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ATTORNEYS AT LAW

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Construction Law

In This Issue…

What Pennsylvania employers need to know about medical marijuana


Michael McAuliffe Miller

With the passage of medical marijuana laws in various states across the country, employers should know that their obligations are defined not only by federal law but also by the application of their state's medical marijuana legislation. In the Commonwealth of Pennsylvania, Governor Tom Wolf signed legislation in April 2016 authorizing the use of medical marijuana (the Medical Marijuana Act or the Act) in Pennsylvania. The Act, which was effective May 17, 2016, allows patients suffering from a variety of diagnosed medical conditions to use marijuana to treat their conditions.

It is important to note that *smoking* marijuana is still illegal under the Act and, as such, marijuana may only be ingested or used in forms such as pills, oils, topical gels, creams, or ointments. Under the new law, medical marijuana will be dispensed only to an individual (or a caregiver of an individual) who receives a certification from a medical provider and an identification card issued by the Pennsylvania Department of Health.

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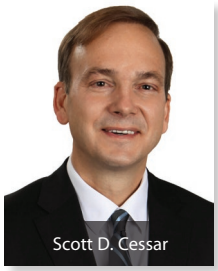
Claim Waivers: A must-read article for all contractor personnel involved with payment applications or change orders


Scott D. Cessar

Dear Contractor Clients:

With all due respect, some of you have not read our prior newsletter articles on the growing use of claim waivers in interim payment applications and in change orders and their potential effect, if not modified, on your rights down the road to claim additional compensation. Or you have read the articles, but not passed them on to your project managers, project engineers, office administrators, payment clerks, and anyone else in the office responsible for processing payment applications and change orders.

I say that because we continue to review claims for clients where we are presented with payment applications and change orders that contain troubling claim waiver language.

continued on page 2

Claim Waivers: A must-read article for all contractor personnel involved with payment applications or change orders

(continued)

So kindly **STOP, READ** this article, and then **PASS IT AROUND THE OFFICE** to everyone involved with change orders or pay applications. An ounce of prevention now will be well worth the cost of a pound of cure later in the form of foregone, but meritorious claims for additional compensation or for attorney fees spent litigating the enforceability of claim waivers.

We are talking about two different forms routinely used in the construction field: the interim payment application and the change order. Language that was once rarely contained in these two forms has now become commonplace.

With interim payment applications, owners and general contractors are routinely including language by which the contractor or subcontractor certifies not only that it is waiving liens to the extent of the amount of payments to date, but that it also waives any claims it may have to date. This waiver of claims means exactly what it says: all potential claims as of the date of execution are released. This would potentially exclude claims for costs for project delays or impacts antecedent to the date of the pay application and even pending change orders.

In change orders, the language will provide that, by agreeing to the within change and accepting compensation, the contractor or subcontractor agrees that is has been paid in full for all changes to date and has no other claims and/or has been paid in full to date for any such claims.

The import of signing partial payment applications and change orders containing this type of language can be significant. While there are legal theories to challenge whether such waivers are enforceable, and much will turn on the precise language of the waiver, the background circumstances and the particular state law, by agreeing to such language, at a minimum, you are handing substantial leverage to the owner or contractor to argue that your claims were waived and should not even be considered. You may well then be left with the Hobbesian choice to have to litigate the enforceability of the release prior to even getting to the merits of the claims.

So what should you do when confronted with language in an interim payment application or change order releasing all claims to date? We suggest one of three options: (1) strike the language and send the form back signed; (2) modify the form and list all known claims and make reservation for unknown claims; or (3) modify the language to make clear that you do not have any known claims but reserve rights to raise any subsequent claims that arise and that predate the date of execution of the form.

We can hear your concern now that, if you modify the form, the payment application or change order will not be processed and you will not be paid. However, requiring the contractor or subcontractor to forego claims without additional compensation would, in most states, not be lawful, as it would be a breach of the duty of good faith and fair dealing and a violation of contractor payment statutes. The fact is that the law disfavors one party extorting something from another party for nothing.

Sincerely yours,
Scott Cessar

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What Pennsylvania employers need to know about medical marijuana

(continued)

In the meantime, here's what a Pennsylvania employer needs to know about the effect of the Act on employment.

Generally speaking, laws that protect employees, like the Americans with Disabilities Act, specifically exclude from the definition of "disability" any employee or applicant currently engaged in the illegal use of drugs. Indeed, marijuana remains listed as a Schedule 1 controlled substance under the federal Controlled Substances Act.

It is also important to remember that, while the ADA itself does not require an accommodation *based on* marijuana use, it does require other accommodations related to a covered disability (for example, glaucoma), and affords certain protections to employees and applicants with disabilities, such as the confidentiality of medical information. The smart employer will closely work with its HR professionals and lawyers to avoid related issues under the ADA—such as discrimination based on an employee's recognized disability—and put themselves in a better position to defend their employment decision.

Turning to the Pennsylvania Medical Marijuana Act, the Act prohibits employers from discharging, threatening, refusing to hire, discriminating, or retaliating against employees "solely on the basis of such employee's status as an individual who is certified to use medical marijuana." In other words, taking adverse action against an employee based solely on the individual's status as a medical marijuana cardholder would likely be considered discrimination under the new laws.

The Act does not prevent employers from pre-hire (post-offer), periodic, or random drug testing. In addition, certain exceptions to the antidiscrimination provision exist, as the Act allows additional flexibility for employers with safety-sensitive work environments, specifying these employers may prohibit employees from doing any of the following while under the influence of medical marijuana: (1) operating or controlling government-controlled chemicals or high-voltage electricity; (2) performing duties at heights or in confined spaces, including mining; or (3) performing any tasks that threaten the life of the employee or his/her coworkers.

While this list is helpful in providing clarification to employers with workers in safety-sensitive positions, unfortunately, the enumeration of exceptions to the

general rule against discrimination suggests that the law may be interpreted to prohibit other restrictions.

Of great interest to most employers is the fact that the Act does not require employers to accommodate the use of marijuana on the job and allows employers to discipline employees who are "under the influence" of medical marijuana at work or if "the employee's conduct falls below the standard of care normally accepted for that position."

How employers should go about *proving* that an employee's work performance fell below a reasonable standard of care due to being under the influence of medical marijuana is not spelled out in the Act. However, regulations anticipated in the coming months may provide additional guidance. The antidiscrimination provision also does not prohibit employers from disciplining an employee for being under the influence of medical marijuana in the workplace or while performing work. So, if an employee tests positive for marijuana, the employer should ask the worker to verify that he or she is a participant in a recognized medical marijuana program.

If the individual is not a certified user, then an employer can proceed as it has in the past by not hiring, disciplining, or discharging the individual. If the individual is a certified user, then the employer needs to determine if the person was "under the influence" of marijuana in the workplace, as an employer is not required to accommodate marijuana use.

Complicating the issue is the fact that testing vendors are not generally able to distinguish between positive test results caused by smoking marijuana, which is illegal under the medical marijuana act in Pennsylvania, and ingesting marijuana in an approved form. The law is silent as to whether an employer can rely upon a positive drug test as a reason for an adverse employment action in itself, or as evidence of impairment. Clearly, additional regulations from the Commonwealth's Department of Health as well as guidance from the courts will be necessary.

At present, it is unclear how employers can determine whether an employee is "under the influence" of marijuana while at work. Observations are helpful, but do not identify the cause of the impairment; tests show recent drug use, but are not very useful to assess the individual's level of impairment at the precise time of the test.

Many employers use urine samples for drug tests; however, urine testing may reveal use weeks prior to testing. While saliva testing shows more recent use, the results still provide no definitive answer whether an employee was under the "influence of marijuana" on the job.

Additionally, when an employer receives notification that an employee is a medical marijuana user, that employer needs to be especially careful how it uses that information and how far it goes in asking for more. This is because the employer now is likely on notice that the employee is potentially disabled under the Americans with Disabilities Act or similar state statutes and/or has a serious health condition under the Family and Medical Leave Act.

Here are some general guidelines for employers in states with medical marijuana legislation:

- Ensure that all employment policies and handbooks make clear that testing positive for an illegal drug—including medical marijuana—is a policy violation, and that the employer reserves the right to take adverse action based upon such test results to the fullest extent permitted under the law.
- Disseminate drug policies to employees and enforce them uniformly among all employees.
- Ensure that the monitoring of on-site drug use is uniform and as fair as possible. Drug testing cannot be used discriminately as a basis for targeting employees, and this will likely be the basis of many claims under the Act.
- Ensure that safety-sensitive positions, including the justification for any alleged safety-sensitive task that may be deemed life threatening, are fully explained.
- Discuss with vendors testing protocols and how positive marijuana tests will be handled and reported. In the event of a positive marijuana test, medical review officers should be instructed to have a discussion with an employee regarding whether he or she has a state-issued medical marijuana identification card.
- Train supervisors to handle issues regarding potentially impaired employees or to respond to employees' questions regarding the state medical marijuana laws.
- Train HR to deal with issues related to reasonable suspicion testing for those employees suspected to be impaired.
- Ensure that supervisors never make decisions based on social media, workplace chatter, rumors, or belief about marijuana use and that all decisions to significantly engage in this issue are reviewed/considered by human resources or labor counsel.
- Establish some nexus between off-site marijuana use and on-site work conduct if an adverse employment action is sought.

Overall, employers will have to be patient, deliberate, and careful in their employment decisions as well as the underlying justifications for those decision. Good facts and a reasoned approach will provide the best possible defense in an uncertain time.

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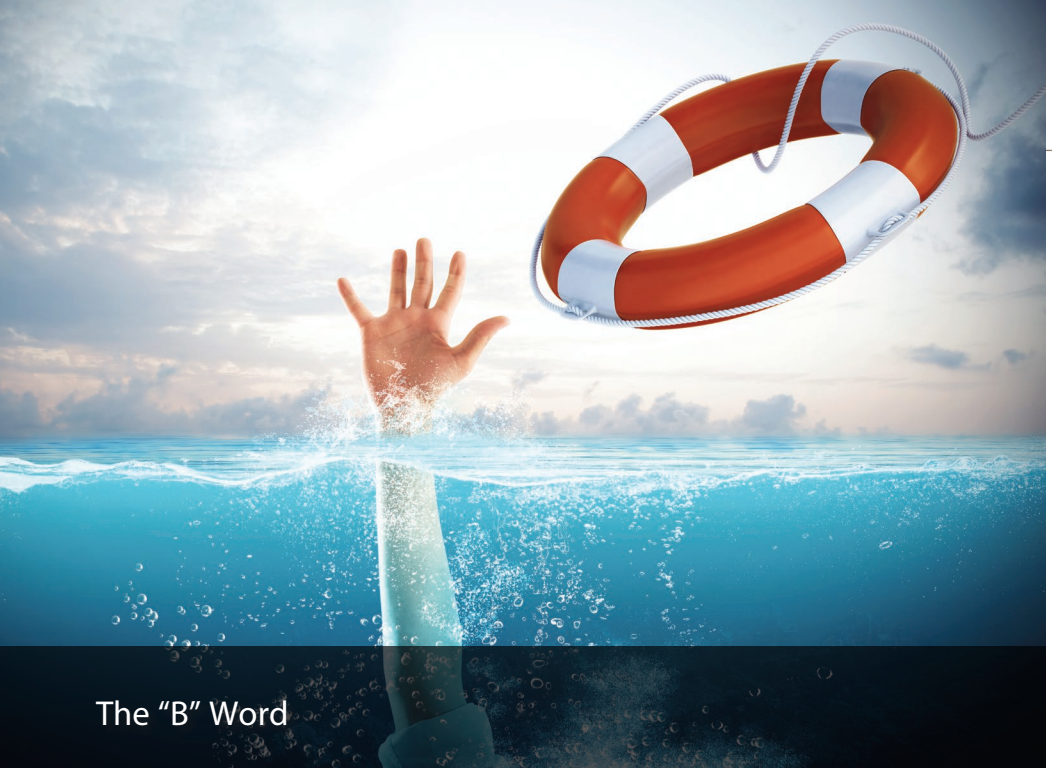
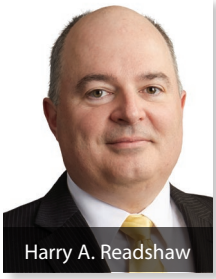


The "B" Word



Harry A. Readshaw

It happened … your company has not yet been paid for work that it completed on a project and you hear someone say the dreaded "B" word … "Bankruptcy." The first thing to do if someone owes you money and you hear the "B" word is to verify that a bankruptcy petition has been filed with a United States Bankruptcy Court. I am surprised at the number of times cases are referred to me as bankruptcy cases where no bankruptcy petition has been filed. The term is often used to loosely describe a company closing its doors, projects that are being foreclosed by lenders, or a company having severe cash flow issues. If you are unable to independently verify that a bankruptcy case has been commenced, your bankruptcy attorney can access the federal database of case filings and can confirm in a few minutes whether or not a case has been filed. Assuming that a bankruptcy case has been filed, your company must act quickly to observe the automatic stay of bankruptcy by ceasing all collection efforts and litigation against the debtor. Simple enough, right?

Here is the scenario: You are a subcontractor on a project to erect a privately owned office building and are owed $100,000 for work already performed. Before you are paid, the general contractor files for protection under the United States Bankruptcy Code. You react quickly and file a Mechanic's Lien. You think that you are safe, as the property is owned by the owner, not the bankrupt general contractor. You will either be paid in full or, more likely, negotiate a settlement with the owner. Maybe not. In March of this year, the United States Court of Appeals for the Third Circuit determined that two subcontractors in this very position violated the general contractor's automatic stay.

Specifically, in the case of *In re Linear Electric Company, Inc.*, the Third Circuit examined this scenario with respect to a project located in New Jersey. Applying New Jersey Mechanic's Lien Law, the Circuit Court found that the liens attached to receivables due from the owner to the general contractor. Having determined that the liens attached to the receivable, which was property of the debtor under the United States Bankruptcy Code, the Court found that it was a violation of the bankruptcy stay for the subcontractors to file Mechanic's Liens.

One of the key facts in *Linear Electric* is that, under New Jersey law, a Mechanic's Lien only relates to the amount that the owner owes, but has not yet paid. As the lien only relates to amounts not yet paid, the Court viewed the lien as a lien attaching to the receivable owed to the bankrupt general contractor. Voilà: a violation of the automatic stay. This would not be the case in some jurisdictions, where a subcontractor's Mechanic's Lien is unaffected by an owner's payment to the general contractor.

A lesser determining factor in *Linear Electric* was that, in New Jersey, Mechanic's Liens attach and are determined on the day that they are filed. Conversely, in states such as Pennsylvania, a Mechanic's Lien relates back to "the date of visible commencement upon the ground," which almost always predates a bankruptcy filing in these scenarios, such that filing a post-petition Mechanic's Lien may not be a violation of a bankruptcy stay, even where the owner filed the bankruptcy.

The subcontractors in *Linear Electric* probably thought they were doing the right and responsible thing by protecting themselves with the filing of a Mechanic's Lien against the owner's property. Unfortunately, the language contained in the applicable state Mechanic's Lien Law converted an act designed to collect a debt from third party into a violation of the automatic bankruptcy stay. As violations of a bankruptcy stay can result in both actual and punitive damages, often including payment of the debtor's attorney fees as well as your own attorney fees in defense, a stay violation can be a very costly mistake.

The takeaway from *Linear Electric*, no matter what state you do business in, is that a seemingly simple thing like the automatic bankruptcy stay can be complicated by applicable state law. Before taking any action to collect a debt after a bankruptcy is filed, please protect yourself by consulting with competent counsel.

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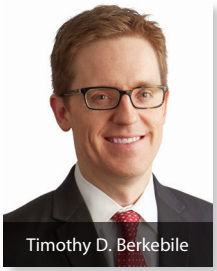
2017 AIA contract document amendments


Timothy D. Berkebile

Earlier this year, the American Institute of Architects released the 2017 updates to the A201 family of documents for design-bid-build construction projects. These amendments address a number of trends in the construction industry. Project participants presented with 2017 AIA contracts cannot assume that material terms and conditions contained in previous versions remain the same, and should be aware that significant changes have been made to key provisions. Frequent users of AIA documents should revise any stock changes and supplementary conditions upon which they regularly rely. The following is a non-exhaustive list of changes that have been made.

> *"Project participants presented with 2017 AIA contracts cannot assume that material terms and conditions contained in previous versions remain the same, and should be aware that significant changes have been made to key provisions."*

The 2017 Owner/Contractor series (designated as the A100's) provides:

- A comprehensive insurance and bonds exhibit replacing the insurance terms previously set forth in the A201 General Conditions.
- A set termination fee to be paid to the contractor if terminated for owner's convenience in addition to payments for work properly performed and costs incurred by reason of the termination.
- A simplified progress payment calculation that incorporates change directive amounts and removes amounts the contractor does not intend to pay to subcontractors.
- A more thorough procedure for withholding retainage.

The amended contracts including a Guaranteed Maximum Price further expressly allow for revisions to the contract documents consistent with the stated assumptions contained in the GMP proposal.

The 2017 A201 General Conditions has been modified to include the following changes, among others:

- The inclusion of heightened notice requirements.
- The elimination of limited exceptions to contractor owning the means and methods.
- A requirement that warranties be issued in the owner's name.
- The shortening of the notice period for concealed or unknown conditions to 14 days.
- An increase in the amount of detail required in the project schedule.
- Inclusion of contractor's express entitlement to additional time for adverse weather conditions.
- Inclusion of contractor's express entitlement to overhead and profit for work not performed in the event of termination for owner default.

The 2017 Owner/Architect series (designated as the B100's) provides:

- A sustainable projects exhibit that addresses the risks and responsibilities associated with sustainable design and construction services.
- A set termination fee to be paid to the contractor if terminated for owner's convenience.
- Architect's entitlement to compensation for any redesign made necessary by market conditions causing costs to exceed the owner's budget where not reasonably anticipatable.
- A distinction between Additional Services arising during the course of the project and Supplemental Services identified at the time of agreement.
- Clarification of the calculation of architect's progress payments if based on a percentage of the owner's budget.

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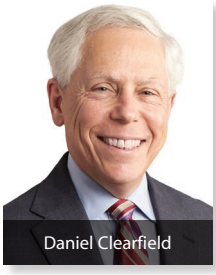
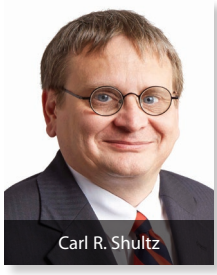
Pennsylvania's Safe Digging Law expanded


Daniel Clearfield


Carl R. Shultz

The extension of Pennsylvania's "One-Call" law imposes new obligations and adds an enforcement arm with a compliance mandate that could be challenging for contractors in 2018 and beyond.

On October 30, 2017, Governor Wolf signed legislation (Act 50 of 2017) that expands Pennsylvania's Underground Utility Line Protection Law, commonly known as "One Call" or the "Safe Digging" Law, with new provisions that become effective in the Spring of 2018. That Law requires everyone to contact the One Call System, by dialing 8-1-1, at least three business days before beginning any digging or excavation project.

Act 50 expands the duties of designers, excavators, and owners of underground lines or facilities. It makes damage reporting mandatory. Designers and excavators are required to make locate requests prior to excavation and to pay the applicable fee (set by the One Call System). Facility owners face increased duties such as maintaining existing records of abandoned main lines and locating or identifying the main lines if possible going forward. Facility owners are required to participate in the One Call System's Member Mapping Solutions. But, the One Call System cannot require its members to locate lines or facilities installed before the effective date of the Act, unless the owner has existing maps of the lines or facilities and those maps meet the System's specifications.

Act 50 creates a new procedure for unmarked or incorrectly marked facilities. Excavators are required to re-notify the One Call System if they discover unmarked or incorrectly marked facilities. In response, facility owners are required to communicate directly to the excavator within two hours after re-notification and to mark, state, locate, or verify their underground facilities. If the owner fails to provide sufficient information within three hours, excavators may proceed with excavation, provided they exercise due care in their endeavors.

Most notably, Act 50 transfers enforcement authority from the Department of Labor and Industry (Department) to the Public Utility Commission (PUC). Reports of alleged violations will now be investigated by a "damage prevention investigator." The investigator's report will include findings and recommendations, which will be reviewed by a "Damage Prevention Committee." The Committee may, among other things, issue an informal determination. A person who is subject to an informal determination of the Committee may accept or reject the result. If an informal determination is rejected, the PUC's prosecutory bureau (Bureau of Investigation and Enforcement, or "BIE") may file a "formal complaint." Formal complaints are legal proceeding before the PUC that will require an evidentiary hearing and a written decision. The recommended decision of an administrative law judge will be reviewed by the full five-member Public Utility Commission. Commissioners are all appointed by the Governor and confirmed by the Pennsylvania Senate. The Commission is required to have no more than three members who are the party of the sitting Governor.

It is expected that the PUC will be actively enforcing the Law. It has been reported that the PUC has a goal of cutting the number of accidental hits to underground lines in half over the next five years. In the past, the Department was criticized for not investigating incidents in a timely manner and for failing to consistently enforce administrative penalties. So, it is likely that the PUC will be making a concentrated effort to enforce the Law to show that it is serious about ensuring the health and safety of the general public, as well as the individuals engaged in digging activities. That means that contractors and excavators may find themselves embroiled in a full-on administrative hearing at the PUC with a BIE prosecutor seeking fines, and potentially changes, in operating procedures. PUC practice is highly specialized, and contractors faced with such a complaint should consider consulting with experienced PUC counsel to ensure satisfactory results.

Act 50 will become fully effective on Saturday, April 28, 2018.

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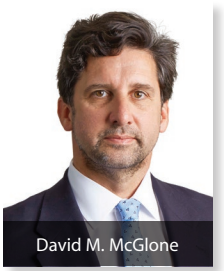
When pigs fly—the jury in construction claims


David M. McGlone

I like to think that I am an interesting oral advocate in front of the jury; my grandmother told me I was. I am proud of my rhetorical flourishes, but I have put my share of jurors to sleep. This is because I am a construction attorney. My experience is that, as the third change order is introduced into evidence at trial, the jurors fall over in the jury box like bowling pins. Each slumps in a different direction, eyes wide shut.

We in the industry should not be insulted, however, we should be concerned that we cannot be sure of justice from the drowsy juror.

Perhaps this is why the American Institute of Architects (AIA) began inserting arbitration clauses in the late 19th century. Optional arbitration provisions are fixtures in the mother of all construction documents (AIA A-201) and many other documents. Those provisions have gradually broadened from handling just change orders in the 19th century to just about anything arising on the construction site today between the contractors and/or owners. Arbitrators can even handle punitive damage matters. [*Drywall Systems v. ZVI Construction Co., Inc.*, 435 Mass. 664 (2002).]

Although it is the exception, there must be 50 ways to get your jury trial. A nonexclusive list of events that yield a jury trial in the construction context includes:

- There is no arbitration clause in the contract.
- The arbitration clause is not broad enough to handle the issue.
- The contract is terminated and the arbitration covenant is no longer operative.
- A consumer protection statute forbids it, typically for technical reasons (in residential construction).

“We in the industry should not be insulted, however, we should be concerned that we cannot be sure of justice from the drowsy juror.”

- A purely tortious injury occurs, such as a trade defamation or personal injury.
- Multiple nonsignatory parties make it impossible, unwieldy, or strategically undesirable.
- It is a post-construction dispute.
- A state bond claim statute or Mechanic’s Lien statute makes a jury trial mandatory.
- A government party cannot participate because arbitration is contrary to regulation.
- The parties unwittingly waive the arbitration provision by participating in standard litigation too long.

Notwithstanding that there is strong policy in favor of finding the right to arbitrate, this right is ultimately a creature of contract. If the contract is infirm, the right to arbitrate is probably in question as well.

There is a countervailing strong policy in the civil jury trial right. It is guaranteed by the Seventh Amendment on the federal level and by many, if not all, state constitutions. Typically, if the claim is something similar to a cause of action triable to a jury in 1791 (when the Seventh Amendment was incorporated into the United States Constitution), it is subject to a jury trial. Since most construction claims are based on contract, this would encompass many of the somewhat esoteric elements of a construction claim such as delay, acceleration and unknown site conditions.

Thus, if your arbitration clause is ineffective, you may not only miss out on the streamlined and technically appropriate arbitrator for these types of claims, but you also miss the chance for “bench” trial if your opponent asserts his or her Seventh Amendment right to a jury.

Many elements of a construction claim have their basis in traditional equitable concepts: restitution, specific performance, *Quantum Meruit,* and attorney’s fees. No jury would be available if these types of claims end up in traditional court. Consequently, as a matter of strategy, there is little to be gained by any plaintiff in insisting that this type of claim be prosecuted outside arbitration.

Punitive damages recently became a jury triable claim in the federal courts. [See *Full Spectrum Software, Inc. v. Forte Automation Systems, Inc.*, 858 F.3d 666 (2017).] Since arbitration panels can also hear these types of claims, it would make an airtight arbitration agreement especially important.

In writing this article, I do not mean to cast aspersions on our jury system. We are fortunate to have such an effective system that has the flexibility to weigh a criminal case by using jury pool “A” and a construction case using jury pool “B.”

It is useful to pause, however, to consider how to plan our construction contracts for the benefit of our construction industry and the court system.

David M. McGlone may be reached at dmcglone@eckertseamans.com

Construction Law Group NEWS

Eckert Seamans' Construction Group again received Tier 1 rankings from U.S. News – Best Lawyers® "Best Law Firms" 2018 in the Pittsburgh metropolitan market.

Our practice was also once again selected for inclusion in "Chambers USA: America's Leading Lawyers for Business" in Pennsylvania. According to Chambers USA, the team is "well respected for representing a wide range of clients, such as public and private owners, suppliers, designers and sureties. Esteemed for its strength in construction disputes and also regularly advises on bidding and procurement, government contracts and regulatory compliance issues. Active in both national and international projects in the infrastructure, energy and leisure sectors."

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

"'Excellent trial lawyer' **Christopher Opalinski** is a fine choice of counsel for complex construction suits and acts for a range of clients in the public and private sector. He regularly handles disputes at state and federal level and before arbitration panels, and is highly regarded for his experience in cross-border cases."

Scott Cessar is "acclaimed for his work in arbitration and mediation, where peers note that he is 'very competent, responsive, and practical.' One client enthuses: 'He was like no other lawyer. He tries to understand his client and respond accordingly. He really knows construction, knows all the Pittsburgh players and is highly regarded there. I'm thrilled I sought him out because he's perfect.'"

Cornelius O'Brien is "highly experienced in construction claims and disputes, acting for contractors, managers and subcontractors. He is also noted for handling construction litigation on behalf of municipalities and pharmaceutical companies. One appreciative client values his 'very accommodating' approach and 'conscientiousness of costs and expenses involved.'"

The publication's rankings are based upon the recommendations of 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.

Chris Opalinski, Scott Cessar, and **Neil O'Brien** were selected for inclusion in the 2018 edition of The Best Lawyers in America® for their legal work in construction. Also, **Chris** was named Litigation – Construction "Lawyer of the Year" in Pittsburgh. Best Lawyers compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. Inclusion in The Best Lawyers in America 2018 is determined by more than 5.5 million detailed evaluations of lawyers by other lawyers.

David M. McGlone of the Boston office was recognized in the 2017 edition of Massachusetts Super Lawyers® for his work in construction litigation

Scott Cessar recently achieved a very favorable result for a client who served as a subcontractor in the +$75 million renovation of the Smithsonian National Museum of American History in 2011. The United States Board of Civilian Contract Appeals in Washington, D.C., awarded our client more than $1.2 million, including interest, on a $1.5 million claim tried by Scott Cessar to the Board in February of 2016.

In September, **Neil O'Brien** successfully represented a site work contractor in arbitration against a local municipality in a default termination case. The arbitrator awarded our client all sums unpaid under the contract at the time of termination and rejected the municipality's counterclaim alleging approximately $750,000 in completion and delay costs, in its entirety.

Scott Cessar's article "Avoid Disputes From Incorporation by Reference Clauses in Surety Bonds" was published in the Construction Executive Magazine's Managing Your Business newsletter in October 2017.

Matthew Whipple's article "Advice to Federal Construction Contractors: Stick to the Fundamentals" was published in Construction Executive Magazine in September 2017.

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