure individuals are who they say they are. For example, banks in foreign countries now allow their consumers to scan their fingerprints at ATMs instead of requiring the possession of a bank card and an easy-to-crack four-digit code. Similarly, biometric technology provides employers today with an opportunity ensure that the right person is "punching the time clock" as a measure to prevent employee theft of time.

The appeal of biometric timekeeping in the construction industry, in particular, is real: Without accurate time records of both its own and its subcontractors' employees under the Davis-Bacon Act, federal contractors may be subject to fines and additional liability.

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Tips for owners in negotiating contracts with architects
(continued)

Limitations of liability. It has become more and more common now for architects to request to contractually cap their liability at a fixed number, like $50,000 or a multiple of their fees. These caps are often woefully inadequate in comparison to the damages that can be caused by a defective design or other architect errors or omissions. These caps must be carefully considered in conjunction with insurance requirements for errors and omissions and general liability, including indemnity obligations. It may be that the owner is paying for insurance protection in excess of the cap, but the cap limits the carrier's exposure as well as the architect's. Caps can also create disincentives to make things right, as the architect knows that there is a high-side limit to its exposure.

Copyrights and licenses. There are a host of issues here, and we will discuss one that, in our experience, often occurs. That issue is that most architectural agreements limit the owner's right to use the design and drawings only to the particular project. As such, an owner should consider whether it may want to build other buildings with that same or a similar design, which is particularly fair in circumstances where the owner has made material contributions to the design. This situation occurs in office building construction where an owner wants to replicate the original building to construct a twin building, or in residential construction where an owner wants to use design concepts or floor plans from one house on a new house.

If the owner is thinking of this as a possibility, he or she needs to negotiate a paid-up worldwide license, stated in the architectural agreement, to use the drawings on other projects. As part of that agreement and as a matter of fairness, the owner should expect to agree to provide some level of indemnity to the architect for claims arising out of the use of the drawings on a subsequent project, if the architect is not hired to review the plans and confirm the suitability of their use on the ensuing project.

Payment disputes. Many architectural agreements will state that, if timely payment is not made, the owner's license to use the drawings may be terminated by the architect. This means that, even if the owner has a good faith payment dispute with the architect, the architect has the contractual leverage to require payment by the owner or else shut down the job by filing suit and requesting an injunction based on termination of the license.

By reference, *Eberly Architects v. Bogart Architects*, a 2016 case filed in federal court in Ohio, involved a payment dispute between an owner and an architect where the architect terminated the owner's license to use its plans and then sued not only the owner who allegedly failed to pay the architect's fees but also the contractors and subcontractors who were using the plans to build the project. The architect alleged that all parties were liable for money damages under the Copyright Act for violating the license by continuing to use the plans to build the project after the architect terminated the license following a fee dispute.

The short answer here is to contract with the architect so that it cannot terminate the license based on a payment or other dispute and that all disputes shall be resolved through the dispute resolution process set forth in the contract, with the license remaining intact.

Dispute resolution. The risk here is that the dispute resolution clause in the architectural contract may limit the ability to join the architect to any disputes that may arise with other parties, such as the contractors. The dispute resolution clause in the architectural contract should clearly provide that the architect may be joined to any other litigation or arbitration that may arise out of the project. The consequences otherwise are the potential for disjointed proceedings that would delay and make resolution both more risky and more expensive to the owner.

Scope of services. This is not so much a liability issue but an issue of what architectural services your project requires. Once the plans and specifications are put out for bid, does the owner need the architect to manage and inspect the work on a weekly or a month basis? Does the architect need to review and approve pay applications? Or will it be just as effective, but much more cost efficient, to use a construction manager or a clerk of the works and only consult with the architect on an as-needed basis as to design issues? These questions need to be considered prior to the contract being signed with the architect.

These five issues are key to consider, and there are certainly others, such as the scope of insurance coverage needed for the project. Perhaps the best tip we can provide, however, is that it may be best to consult your construction attorney prior to signing that architectural contract. An ounce of prevention is almost always worth a pound of cure.

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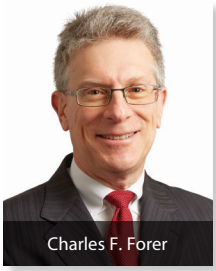
Attacking the arbitrator for bias


Charles F. Forer

Bob has lost his share of arbitration proceedings. However, he never had experienced such a vindictive arbitrator who at every stage of the proceeding went out of his way to harm Bob's client. Two illustrations:

1. The arbitration award identified Bob's client as "a perjurer" even though the other side—ABC, LLC—did not make any such contention and there was nothing in the record to support this charge.
2. The arbitration award said Bob's client "customarily" sued anyone and everyone "in order to get his way, no matter how specious the claim." Again, a groundless assertion.

Bob feared everyone in cyberspace would learn about this damaging and unfair award. Bob's client would be doomed. All because of a biased arbitrator who got the facts and law wrong and then chose to broadcast his animosity.

Bob was so dissatisfied that he concluded that the arbitrator's antics demanded a "big-picture approach." Bob wanted to make an example of this arbitrator so no one else ever suffered the way Bob's client suffered.

To achieve this grand strategy, Bob took the obvious step (to him anyway)—he sued the arbitrator. The complaint alleged that the arbitrator's misconduct tainted and made a mockery of the process. The requested relief: a declaratory judgment directing the arbitrator to modify, take down, or redact the final award to conform to what really took place at the arbitration hearing.

Bob believed he would discover facts that would explain the arbitrator's (mis)conduct. Bob figured the arbitrator had issued other awards in favor of ABC or its lawyer's other clients. Bob suspected ABC or its lawyer had paid lots of money to the arbitrator. Bob's eyes danced with delight as he considered his deposition questions:

- Have you been an arbitrator in other matters when ABC was a party?
- How much has ABC (or its lawyers) paid you for your past arbitration services?
- Do you anticipate getting more arbitration work from ABC or its lawyers?
- How many times have you ruled in favor of ABC or its lawyers' other clients? Against ABC or its lawyers' other clients?
- Before this arbitration began, did you disclose all of your relationships with ABC and its lawyers?
- Why do you hate my client so much? (Whoops—Bob quickly deleted this question from his outline.)

Bob never got a chance to try out his deposition questions. Nor did he ever have the opportunity to serve the document requests he had so much fun preparing. Why not? Because the court granted the arbitrator's motion to dismiss the complaint based on the doctrine of "arbitral immunity"—disregarding Bob's argument that "the arbitrator cannot hide behind the doctrine of 'arbitral immunity' to shield his biased, corrupt conduct that was pervasive and undermined the integrity of the arbitration."

What is wrong with this argument? Should Bob have counseled his client to ignore the unfair arbitration award? If so, what would prevent the arbitrator from pulling these same stunts in the future?

Before filing the complaint against the arbitrator, Bob should have considered the well-settled doctrine of arbitral immunity, which "protects arbitrators from civil liability for acts within their jurisdiction arising out of their arbitral functions in contractually agreed upon arbitration hearings." *Sathianathan v. Pacific Exchange, Inc.*, 248 Fed. Appx. 345, 347 (3d Cir. 2007) (*per curiam*).

The doctrine safeguards the arbitration process. If a party could willy-nilly sue an arbitrator, the arbitrator then would run scared; his or her independence and unfettered judgment would go down the drain. Put simply, the doctrine aims "to protect the decision-maker from undue influence and protect the decision-making process from reprisals by dissatisfied litigants." *Sacks v. Dietrich*, 663 F.3d 1065, 1069 (9th Cir. 2011) (citations omitted).

Applying the arbitral immunity doctrine, courts have dismissed claims against arbitrators *and arbitration organizations* in response to all kinds of claims. A brief sampling:

- Alleged conspiracy between arbitrator and a party in exchange for payment. *Garland v. US Airways, Inc.*, 270 Fed. Appx. 99 (3d Cir. 2008).
- Allegedly failing to send notice of the arbitration hearing to the claimant and failing to select the arbitration panel in accordance with the arbitral organization's rules—leading to an *ex parte* hearing before arguably biased arbitrators. *Austern v. Chicago Bd. Options Exchange, Inc.*, 898 F.2d 882 (7th Cir. 1990).
- Arbitral organization's alleged failure to provide a neutral arbitrator. *Hopper v. American Arbitration Ass'n*, 2016 U.S. Dist. LEXIS 37217 (C.D. Cal. March 22, 2016).
- Allegedly failing to provide proper notice of the arbitration claim. *Gill v. Financial Industry Regulatory Authority, Inc.*, 2013 U.S. Dist. LEXIS 44088 (S.D.N.Y. March 6, 2013).
- Alleged corruption and bias. *Pham v. Financial Industry Regulatory Authority, Inc.*, 2013 U.S. Dist. LEXIS 23446 (N.D. Cal. Feb. 20, 2013).

So do arbitrators get a green light to be biased?

Back to basics. The heart of Bob's gripe: the arbitrator made biased and even corrupt decisions. There *is* a remedy for this claim—a petition to vacate the arbitration award, at the conclusion of the proceeding, in accordance with the Federal Arbitration Act, which identifies "evident partiality or corruption in the arbitrators, or either of them" as a basis to vacate an arbitration award [9 U.S.C. § 10(a)(2)]; or in accordance with the Pennsylvania Uniform Arbitration Act [42 Pa. Cons. Stat. Ann. § 7341 ("fraud, misconduct, corruption or other irregularity caused the rendition of an unjust, inequitable or unconscionable award")].

Nevertheless, Bob is still out of luck. He had three months to file his petition to vacate if he were proceeding under the

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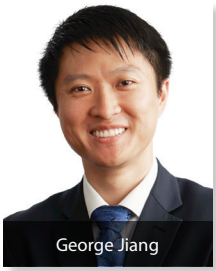
New FAA rules impacting the use of drones over construction sites



George Jiang

Recent innovations in small, unmanned aircraft (more popularly known as "drones") have given construction contractors the ability to cheaply and efficiently conduct site surveys, inspect otherwise inaccessible areas, monitor progress, aid in the early identification of potential deficiencies, and ensure that the project is completed on time and within budget. In response to the surging popularity in the commercial operation of drones, the Federal Aviation Administration (FAA) implemented new rules (1) addressing who is qualified to fly a drone for commercial purposes and (2) imposing operational limitations on the use of a drone. Accordingly, contractors that operate drones should be aware of the potential impact these rules may have on the way that drones can be used on construction sites.

The most significant constraint imposed by the new FAA rules is the requirement that all commercial drone operators must either obtain a remote pilot certificate or be directly supervised by a person who has obtained the certification. To obtain a remote pilot certificate, an applicant must pass an aeronautical knowledge test as well as a background check. Unlike the manned aircraft certification process, flight training is not necessary, and a practical examination in unmanned aircraft flight proficiency will not be administered.

Applicants with an existing pilot certificate for manned aircraft can obtain a remote pilot certificate if they have completed a flight review within the past two years and finish an online training course.

Commercial drone operators must also comply with new restrictions on how and when drones may be used. In particular, those considering using drones on construction sites should be aware that the new FAA rules prohibit a drone from being flown:

- Outside of the operator's visual line of sight
- When visibility is less than three miles
- Less than 500 feet below a cloud or within 2,000 feet horizontally from a cloud
- At night
- Directly over people not directly participating in the drone's operation
- Higher than 400 feet above either ground level or a structure, whichever is higher
- Without permission in controlled airspace

In addition, each drone must weigh less than 55 pounds, regardless of whether it is carrying a payload. The FAA also requires all commercial drones to be registered and marked.

The practical effect of the FAA's new regulations for drone operations over construction sites can be significant. The visual line of sight requirement may limit the most potentially useful applications for drones, such as using a drone to inspect an inaccessible area from a vantage point that is also beyond the operator's line of sight. It may also be impractical to use a drone on a busy site because of the risk that it will be flown above other people working on the premises, and the regulations make no exception for sites where people are required to wear hardhats. Furthermore, drones cannot participate in nighttime construction activities, and operators must be aware of whether the site is situated below or near restricted airspace, such as airports or other sensitive areas. In areas with inclement weather or low cloud cover, drone operations may effectively be grounded, even though the construction site itself is unaffected and visible to the drone pilot.

Fortunately, all of the significant operational restrictions listed above can be waived by applying for a certificate of waiver demonstrating that the proposed drone operation can be safely conducted. This request for a certificate of waiver must contain a complete description of the proposed operation and justification for why the operation can be safely conducted. Drone operators seeking a waiver should therefore consider offering to take specific precautions depending on the type of waiver requested. For example, a request for a waiver of the visual line of sight restriction could include a statement that the drone operator will be using reliable first-person-view technology to maintain full awareness of the drone's location and surroundings. Similarly, a request for waiver of the restriction against operating drones directly overhead other people is more likely to be granted if it is accompanied by assurances that all personnel on the site will be forewarned about drone activities and are required to wear hardhats during the flight.

As the benefits of using drones for construction projects become increasingly clear, their presence at work sites will become the norm rather than the exception. Contractors should be mindful of any potential FAA restrictions that apply to any planned drone flights and make sure to apply for the proper waivers given the particular project at hand.

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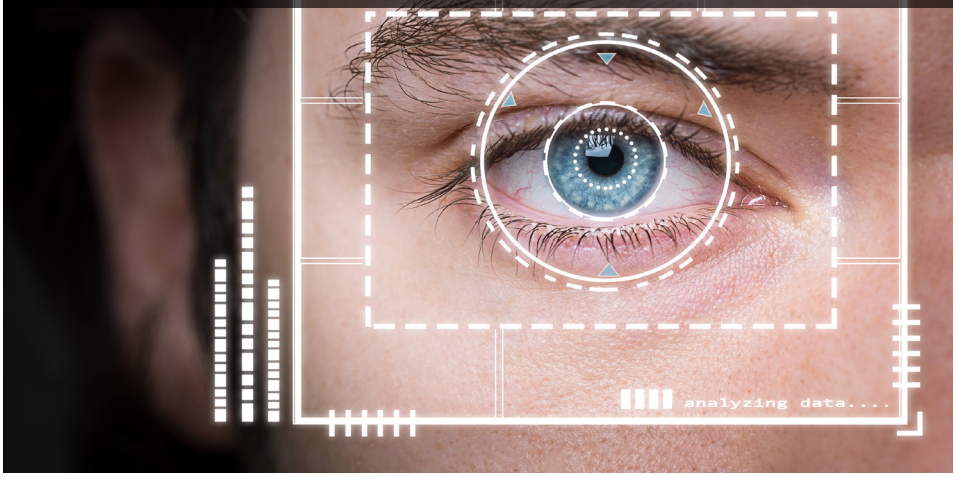
Assessing the viability of biometric technology as a new method of timekeeping in the construction industry (continued)



Unfortunately, there is little in the way of guidance to contractors that endeavor to implement biometric timekeeping systems—the law as it pertains to collection and storage of biometric information is still evolving. Contractors who are considering using biometric information as a means to track time should be aware of the implications on both their own and their subcontractors' employees.

First, contractors dealing with unionized workforces should keep in mind their duty to bargain in good faith before implementing biometric timekeeping systems. Although the National Labor Relations Board (NLRB) appears receptive to the new technology as a means of timekeeping, its decisions caution that employers are required to bargain with a union in certain circumstances. Contractors would be required to bargain with a union when it is clear that, among other things, the new system will subject unit employees to additional discipline or increased supervisory oversight. When either of these is the case, employers are generally not permitted to institute the new system, unless either (1) it is agreed to by union representatives or (2) the parties have reached impasse.

Less clear are the statutory limitations that may be imposed on contractors when implementing this type of system. Some states have statutory protections for employees with respect to the use of biometric technology. For example, New York expressly prohibits employers from requiring employees to be fingerprinted as a term or condition of employment. Additionally, some states condition a private or commercial entity's collection and use of biometric information on informed consent from the individuals whose biometric information will be collected. Those states also provide guidance regarding storage and destruction of the collected information. As to the dissemination of biometric information to unauthorized organizations, a number of states require an entity to (at the very least) provide notice to the individual that a security breach has occurred.

Other states, including Pennsylvania and Ohio, have yet to address the use of biometric technology in the employment setting. Interestingly enough, however, even in states in which the legislature has yet to adopt a stance on collection or dissemination of biometric data, contractors may face yet additional obstacles to biometric timekeeping. One West Virginia federal court decision, for example, found that an employee whose religious views conflicted with an employer's use of biometric technology was entitled to a religious accommodation under federal anti-discrimination law.

Assuming you are operating in a state that does not prohibit the collection of biometric information, a best practice is to always obtain a consent to the collection of the data, secure the information properly, and dispose of it appropriately. Depending on the relationship between the contractor and the individual whose biometric information is to be collected, there are sure to be differences between the requirement of consent, the length of time biometric information may be stored, and the protocols for destruction of such information. In light of the uncertainties that exist surrounding the collection and use of biometrics, contractors should consult with counsel before implementing any type of biometric timekeeping system.

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Attacking the arbitrator for bias (continued)

Federal Arbitration Act [9 U.S.C. § 12 ("Notice of a motion to vacate, modify, or correct an award must be served upon the adverse party or his attorney within three months after the award is filed or delivered."); *Hunsinger v. Carr*, 2016 U.S. Dist. LEXIS 68437, at *21 (E.D. Pa. May 24, 2016)]. And he had only 30 days if he were proceeding under the Pennsylvania Uniform Arbitration Act [42 Pa. Cons. Stat. Ann. § 7342(b); *Dipietro v. Glidewell Laboratories*, 2015 Pa. Super. Unpub. LEXIS 3051, at *10-*11 n.8 (Pa. Super. Aug. 21, 2015) ("any challenge to the arbitration award [must] be made in an appeal to the Court of Common Pleas by the filing of a petition to vacate or modify the arbitration award within 30 days of the date of the award")].

The moral of the story? If you cry foul, do so to the proper ref at the proper time. At least if you want a shot at relief.

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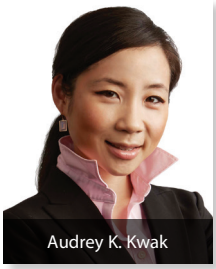
Owner's termination for convenience will not preclude entitlement to liquidated damages


Audrey K. Kwak

Conventional wisdom holds that an owner will not be entitled to liquidated damages after terminating a contractor for convenience—i.e., without cause—as liquidated damages are remedies arising from the default of the contractor. But a recent case from the Connecticut Supreme Court debunks this notion and instead affirms the primacy of contract language, notwithstanding the fact that it seems to confer upon the public owner a substantial windfall.

In *Old Colony Construction, LLC v. Town of Southington* (2015), the court considered a contractor's claim that the project owner, the Town of Southington, was foreclosed from collecting liquidated damages because the town had terminated the contractor for convenience on a sewer pump station replacement project.

The contract provided that time was of the essence and provided for liquidated damages in the amount of $400 for each day that substantial completion exceeded the contract substantial completion date. After significant delays on the project (attributable both to the contractor and to the town), the town terminated the contract on the basis of convenience, more than two and a half years after the contract substantial completion date had passed.

After termination, the contractor and the town each filed claims against the other. The trial court concluded that the contractor was entitled to more than $164,000 for completed work that it had not been paid for. However, the court also determined that the town was entitled to liquidated damages of $315,000 for 789 days of delay. The liquidated damages award offset the contractor's damages entirely and resulted in a net judgment favoring the owner of over $150,000.

The contractor appealed, arguing that because a termination for convenience avoids liability for the contractor's expectation damages and avoids the risks associated with proving proper termination for cause, the owner thereby forfeits traditional "default based remedies" available for termination for cause. The appellate court disagreed, based on the express language of the contract. The court noted that the contract's termination for convenience clause specifically allowed for termination "without cause and without prejudice to *any other right or remedy*," and this broad reservation of rights and remedies was to be given full effect absent evidence of a more limited intent. Furthermore, even if such a limitation did exist following a termination for convenience, the town's claim for liquidated damages in this case would not be impaired because its right to such damages arose as soon as the substantial completion date passed and continued to accrue until the termination of the contract.

The Connecticut Supreme Court agreed with both lower courts, holding that the town's pursuit of liquidated damages did not deprive the contractor of any rights that it would have had if it had been terminated for cause. The Court also observed that the contractor was not exposed to the costs of project completion, for which it would have been liable if terminated for cause. The Supreme Court thus agreed with the trial court that the town's election to terminate the contract for convenience did not preclude it from recovering liquidated damages.

This case emphasizes the importance of carefully reviewing and negotiating contractual language in order to ensure the language correctly expresses the parties' intent. Owners should ensure that a termination for convenience clause expressly reserves its contractual rights and remedies, including the recovery of liquidated damages, if applicable. Conversely, contractors should be aware that a reservation of rights in a termination for convenience clause is likely to be enforced, and should negotiate limiting language accordingly.

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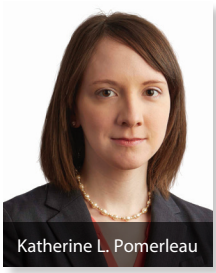
Owners' agents remain safe from CASPA claims


Katherine L. Pomerleau

The Pennsylvania Supreme Court has decided that a contractor cannot bring a claim against an owner's agent under the Contractor and Subcontractor Payment Act (CASPA).

Generally, CASPA specifies that a contractor who makes improvements to property is entitled to timely payment according to the terms of the contract or, alternatively, according to a timetable specified within the CASPA statute. Importantly, CASPA provides for interest payments, penalties and reasonable attorneys' fees if an owner fails to abide by these payment terms.

In *Scungio Borst & Associates v. 410 Shurs Lane Developers, LLC*, the Court considered the question of who a contractor could recover these payments and penalties from. In this case, Scungio entered into construction contracts with 410 Shurs Lane to improve real property owned by 410 Shurs Lane. These agreements were made with Robert DeBolt, part-owner and president of 410 Shurs Lane. Scungio performed the specified work until its contracts with 410 Shurs Lane were terminated, with approximately $1.5 million still due to Scungio. Because 410 Shurs Lane refused to make payment, Scungio brought CASPA claims against 410 Shurs Lane, Kenworth II, LLC (its alleged successor corporation), and Robert DeBolt. The question before the Court was whether DeBolt, in his individual capacity as an alleged agent of 410 Shurs Lane, was potentially liable under CASPA to Scungio.

The confusion ultimately addressed by the Court arose from the definition of "owner" contained in the CASPA statute. While the statute states that the contractor is entitled to payment "from the party with whom the contractor or subcontractor has contracted," the definition of "owner" elsewhere in the statute states that "[t]he term includes successors in interest of the owner and agents of the owner acting with authority."

DeBolt argued that a contractor can only recover from the party with whom it contracted. He, along with the Pennsylvania intermediate appellate court, interpreted

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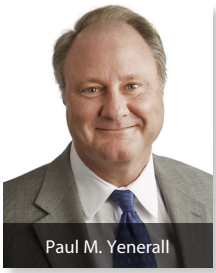
Using ESOPs to foster pride of ownership and boost retention


Paul M. Yenerall

An employee stock ownership plan (commonly referred to as an ESOP) is a way for a construction company to attempt to mitigate high turnover among its employees and to facilitate the diversification of the wealth of the owners. An ESOP is a tax qualified retirement plan designed to invest primarily in the stock of the employer. The owners of the employer may sell shares of stock to the trustee of the ESOP and defer any taxation of the gain for federal income tax purposes if publicly traded stock or certain debt instruments are acquired with the proceeds from the sale of the stock. The purchase of this stock by the trustee can be accomplished on a tax-deductible basis. Finally, many studies have shown that employees' ownership of the employer stock through the ESOP promotes a feeling of ownership in the employer among employees and leads to less turnover.

At least nine of the construction firms ranked among the top contractors by Building Design+Construction for 2015 have ESOPs, with a combined revenue of more than $20 billion.[1]

Following is a brief look at three of those nine firms and their experiences with ESOPs.

Austin Industries, Dallas

Brett Billups, vice president of Austin Industries' human resources division, told Bloomberg BNA that "our history and culture has always been to share profits with employees," going back to its founding as Austin Bridge Co. In 1986, the founder's grandson decided to sell the business partly for tax advantage reasons, but he wanted to keep it intact, and so it was sold to the employees, Billups said.

To make sure its employees know the benefits of the ESOP, Austin conducts a learning survey on a regular basis, with different levels of communication depending on age and experience level.

Anniversary ESOP parties, training via Austin's intranet on ESOPs, and an ESOP 101 course are a few of the company's methods of getting and keeping employees up to speed on the ESOP structure, Billups said.

Other strategies at Austin that encourage employee retention include specifying the financial benefits that an employee would lose by leaving the company, Kay Bishop Jones, Austin's corporate communications manager, told Bloomberg BNA.

The ESOP helps not only with employee retention but also with customer retention, Billups said. "Customers know that we have a strong culture, and that we have core values" that include a strong work ethic, he said.

Sundt Construction, Tucson, Arizona

Brand strategy is used in the hiring process at Sundt Construction, and every new employee learns about the ESOP during orientation, Dan Hagg, chief administrative officer, told Bloomberg BNA. During orientation, new-hires learn about what it means to be an employee-owner and why that's important, Hagg said.

Sundt also keeps employees up to date on the ESOP through monthly, one-page newsletters that include "simple, digestible pieces of information," Hagg said.

Hagg also said that he emphasizes what the ESOP means to employees' financial future. "When I talk about it, I talk about wealth accumulation."

The ESOP culture—a sense of ownership and common responsibility—has helped push Sundt's retention rate into the 90th percentile in the construction industry, he said.

JE Dunn Construction, Kansas City, Missouri

Although JE Dunn Construction is more than 90 years old, it converted to an ESOP five years ago when family members of the founder decided to sell to employees, Gordon Lansford, the company's president and chief executive officer, told Bloomberg BNA.

"The desire to create an alignment between short- and long-term goals" led to the decision to become an ESOP, Lansford said.

Lansford also said that one of the major benefits from the switch was providing transparency to employees about the company's performance. "They know what success looks like."

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If you are interested in exploring the possibility of using an ESOP in your company, please contact Paul M. Yenerall at 412.566.2035 or pyenerall@eckertseamans.com

Owners' agents remain safe from CASPA claims
(continued)

the CASPA statute's definition of "owner" as a clarification that the owner is still liable for construction contracts signed on its behalf by its authorized agents.

Scungio disagreed, arguing that the definition was meant to impose liability on agents, similar to the Pennsylvania Wage Payment Collection Law.

Finding that the statutory language in question was ambiguous, the Pennsylvania Supreme Court resolved the ambiguity by considering a number of factors, including legislative history and the goal that the law was meant to attain. The Court ultimately decided that CASPA was enacted to address the problems that contractors previously had to face in order to get paid for their work under the common law contract system. The intent, according to the Court, was not to disturb well-established agency principles or create new avenues of liability by imposing additional liability on the agents of owners.

Accordingly, claims under CASPA are limited to the party with whom the contractors formed the construction contract. When that party is the owner, although the owner will be bound by its agents' authorized acts, the agents, in their individual capacities, cannot be subject to CASPA claims.

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Construction Law Group NEWS

Eckert Seamans' Construction Group received Tier 1 rankings from U.S. News – Best Lawyers® "Best Law Firms" 2017 in the Pittsburgh metropolitan market.

Eckert Seamans' Construction Group was once again selected for inclusion in *Chambers USA: America's Leading Lawyers for Business* for Pennsylvania. According to Chambers USA sources, "They are straightforward, knowledgeable, prepared and engaged." "Their credibility and efficiency has made a significant difference in the difficult situations we have encountered and their eventual outcomes."

In addition, **Scott Cessar, Neil O'Brien** and **Chris Opalinski** were selected individually for inclusion in Chambers USA. Excerpts from sources follow below:

Chris Opalinski is touted as an "exceptional trial attorney, counselor and outstanding problem solver." He is distinguished for his vast experience in construction litigation in the public and private sectors.

The "efficient" and "practical" **Scott Cessar** is regarded by peers and clients as an "outstanding attorney" and "a zealous advocate." He handles disputes relating to the full spectrum of construction concerns, including claims for charges, delays and defects.

Neil O'Brien evokes praise as a "very compelling advocate," with others commenting: "People trust his knowledge and judgment." He is experienced in representing owners, suppliers and contractors in construction disputes.

The publication's rankings are based upon the recommendations of more than 10,000 clients and lawyers throughout the United States. Chambers USA researchers conduct thousands of interviews to obtain opinions about the lawyers and law firms the interviewees have dealt with over the past year. The leading law firms and attorneys are then compiled and ranked based on the comments in the interviews.

Scott Cessar and **Chris Opalinski** were selected by Pennsylvania Super Lawyers® 2016 for inclusion for their work in construction litigation. Scott was also named one of the "Top 50" lawyers in Pittsburgh.

David McGlone was selected for inclusion in the 2016 edition of Massachusetts Super Lawyers®.

Michael Montgomery was recognized for his work in construction law in the 2017 Virginia Legal Elite, published by Virginia Business magazine in collaboration with the Virginia Bar Association.

Matthew Whipple was appointed secretary of the Allegheny County Bar Association's Construction Law Section, and also led a presentation titled "Damages, Remedies, Disputes, Avoidance & ADR " at a PBI Construction Law CLE in October.

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