



COMMON SENSE CONTRACTING

VOLUME 21, NUMBER 4

WINTER 2008

Inside This Issue

- 575 **Wisconsin: Economic Loss Rule**
- 576 **Contractor Ethics Program Mandated**
- 577 **Specify “Arbitration” with Clarity**
- 578 **Timing Is Everything**
- 579 **“Green Building” – What You Need to Know**
- 580 **Defense Base Closure – Hazardous Substance Remediation**
- 581 **Exculpatory Clauses and Third Party Claims**
- 582 **Arbitration and Contract Termination**

Wisconsin: Economic Loss Rule

575 Introduction

Construction contracts are a means for the contracting parties to allocate certain economic risks. When disputes arise, a party to a contract may seek to make claims for negligence (tort) as well as for breach of

contract with a view to expanding liability beyond that contractually defined allocation. The Economic Loss Rule applies in certain cases to protect parties from such exposure in tort. Generally, the Economic Loss Rule prohibits tort recovery for cases in which a product has damaged only itself and there is no personal injury or damage to other property and the losses or damages are economic in nature. The Economic Loss Rule was originally developed in the context of products liability matters, but has been expanded in many states to apply in other contexts as well. In *1325 North Van Buren, LLC v. T-3 Group, Ltd.*, 293 Wis.2d 410, 716 N.W.2d 822 (2006), the Wisconsin Supreme Court held that the Economic Loss Rule barred claims in negligence against a construction manager at risk on a building renovation project. In the same decision, that court considered whether an errors and omissions insurance policy covered breach of contract claims.

Factual and Procedural Background

1325 North Van Buren, LLC (“Van Buren”), owner of an existing industrial warehouse, contracted with T-3 Group, Ltd. (“T-3”) as a construction manager (“CM”) at risk with a GMP for renovation of the warehouse into a condominium building with an adjacent garage. In addition to providing construction management services, the CM was obligated to enter into subcontracts, procure materials, and coordinate and supervise the numerous subcontractors that performed the work. The contract, which was a

Smith Currie Opens Washington, DC Office

For over four decades, Smith Currie attorneys have maintained an active practice related to federal government contracting. During that period, three of our partners have been selected to serve as chairs of the Section of Public Contract Law of the American Bar Association. In addition, the firm was engaged by John Wiley & Sons to develop a new book entitled *Federal Government Construction Contracts – A Practical Guide for the Industry Professional*, which will be available in February 2008.

Consistent with our tradition and the goal to provide effective and timely service to our clients, Smith Currie is opening a Washington, DC office as

of January 2, 2008. Steven L. Reed, a recently retired judge from the Armed Services Board of Contract Appeals, will be the resident partner in that office. The address and contact information for our Washington, DC office is:

SMITH, CURRIE & HANCOCK LLP

1001 Pennsylvania Avenue, N.W.
Suite 600 South
Washington, DC 20004
Telephone: (202)742-6661
Facsimile: (202)742-6662
slreed@smithcurrie.com
www.smithcurrie.com

customized AIA “Standard Form of Agreement Between Owner and Construction Manager where the Construction Manager is also the Constructor,” provided that Van Buren would pay for the cost of the work plus T-3’s construction management fee. The contract contained an express warranty addressing the correction of defective work in the project and a liquidated damages provision. During construction, numerous problems related to defects on the work and schedule delays occurred, and Van Buren ended up terminating T-3. Van Buren subsequently filed a lawsuit against T-3 on breach of contract and negligence (tort) theories. T-3 filed a motion for partial summary judgment, arguing that the Economic Loss Rule barred Van Buren’s tort claims. The trial court agreed and entered partial summary judgment in favor of T-3, dismissing the tort claims. Van Buren appealed and the Wisconsin Court of Appeals reversed the trial court’s dismissal of those claims. T-3 then appealed to the Supreme Court of Wisconsin, which reversed the court of appeals’ decision and reinstated the trial court’s ruling.

Court’s Analysis of Contract

The Wisconsin Supreme Court began its analysis by recounting the Wisconsin version of the Economic Loss Rule. Under Wisconsin law, the Economic Loss Rule applies to a contract that is solely for products or is a mixed contract for both products and services, the predominant purpose of which is for products. The rule does not apply to contracts that are solely or predominantly for services.

In reversing the trial court, the court of appeals had held that the contract between Van Buren and T-3 was really purely a service contract as T-3 had been hired and was paid to provide construction management services. That court of appeals reasoned that the actual work was performed by subcontractors and with respect to that work T-3 was merely a conduit through which the money flowed. The Wisconsin Supreme Court disagreed and held that the contract “clearly discusse[d] both services and products to be furnished.” That court focused on the fact that the parties used an AIA form contract, under which the

construction manager assumes the risk that the cost of construction did not exceed a guaranteed maximum price. Since T-3 had assumed financial risk over the cost of construction, the court determined that it was more than a mere conduit of the funds for construction. In addition, the scope of work defined by the contract included the construction and services required by the contract documents and all other labor, material, equipment and services. Thus the contract required T-3 to deliver all of the materials and services for the completed project and not just construction management services. As such, the court concluded, the contract was a mixed contract for both products and services.

The Wisconsin Supreme Court then applied the “predominant purpose” test in order to determine whether the predominant purpose of the contract was to provide services or a product. Van Buren argued that services were the predominant purpose of the contract because T-3 had been hired for its construction management expertise and the product, the condominium complex and garage, was supplied by the subcontractors that actually built it. Once again, the Wisconsin Supreme Court disagreed and held that the predominant purpose of the contract between Van Buren and T-3 was to provide a completed condominium complex rather than to provide construction management services. In reaching this conclusion, the court looked at several factors, including again the scope of work of the contract, which provided that T-3 was to deliver a series of condominium units; the pricing of the contract, which the court concluded was akin to a fixed price contract for the completed complex and not tied to the amount of work and services necessary to complete the project; and the process of bidding for the project, in which the construction management was selected based upon its overall price for the project, rather than its fee.

In reaching its holding, the Wisconsin Supreme Court also considered the principles underlying the Economic Loss Rule. The injuries suffered by Van Buren were in the nature of construction defects and uncompleted work,

2008 Construction Industry Update

Mark your calendars and plan on attending **Smith, Currie & Hancock’s 2008 Update for the Construction Industry** to be held on February 28-29, 2008 at the Hyatt Regency Hotel in Atlanta. Avoiding costly claims and disputes is a priority for everyone (contractors, subcontractors, owners, designers, etc.) working in the construction industry. One of the best ways to avoid problems and cost overruns is to obtain current information regarding the new industry contract forms (ConsensusDOCS and AIA-A-201 (2007)), project delivery systems, construction defect claims and defenses, recovery of extended overhead and lost productivity costs, as well as recent construction and employment law rulings that affect your rights, obligations, and bottom line. In addition, if you need continuing education (“CE”) credits as a Florida licensed contractor, this program will permit you to obtain 7 hours CE credits.

Hold these dates for our **Atlanta** program. Shortly after the first of the year, you will receive more detailed information on the program. In the meantime, if there are topics you would like to see us address in the program, please feel free to contact **Eric Nelson**, (404)582-8061 or elnelson@smithcurrie.com, or any of the firm’s attorneys.

covered by a warranty provided by T-3 and delays, covered by the liquidated damages provision. The court stated that Van Buren and T-3 were commercially sophisticated parties that had drafted a lengthy, detailed contract that specifically allocated the risk of loss and available remedies under the terms of the contract. The court then reviewed several of those provisions and stated that it was “difficult to conceive what else the parties could have done with respect to the risk allocation and remedies in the event of a breach of contract.” In short, the court concluded, the case was “tailor made for the application of traditional contract law.”

Applicability of E&O Insurance

Similar to the practice of many CM firms, T-3 obtained a professional liability policy (“E&O” insurance). This policy provided coverage for “wrongful act”, which was defined as “any actual or alleged negligent act, error or omission in the performance of ‘professional services’ for others by the insured.” T-3’s insurer sought a determination that the breach of contract claims did not fall within the policy’s coverage. The insurer argued that “negligent” applied to “act”, “error” or “omission” and that none of the owner’s claims were subject to being covered by insurance. The Wisconsin Supreme Court rejected that interpretation of the policy and concluded that insurance coverage was available as the theory of liability did not control coverage.

Comment

This case settled the question of whether, under Wisconsin law, the Economic Loss Rule applied to contracts entered into by a construction manager at risk. The question of whether the Economic Loss Rule would also apply to contracts entered into by a construction manager as agent was not addressed. However, based on the reasoning upon which the Wisconsin Supreme Court based its holding in this case, it is quite possible that the Economic Loss Rule would not apply in those cases since a construction manager as agent does not hire the trade contractors or assume financial risk over the cost of construction. As a result, the risk assumed by a construction manager as agent may be greater than that of a construction manager at risk under certain circumstances. The exposure of a construction manager at risk is limited to that defined by the contract, but the construction manager as agent may be unable to limit its risk contractually and face exposure in both contract and tort.

Even though adoption and application of the Economic Loss Rule differs from state to state and the holding in this case only applies to construction contracts subject to Wisconsin law, this case, and its implications, plainly illustrates the importance of undertaking a careful review and analysis of applicable law prior to entering into a contract. Similarly, the court’s analysis of the language of the construction manager’s E&O policy is critical to determining the rights and practical remedies available to the parties.

Andrew R. McBride
404/582-8063

armcbride@smithcurrie.com

Member of the State Bars of Georgia and New Jersey

Contractor Ethics Program Mandated

576 In the Fall 2007 issue, we reported on the proposed Federal Acquisition Regulation (“FAR”) provision that would require many contractors to adopt corporate ethics and compliance programs. In that discussion, we indicated that the adoption of the proposal in some form was very likely. In the November 23, 2007 issue of the *Federal Register*, the final rule was issued with an effective date of December 24, 2007 (*See* 72 Fed. Reg. 65873). The purpose of this article is to provide a summary of that final rule, discuss a proposed rule that is related to it, and provide an update on the next chapter of the decision in *Morse Diesel International, Inc. v. United States*, 74 Fed. Cl. 601 (2007).

Overview: Final FAR Rule

The final rule issued on November 23, 2007 adds Subpart 3.10 – Contractor Code of Business Ethics and Conduct, FAR Clause 52.203-13 Contractor Code of Business Ethics and Conduct (DEC 2007), and FAR clause 52.203-14 Display of Hotline Posters (DEC 2007) to the Federal Acquisition Regulation. These provisions apply to most contracts awarded on or after December 24, 2007 of \$5,000,000 or more and with duration in excess of 120 days. Together with these provisions, the FAR Council published a summary of the comments to the initially proposed regulations and its responses to them. In some aspects, these comments can be important to a proper understanding of the new regulations. A summary of the new requirements follows:

- Within 30 days of contract award, contractors shall have adopted a written code of business ethics, provide a copy of the code to each employee engaged in performance of the affected contract, and “promote compliance with its code of business ethics and conduct.” (The contracting officer may extend that 30-day period.)
- Within 90 days of contract award (unless extended by the contracting officer), contractors, other than small business concerns, shall establish an on-going business ethics awareness program and “internal control system” to “facilitate timely discovery of improper conduct” and “ensure corrective measures” are instituted. FAR § 52.203-13(c)(ii) states that an internal reporting mechanism such as a hotline and instructions encouraging employees to report suspected instances of improper conduct are suggested elements of an “internal control system.”
- FAR § 52.203-14 Display of Hotline Poster(s) clause basically requires all contractors (no exemption for small business concerns) to display applicable federal agency fraud hotline posters unless that contractor has implemented a “business ethics and awareness program” including a reporting mechanism. This appears to be worded to induce small business concerns to adopt some version of an ongoing business ethics awareness program and internal reporting system.
- All contractors are required to flow down these clauses to subcontracts exceeding \$5,000,000. In response to

comments regarding the draft regulations, the FAR Council expressly stated in its comments that “purchase” orders on construction projects are considered subcontracts for the purpose of these regulations.

- In response to comments questioning a prime contractor’s obligation to monitor compliance with these clauses by its subcontractors, the FAR Council stated that the prime contractor is “not required to judge or monitor” the subcontractor’s program, just “check for existence” of the program.

The only blanket exemptions from coverage provided by the new regulations were for “commercial items” and contracts performed entirely outside of the United States. The FAR’s definition of “commercial item” is found at FAR § 2.101. While detailed, that definition can be difficult to apply in practical terms.

Proposed FAR Rule

On November 14, 2007, the FAR Council issued a proposed rule addressing contractor code of ethics and internal control systems applicable to contracts in excess of \$5,000,000 and with a performance period of more than 120 days. *See* 72 Fed. Reg. 64019. Significant elements of this proposed rule include the following:

- An amendment to the general standards of responsibility to include comments regarding the contractor’s record of integrity and business ethics in past performance evaluations and information on the contractor’s compliance with the new clauses discussed above.
- Require mandatory reporting by contractors and subcontractors of violations of federal criminal laws in connection with the award or performance of any Government contract or subcontract to the agency Inspector General and the contracting officer.
- Provide for debarment or suspension for a knowing failure to timely report:
 - (1) An overpayment on a Government contract; or
 - (2) Violation of federal criminal law in connection with the award or performance of any Government contract or subcontract. (The draft clause has no time limit on the application of this provision.)
- Flow down requirements applicable to certain subcontracts.

While the proposed new regulations specify that reports of violations of federal law are to be provided to the agency Inspector General and the contracting officer, the draft is silent as to whom reports of “overpayments” should be made. Nor does it define what constitutes an “overpayment”. The draft regulations contained exemptions for commercial items and contracts performed outside of the United States. In the draft, small business concerns would not be required to implement certain elements of the compliance program.

Morse Diesel Update

In our Fall 2007 issue we noted that in the *Morse Diesel International* decision reported at 74 Fed. Cl. 601 (2007), the Court of Federal Claims ruled that the contractor forfeited more than \$50 million in claims due to the findings that it had violated federal laws by improperly billing for

surety bond premiums before those amounts had been paid to the surety. In a decision issued on October 31, 2007, that court imposed civil penalties and damages applicable under the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58, and the Civil False Claims Act, 31 U.S.C. § 3729(a)(1)(a)(2).

In a detailed discussion of the purpose of the civil penalty and damages provisions of these two statutes, the court rejected the contractor’s arguments that:

- Assessing penalties and damages under both acts would be “improperly duplicative.”
- The Government’s damages should be based upon the time-value of money related to the billing for the bond premiums.

Rather, the court awarded the Government the maximum statutory penalty for violations of the anti-Kickback Act (\$259,457.04). In addition, the court ruled that the contractor was liable to the Government for a civil penalty under the False Claims Act of \$5,000-\$10,000 per violation plus treble damages. In that context, the court stated:

In fact, key executives knowingly defrauded the Government on six separate occasions involving four significant federal contracts. Plaintiff unlawfully claimed \$1,635,544 for false reimbursement on bond premiums and obtained \$688,678 for false indemnity payments to the parent company.

Based upon these findings of fact, the court imposed a civil penalty of \$50,000 and awarded treble damages of \$6,972,666 ((\$1,635,544 + \$688,678) x 3). In total, Morse Diesel was found liable for \$7,022,666.

We will continue to monitor this case and the likely appeals as well as the regulatory developments summarized above. If there are any questions or if you desire additional information, please contact us.

Thomas J. Kelleher, Jr.
404/582-8016

tjkelleher@smithcurrie.com

Member of the State Bars of Georgia and Virginia

Specify “Arbitration” With Clarity

577 The principal concept of every contract or agreement is to achieve the intent of the parties. The courts will examine the language of a contract to determine if the terms are clear and unambiguous. It is not the responsibility of the court to rephrase the language or to add any missing terms. Reasonably clear contract construction must take place when forming the contract.

In a fairly recent Louisiana decision, the Louisiana Court of Appeals held that if parties wish to include an arbitration clause, the word ‘arbitration’ must appear clearly in the agreement. *Ganier v. Inglewood Homes, Inc.*, 944 So. 2d 753 (La. Ct. App. 2006). Use of alternative words such as ‘final determination’ did not bind the parties to arbitration. A failure to clearly stipulate an intent or agreement for a binding arbitration may render the clause null and void.

In the *Ganier* case, the dispute arose in the context of the construction of a residence. The homeowners initiated

a suit against the builder on a breach of warranty claim. The claim stemmed from unresolved damages due to faulty workmanship and a failure to remedy by the builder. The builder took the position that the homeowners did not adhere to a provision of the contract that required disputes to be determined by a third party and sought to stay the litigation based on the contractual language. The language that the builder relied upon stated that “any dispute relating to the contract be referenced for final determination by the Orleans Parish Inspection Department, or another expert mutually agreed on by the parties.”

The homeowners opposed the motion on the grounds that the contract did not contain a valid and enforceable arbitration clause. They argued that the clause was vague and ambiguous and did not contain the words “binding arbitration.” In addition, they asserted that the “Orleans Parish Inspection Department” did not exist.

The court ruled that the burden of proving the existence of a valid arbitration clause was on the builder because it requested the motion to stay the litigation. To succeed, the builder had to show that a valid agreement to arbitrate existed between it and the homebuilders. It further had to show that the disputed claim was within the scope of the arbitration agreement.

In reaching a determination on this case, the court relied upon both state law and the Federal Arbitration Act. The court noted that although state and federal laws favor arbitration, an arbitration clause is not enforceable unless its meaning is “reasonably clear and ascertainable.” Moreover, the law requires that an interpretation of a contract is determined by the common intent of the parties. Where a contract does not contain language that is “a clear, unequivocal written expression that the parties agreed to arbitrate” their disputes, the court will not enforce the clause.

Noting that the clause did not contain the word “arbitration,” the court emphasized that the contractor did not cite to any case law that supported the premise that arbitration can be forced upon parties when the contract did not contain the word “arbitrate”. The contractor also failed to prove the existence of the referenced “Orleans Parish Inspection Department.” Consequently, there was no enforceable agreement to arbitrate.

Practical Application/Comments

Although the courts favor arbitration in lieu of formal litigation, if the contract does not specifically state “arbitration” a court may not impose it. The language of the contract must be “reasonably clear and ascertainable” that it is the intent of the parties to arbitrate their disputes.

To enforce an arbitration clause the court will determine (1) whether a valid agreement to arbitrate between the parties exists; and (2) whether the disputed claim is within the scope of the arbitration agreement. It is advisable to use words such as “*arbitrate*” or “*arbitration*” in the actual clause. Relying upon synonyms or ambiguous forms of expressions, such as “final determination,” may render the clause unenforceable. It is also important to ensure that if arbitrators are referred to in the arbitration agreement that they actually exist, and will continue to

exist, at the time enforcement of the agreement is sought.

Ian C. Clarke

404/582-8049

icclarke@smithcurrie.com

Member of the State Bar of Georgia

Timing is Everything

578 Two recent decisions by the Armed Services Board of Contract Appeals (“ASBCA” or “Board”) in Government contract disputes illustrate the importance of making timely decisions and taking expeditious action in connection with procurement matters or claims prosecution. These decisions may further indicate the pivotal role that counsel can play in providing sound advice early. Both contractors in these two cases were representing themselves before the ASBCA. In each case, the contractor should have made its complaint known to the Government much sooner.

Contract Award or Not

In *Zulco International, Inc.* (“ZII”), ASBCA No. 55441 (October 9, 2007), the contractor was terminated for default on account on its failure to supply a satisfactory “first article” (sample product). In a termination for default, the Government has the burden of proof. In this case, the Government was able to prove that the first article did not meet the contract specifications. The contractor admitted as much. However, ZII attempted to defend its inability to perform.

One of the contractor’s defenses was that the contract had been awarded after the bid acceptance period had expired. The original bid was good for 120 days. At the Government’s request, ZII extended its offered price for an additional 13 days (to January 14, 2005). On January 18, 2005, the Government awarded the contract.

After attempting to perform the contract for about seven months, ZII failed to supply a proper first article and was default terminated. After the default action by the Government, ZII argued for the first time that there was no contract because the contract award by the Government was too late, *i.e.*, four days after the bid acceptance period had expired.

Unfortunately for the contractor, what was too late was the contractor’s assertion that the award was too late. The Board explained: “A contractor may extend its offer or waive the expiration of the acceptance period if [it] accepts the award of a contract on the basis of its bid.” In this case, ZII accepted the award by failing to complain about late award at the time of award and by attempting to perform.

If the Government asks for an extension of the period within which an offer may be accepted, consider the time cost of money, timing and price commitments from subcontractors and suppliers, and any other factors that might affect the ability to perform at the original price and schedule if the award is delayed. ZII likely had every intention of performing; however, it passed up two opportunities to reconsider whether it ought to continue with its offer. It was under no obligation to extend its offer

acceptance period and it was under no obligation to perform when the contract was awarded after the bid acceptance period had expired. If the Government awards too late, a contractor has a right to refuse performance but must notify the Government, in writing, right away.

Claim Submittal Too Late

In *Paranetics Technology, Inc.* (“PTI”), ASBCA No. 55329 (October 12, 2007), the contractor’s post-award claim for unabsorbed overhead was denied. Following award to PTI, a disappointed competitor protested the award. The Government contracting officer (“CO”) issued a stop work order (“SWO”). The SWO was in effect for 39 days. Accordingly, PTI’s performance was delayed.

The contract included a standard provision entitled “PROTEST AFTER AWARD,” FAR § 52.233-3 (AUG 1996). That provision states, in relevant part, that the CO “shall make an equitable adjustment in the delivery schedule or contract price, or both . . . if . . . Contractor asserts its right to an adjustment within 30 days after the end of the . . . work stoppage”

Following the lifting of the stay after 39 days, the CO extended the due date for the first article by 55 days and the initial delivery date by 56 days. The decision does not indicate whether this time adjustment was in a bilateral or a unilateral modification. PTI did not submit to the CO a written claim or a request for an equitable adjustment within the required 30-day period. PTI’s president testified that he discussed filing a claim for the delay caused by the protest with someone in the Government’s procurement office; however, the Board found no corroboration of that conversation. In any event, there was no written follow-up by PTI to the CO or anyone in the CO’s organization. Later, PTI’s SWO delay claim was combined with other delay periods and was submitted more than 27 months after the conclusion of the SWO period. The CO denied the monetary delay claim.

Concerning the portion of PTI’s claim that related to the SWO, the ASBCA, in denying the claim, determined: “. . . appellant [PTI] failed to timely request an adjustment. FAR 52.233-3 . . . requires the contractor to assert a claim for an adjustment [within 30 days]. [PTI] did not comply with this requirement. Thus, its claim for unabsorbed overhead relating to the stop work order is untimely.”

What Prejudice?

There is no indication that PTI asked the Board to require the Government to show how it was prejudiced, if at all, by PTI’s late claim. PTI apparently did not attempt to prove a lack of prejudice to the Government by reason of PTI’s delay in submitting the claim. The ASBCA made no mention of any concern with whether the Government ought to be required to show how it was prejudiced by the late claim.

Based on this decision, it would appear that the contractor simply forfeits any claim it might have had by being late with its request for an adjustment or claim. It would be interesting to know how the Board would rule if proof were offered that tended to show that the Government suffered no prejudice. It would also be interesting to see a response to the legal argument that, while the PROTEST AFTER AWARD provision restrains the CO, it should not

require the ASBCA or a court to order forfeiture of a claim absent good and compelling evidence, such as evidence of prejudice to the Government by reason of the late claim. Similarly, a failure to assert a monetary claim until approximately two years following the delay and extension of the contract may be seen as an indication that the claim was an after thought.

Give Notice

If a discussion is conducted with personnel in the Government, a contractor must follow up with a letter confirming the circumstances and content of the conversation and, when appropriate, asking for an adjustment in the contract terms. Contractors must be diligent in documenting and submitting claims, perhaps with counsel’s assistance. The trend among federal courts and boards that resolve Government contract disputes is to read contract terms in a literal fashion. Therefore, it pays to be well-advised, vigilant, and timely.

Steven L. Reed
404/582-8020

slreed@smithcurrie.com
Member of the State Bar of Georgia

“Green Building”: What You Need to Know

579 Although so-called “Green Building” is the latest trend in the construction industry, it can be hard to define what makes a project “green.” The United States Green Building Council (USGBC)—a non-profit organization comprised of owners, developers, facility managers, design professionals, general contractors, subcontractors, suppliers, and government agencies—tasked itself with identifying green building practices. The result was the Leadership in Energy and Environmental Design (“LEED”) Green Building Rating System.TM

LEED is the emerging short-hand for what makes a project green, environmentally friendly, and/or energy efficient. LEED is actually a series of checklists targeted at specialized projects. As of this writing, the USGBC has developed the following:

- LEED for New Construction and Major Renovations (NC)
- LEED for Existing Buildings: Operations & Maintenance (EB)
- LEED for Commercial Interiors (CI)
- LEED for Core & Shell (CS)
- LEED for Schools
- LEED for Retail
- LEED for Healthcare
- LEED for Homes
- LEED for Neighborhood Development

Projects accumulate points by meeting criteria and based on those points are designated LEED certified (the baseline), LEED Silver, LEED Gold, or LEED Platinum.

Familiarity with the LEED certification system is essential for government (federal and state) contractors and certainly is recommended for contractors in the private sector. Many public entities now require that their

public projects meet LEED certification standards and offer incentives to private LEED projects. First and foremost, various arms of the federal government are requiring LEED certification for their projects. The General Services Administration (GSA) requires that all building projects meet the LEED certified level and target the LEED Silver level. The GSA “strongly encourages” but does not require projects to apply for certification, however. Likewise, the US Navy requires “all applicable projects” to meet the requirements for LEED certification but does not require submission to the USGBC for actual certification. On the contrary, the US Environmental Protection Agency requires all new facility construction and acquisition projects 20,000 square feet or larger not just meet but actually achieve LEED Gold certification. Likewise, the US Department of Agriculture requires all new or major renovation construction of covered facilities to achieve LEED Silver certification.

Local and state governments also are implementing LEED requirements for public projects and incentives for private projects. The City of Gainesville, Florida requires government buildings be LEED certified and offers fast-track, reduced cost building permits for private contractors who use LEED. Likewise, Arlington County, VA offers expedited permitting and allows higher densities to LEED Silver projects. Other governments offer tax incentives on LEED projects, e.g., in Chatham County, Georgia, commercial buildings achieving LEED Gold certification benefit from full property state and county tax abatement for the first five years, which tapers off by 20% each year until the tenth year. In Cincinnati, Ohio, the tax breaks vary by level of LEED certification achieved.

Although the public sector led the way with LEED projects, at this point Green Construction has gone mainstream. Examples of LEED registered (i.e. ongoing) and completed, certified projects are everywhere; just in Atlanta, for example, they include:

- LEED for Core and Shell:
 - o 171 17th Street (Silver)
 - o 2555 Cumberland Parkway
 - o 1180 Peachtree (Gold)
 - o 4004 Summit
 - o Phipps Plaza Tower
- LEED for Commercial Interiors
 - o DPR Construction, Inc.
 - o Herman Miller Atlanta National Design Center (Gold)
 - o Perkins+Will, 1375 Peachtree St
 - o Skanska Office at Ivan Allen Plaza
- LEED for Existing Buildings:
 - o One Atlanta Plaza
 - o Sam Nunn Atlanta Federal Center
 - o Southern Dairies Building C
- LEED for New Construction:
 - o ASHRAE Headquarters
 - o Ben Massell Dental Clinic, Jewish Family & Career Services
 - o Management Building at Technology Square, Georgia Institute of Technology (Silver)
 - o Edgewood Offices, The Epstein Group, Inc.

(Platinum)

- o Villages at Carver Family YMCA

Signs on construction fences indicate that many more projects seeking LEED certification are underway.

Practical Considerations

The earlier in the planning phase that the owner decides to seek LEED certification, the lower the costs of construction. As a rule, design costs for LEED projects exceed design costs for non-LEED projects. Arguably, however, the increased emphasis on front-end design reduces construction costs by reducing the number of change orders required. If an owner wants or requires LEED certification, the project participants need to understand the LEED process when estimating, bidding, and working the job. LEED touches every decision from site selection, selection of materials, handling of construction waste, storm-water, MEP design, to finishes.

When an owner decides to obtain LEED certification, the first step is designating a LEED accredited professional (AP) to oversee and shepherd the process. Often the LEED AP is a member of the design team, though it could be a construction manager or contractor, on a design-build project for example. No matter who is serving as the LEED AP, for a LEED project to be cost effective, all project participants—not just the designers—need to understand the requirements for LEED certification from the beginning. Contractors may be surprised that they are already acting in ways that would earn points for LEED Certification. Projects accumulate points in six core areas:

- For sustainable sites, e.g. by conforming to the NPDES permit requirements, which is already required;
- For water efficiency, e.g. by capturing rainwater, using native landscaping, and using innovative water efficient fixtures;
- For energy and atmosphere, e.g. by conforming with ASHRAE 90.1, reducing energy demand, using HVAC and fire suppression systems without HCFCs or Halons, and using on-site renewable energy (e.g. photo-voltaics) or other green energy;
- For materials and resources, e.g. by storing and collecting recyclables, reusing shell and non-shell components in renovations; diverting construction waste from the landfill; using recycled or rapidly renewable materials; and using local or regional materials;
- For pollutants and indoor environmental air quality, e.g. by choosing low or no emitting materials adhesives, sealants, paints, carpets, and composite wood products; flushing or filtering out any pollutants; and conforming with ASHRAE 55; and
- For innovation and the design process.

The LEED AP must submit documentation to support every point the project is claiming, so all project participants involved with a particular point must document it. See www.usgbc.org or www.buildinggreen.com for more information.

Legal Issues Raised by LEED

No cases have tested the nature or extent of liability related to LEED certification yet. Potential questions that will eventually arise if they have not already include: Who

warrants the content of materials for LEED certification purposes? Does LEED certification operate as an affirmative defense to building defect claims after construction? Is the HVAC subcontractor liable for moisture issues related to LEED mandated systems? Who bears the risk of the project not meeting the criteria for a given level of certification? Is it enough that the project meet the LEED criteria or that it actually be certified by the USGBC? Who has the authority to decide whether a project meets the LEED requirements if not the USGBC? Who bears the risk of a project not meeting the level of certification required by the owner? What is the remedy?

These questions remain unanswered because there have not yet been any reported legal cases involving LEED or other green construction standards. However, as with all projects, the participants should read the project documents carefully to evaluate their risks and responsibilities. Pay close attention to any mention of LEED and make sure to know what your responsibilities will be with regard to the LEED certification process. Until the law develops the best strategy is to document, document, document.

Helen Pope
404/582-8044
hhpope@smithcurrie.com
Member of the State Bar of Georgia

Defense Base Closure – Hazardous Substance

580 The redevelopment and refurbishing of closed or realigned federal military installations can offer significant opportunity for the construction industry, along with significant risk inherent in rehabilitating and redeveloping such property. One such risk deals with the unanticipated need to remediate existing hazardous materials and substances from these installations. The cost and potential liability of performing such environmental remediation can far exceed the potential profits recognized from the redevelopment of these facilities. A recent case from the U.S. Court of Federal Claims recognizes that developers and constructors involved in the rehabilitation of closed federal military installations have some statutory relief from such risk.

Factual Background

In 1988, Congress established the Base Realignment and Closure Commission (the “BRAC Commission”) to review military bases and recommend facilities for closure or realignment. Once closed, bases are then turned over to private developers. In 1991, the BRAC Commission selected Lowry Air Force Base in Colorado for closure. Shortly thereafter, a local intergovernmental agency was formed to facilitate residential development of the closed base property. This local development authority built the infrastructure for residential development and finished various lots before conveying them to multiple homebuilders.

In one particular section of the former Air Force base, five homebuilders had purchased such lots from the development authority. During construction of homes on

these lots, asbestos-containing materials (“ACM”) were discovered in the underlying soils. The Air Force admitted that it was the original source of the ACM at that base. It was believed that the ACM had been buried on the site during incidental renovation and demolition operations between 1959 and 1979, well before ACM became a cognizable and regulated hazardous substance.

During construction of the private homes, the State of Colorado Department of Public Health and the Environment (the “state”) issued Compliance Advisories to the homebuilders, the development authority, and the U.S. Air Force notifying all parties of the threat to public health and the environment caused by the buried ACM. The specific environmental threat involved the potential release of buried ACM into the air through excavation of soils and other land disturbing activities at the sites.

Action for Indemnity

In light of this environmental concern, the state developed a Response Plan which required sampling of the contaminated soils and removal of the ACM to “non-detect” levels. The homebuilders and the development authority accepted and implemented the Response Plan, at a cost in excess of \$9 million. The Air Force was not so cooperative; it did not embrace the Response Plan, nor did it participate in the ensuing investigation and ACM clean up. As a result, the homebuilders and the development authority demanded indemnification from the Air Force pursuant to Section 330 of the National Defense Authorization Act for Fiscal Year 1993. 10 U.S.C. § 2687. After the Air Force declined to indemnify the homebuilders or the development authority, the homebuilders filed suit in the U.S. Court of Federal Claims in the case styled *Richmond American Homes of Colorado, Inc. v. United States*, 75 Fed. Cl. 376 (“*Richmond American*”).

The plaintiffs’ action rested on Section 330(a)(1) of the National Defense Authorization Act that provides:

The Secretary of Defense shall hold harmless, defend, and indemnify in full the persons and entities described in paragraph (2) from and against any suit, claim, demand or action, liability, judgment, cost or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance or pollutant or contaminant as a result of Department of Defense activities at any installation (or portion thereof) that is closed pursuant to a base closure law. 10 U.S.C. § 2687 note.

The “indemnities” recognized by this provision include: i) any state or political subdivision thereof acquiring ownership or control of any facility at a closed military installation; ii) any other person or entity acquiring such ownership or control; and iii) any successor, assignee, transferee, lender, or lessee of any of the above. This indemnification provision does not apply to the extent the person seeking indemnity contributed to any release or threatened release.

In *Richmond American*, both sides moved for summary judgment. The Air Force sought summary judgment on the

plaintiffs' Section 330 claim. The plaintiffs sought summary judgment as to both liability and damages. The court granted summary judgment in favor of plaintiffs as to the Air Force's liability under Section 330 and denied the Air Force's summary judgment motion.

The Air Force argued for a narrow application of the Section 330(a)(1) indemnification obligation. Specifically, the Government argued that this obligation should only be triggered where a third party sues one of the stated indemnities for personal injury or property damage. Applying this narrow construction to the *Richmond American* plaintiffs, the Air Force argued that the plaintiffs could only recover if they refused to investigate or clean up the contaminated soil and then faced lawsuits by "third party" homeowners. Finally, the Government argued that the plaintiffs contributed to the release or threatened release of ACM by moving contaminated soils around the property.

The court rejected the Government's narrow interpretation of the Section 330(a)(1) indemnity provision for two reasons. First, the court found that this interpretation was at odds with the stated legislative intent of the statute, which was, to "ensure, without condition, that the Federal Government will defend and indemnify states and employers who are sued over pollution caused by Federal activities." 138 Cong. Rec. § 13982-01 (daily ed. Sept. 18, 1992). The court further found that the Air Force's position conflicted with the "general theme of environmental remediation statutes." Relying upon the federal CERCLA laws in particular, the court reasoned that environmental remediation statutes "mandate prompt clean-up of hazardous wastes, while providing mechanisms to ensure that a single party is not left holding the bag for other responsible parties." Adopting the Government's position, the court believed, would "discourage private economic development of former military property."

The court also rejected the Government's argument that the homebuilders and the development authority caused or contributed to the ACM being buried underground. The court recognized that Section 330(a) does not provide a "blanket indemnification" for the listed indemnities. However, the court found that the Air Force's evidence as to the responsibility of the development authority and/or the homebuilders was speculative at best.

Comment

Contractors and developers performing construction activities must always be concerned about the risks of encountering hazardous or potentially hazardous substances or materials. Due diligence and knowledge of site conditions before commencing construction activities should be mandatory considerations by the prudent construction professional. While not offering a "pass" from such considerations and evaluation of environmental risks, the *Richmond American* case does provide some comfort to developers and contractors working on military installations closed by the BRAC Commission.

G. Scott Walters
404/582-8062

gswalters@smithcurrie.com

Member of the State Bar of Georgia and the District
of Columbia

Exculpatory Clauses and Third Party Claims

581 Introduction

Broad exculpatory clauses that are written to foreclose certain third party claims against design professionals and construction managers are routinely included in construction contracts. Notwithstanding those clauses, some courts are holding that construction professionals may be liable to third-parties due to the nature of the construction professional's contractual undertaking. For example, a construction manager who agrees to supervise safety on the jobsite might be liable for negligently supervising safety notwithstanding the presence of an exculpatory clause that insulated the construction manager's liability from third-parties. Likewise, an engineering firm may be liable for its professional negligence notwithstanding the presence of a broad exculpatory clause in a construction contract because a court may conclude that an engineer has a non-delegable duty to provide its services with ordinary care and diligence.

Two recent cases, one out of the Supreme Court of Pennsylvania and one out of the U.S. Court of Appeals for the Fifth Circuit have addressed these issues and have determined that construction professionals might be liable to third-parties notwithstanding exculpatory clauses.

Safety Related Duties

Farabaugh & Pennsylvania Turnpike Com'n, 911 A.2d 1264 (PA. 2006) involved an action by the wife of a deceased construction worker of general contractor against the construction manager ("CM"). The worker died on the jobsite when a haul road collapsed. The haul road was part of the general contractor's worksite. The contract between the Pennsylvania Turnpike Commission ("PTC") and the general contractor provided that the general contractor would assume responsibility for the injuries its employees sustained on the jobsite. Moreover, that contract also provided that the general contractor agreed that PTC's acceptance of its safety program did not "relieve or decrease" the general contractor's liability for safety and that the contract would not act to make the owner, engineer, or any other party other than the general contractor solely responsible for safety.

The contract between PTC and the construction manager provided that the CM would assume responsibility for monitoring the general contractor's compliance of safety procedures. The contractor's wife (plaintiff) sued the CM for wrongful death. She claimed that the construction manager's negligence in monitoring and supervising safety was a proximate cause of her husband's death and that the construction manager assumed a duty of care to her husband to perform its contractual obligations of providing safety oversight and inspection services in a manner that did not compromise the safety of workers on the worksite.

The CM claimed that it owed no duty to decedent, whose death resulted from the negligent construction and maintenance of the haul road by the general contractor. Thus, the CM contended that it did not owe the third-party

decident a duty because the CM was only responsible for oversight of safety (i.e., to see that the general contractor's employees followed their own safety procedure). Moreover, the CM sought to persuade the court to define the scope of a construction manager's duty to employees of other contractors as being merely responsible for monitoring the contractor's compliance with its own safety plans.

The court responded by distinguishing between duties that are delegated and those that are assumed. Here, the court held that the construction manager owed a duty because the contract between PTC and the CM called for the construction manager to "assume" an active roll in safety. According to the court, the construction manager therefore potentially could be found responsible to third-parties because it assumed an "active" roll in safety of project site notwithstanding the exculpatory language in the contract with the general contractor.

Engineer's Inspection Duties

In *Lyndon Property Ins. Co. v. Duke Levy and Associates, LLC*, 475 F.3d 268 (5th Cir. 2007) the performance bond surety for a defaulted contractor on a county sewer project brought an action for negligence against the engineer, whom the public owner hired. The surety completed the work with a new contractor following the termination and alleged that it paid the completion contractor more than \$900,000 to fix and test work performed by the defaulted contractor that had been inspected and approved by the engineering firm. The engineer claimed that it did not owe any duty to third-parties (such as the surety) because of a contractual disclaimer and that it was, therefore, not liable. That clause provided as follows:

Neither ENGINEER's authority to act under [the] Contract documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

The trial court ruled that this provision precluded the surety's claim against the engineer.

In applying Mississippi law, the Fifth Circuit noted that, an architect or engineer generally has a professional non-delegable duty and is required to exercise ordinary professional skills and diligence. The engineer did not contest this general characterization, however, but argued that the exculpatory clause nonetheless limited its liability so that it was only liable to the public owner and not to third-parties.

The Fifth Circuit noted that Mississippi law assesses exculpatory clauses with strict scrutiny. Consequently, the courts applying Mississippi law will not enforce exculpatory clauses unless the court determines that the parties understood the extent of the exculpatory clause and that they fairly and honestly negotiated it. Moreover, the court indicated that the law does not look upon exculpatory clauses favorably, but will enforce them when the court finds that the parties understood the extent of the

exculpatory clause and that they fairly and honestly negotiated for it.

In this case, the court determined that clause was not sufficiently clear to act as a limitation of liability because the court did not find that the parties either understood the clause or that they fairly and honestly negotiated for it. Furthermore, the court held that the county could not bargain away the engineer's potential duty to a surety who would step in the shoes of the county under equitable subrogation.

Comment

The interpretation of exculpatory clauses are usually controlled by state law and it is difficult to draw general conclusions regarding the effect of such clauses. However, both decisions illustrate a degree of judicial scrutiny provided to these clauses and that design, engineering and construction management firms may still be liable to third parties notwithstanding the use of such clauses. Certainly, firms providing professional services in conjunction with construction projects need to consider the nature and extent of their insurance coverage as well as adequacy of fees paid for their services given the potentially expanded liability risks.

John S. Tobey
404/582-8054

jstobey@smithcurrie.com
Member of the State Bar of Georgia

Arbitration and Contract Termination

582 The American Institute of Architects ("AIA") standard contract documents are commonly used in the construction industry today. The AIA General Conditions of the Contract for Construction (A201-1997) include a dispute resolution clause that requires all claims to be submitted to mediation and arbitration after initial decision by the architect. However, anyone that uses the AIA documents should be aware that termination of the contract itself may create a question of the continued applicability of the contract's dispute resolution clause. In 2007, the First District Court of Appeal of Florida issued its decision in *Auchter Company v. Zagloul*, 949 So. 2d 1189 (Fla. 1st DCA 2007) which provides guidance on the ability of a party to enforce the AIA arbitration provision after termination.

Factual Background

In the *Auchter Company* case, Zagloul and Auchter Company ("Auchter") entered into a contract for construction of a house. The contract documents consisted of the "Standard Form of Agreement Between Owner and Contractor" (AIA Document A111-1997) and "General Conditions of the Contract for Construction" (AIA Document A201-1997). Two months after Auchter obtained a certificate of occupancy on the house, Zagloul notified Auchter that the contract was terminated because of what he alleged as "substantial breaches of the contract" and subsequently filed suit on its claims.

In response to this suit, Auchter filed a motion to

dismiss and/or compel mediation and/or arbitration and to stay the action. That motion was based on Articles 4.5.1 and 4.6.1 of the AIA General Conditions which required the parties to submit any “claims arising out of or related to the [c]ontract” to mediation and, if mediation failed, to binding arbitration. Zagloul opposed the motion on the ground that the contract between the parties had been terminated and, as a matter of law, the mediation and arbitration provisions contained in the AIA General Conditions did not survive that termination. Zagloul relied principally on the decision in *Aberdeen Golf & Country Club v. Bliss Construction, Inc.*, 932 So. 2d 235 (Fla. 4th DCA 2005), which Zagloul asserted was binding on the trial court because it was the only Florida appellate decision construing the AIA dispute resolution clause. In response Auchter stated that that *Aberdeen* decision was not binding because the actual holding of that case was that the owner had waived its right to enforce the dispute resolution clause when it terminated the contract. Auchter argued that it had done nothing to waive its right to enforce the arbitration clause in this case. The trial court agreed with Zagloul and denied Auchter’s motion.

Decision on Appeal

On appeal, the court first noted that the only issue to be decided was whether the dispute resolution clause contained in the AIA documents was “valid”. The court then went through a careful analysis of the *Aberdeen* decision. In *Aberdeen* the parties entered into a standard AIA contract, substantively similar to the *Auchter* contract. The owner in *Aberdeen* also attempted to terminate the contract before final completion. However, in *Aberdeen* the contractor filed suit and it was the owner who filed a motion to stay and compel arbitration. The contractor argued that the owner waived its right to enforce the arbitration clause when it terminated the contract. In *Aberdeen*, the trial court and the appellate court agreed holding that the owner’s actions had constituted a waiver of its right to compel arbitration.

The court in *Auchter* noted that the facts of *Aberdeen* were readily distinguishable from those of this case. Specifically, in *Aberdeen*, it was the owner, who terminated the contract, who was seeking the benefit of the dispute resolution clause. Although the owner also terminated the contract in this case, it was the contractor who sought arbitration. Therefore, the court noted that the “equities” were far different than in *Aberdeen*.

The court also examined the language in *Aberdeen* where that court concluded that the AIA dispute resolution provisions were not intended to survive termination of the contract by either party. The *Auchter* court did not agree with the dicta in *Aberdeen* regarding the intent of the standard AIA contract. The court added the arbitration provision in the AIA contract does not require any type of “savings clause” to survive termination. In fact, in the court’s view, it is well established that the duty to arbitrate does not end when a contract is terminated, so long as the disputed claims arise under the contract. In this case, post-termination disputes were not expressly excluded from the scope of the AIA dispute resolution clause.

The court also relied upon the definition of the term “claims” in the AIA contract in reaching its decision. The AIA definition of claims includes other disputes and matters in question between the “Owner and Contractor arising out of our relating to the contract.” [emphasis added]. The court stated that this language was intended to be all-inclusive and did not attempt to limit “claims” to disputes arising before termination of the contract. The Florida Supreme Court previously interpreted this language to encompass virtually all disputes between the contracting parties, including related tort claims in *Seifert v. U.S. Home Corp.*, 750 So. 2d 633, 637 (Fla. 1999). Based upon the factual distinctions in this case and the court’s examination of the contract language, the court held that the AIA dispute resolution clause is intended to survive termination of the contract by a party.

Comment

Arbitration clauses are contractual in nature and parties typically make an informed decision as to whether or not they should include such a clause in a construction contract. Therefore, as a matter of equity it seems appropriate that

UPCOMING SEMINARS

Newly Released ConsensusDOCS and 2007 Edition of A201, Georgia Branch of the AGC, January 28, Atlanta, GA; January 29, Macon, GA; January 30, Albany, GA; January 31, Valdosta, GA; February 4, Savannah, GA; February 5, Columbus, GA. *Philip E. Beck.*

Florida Construction Industry Licensing Board Continuing Education Courses in Conjunction with the Georgia Branch of the AGC, February 7, 2008, Atlanta, GA.

Commercial Real Estate Development and Construction, National Business Institute, February 19, 2008, Atlanta, GA. *Philip E. Beck.*

Smith, Currie & Hancock’s 2008 Update Seminar, February 28-29, 2008, Hyatt Regency Atlanta, Atlanta, GA.

Construction Law: Bring It On!, National Utility Contractors Association Institute for Leadership Development, February 28, 2008, Arlington, VA. *Charles W. Surasky.*

What Owners Want – A Closer Look (Panel Discussion, *Philip E. Beck*, Moderator) Associated General Contractors of America 2008 Annual Convention, March 11, 2008, Las Vegas, NV.

Construction Disputes & Claims Avoidance, Associated General Contractors of America 2008 Annual Convention, March 11, 2008, Las Vegas, NV. *Thomas J. Kelleher, Jr., Ronald G. Robey, Philip E. Beck.*

What Every Contractor Needs to Know About the False Claims Act and Its State and Local Counterparts, Associated General Contractors of America 2008 Annual Convention, March 11, 2008, Las Vegas, NV. *Thomas J. Kelleher, Jr.*

Mediation, National Contract Management Association, 2008 World Congress, April 14, 2008, Cincinnati, OH. *Hubert J. Bell, Jr., Steven L. Reed.*

a party to a contract with an arbitration clause should be entitled to enforce that clause provided that they have followed the contract terms. The *Aberdeen* and *Auchter* cases are important decisions based on the fact that they involved the AIA form documents which are so prevalent in the construction industry today. However, these cases also highlight the practical importance of carefully complying with the terms of a contract especially when it comes to procedures concerning resolution of claims and termination.

Leonardo N. Ortiz
954-769-5325
lnortiz@smithcurrie.com
Member of the State Bar of
Florida

Address Change? To ensure you continue receiving our newsletter, please call or e-mail your address changes to 404/582-8092 or sivey@smithcurrie.com.

Supervisory Editors: Thomas J. Kelleher, Jr., and Charles W. Surasky.

Notice to Florida Licensed Contractors

For many general contractors, 2008 is the deadline for obtaining your mandatory fourteen (14) hours of continuing education ("CE") credits to maintain your Florida contractors license. These requirements include one hour of workplace safety, one hour of workers' compensation, one hour of business practice, one hour of advanced code, one hour of "wind mitigation" methodologies, one hour of laws and regulations, and eight hours of general topics. Smith, Currie & Hancock LLP is an approved course sponsor (Provider No. 0000998) by the Florida Construction Industry Licensing Board (FCILB). The absolute deadline for completion of these hours for many licensed contractors is August 31, 2008.

To avoid conflicts between the busy summer construction season and the August deadline for CE credits, we have scheduled three opportunities to attend FCILB courses in the first quarter of 2008. These courses are scheduled as follows:

February 7, 2008 – Atlanta, Georgia in conjunction with Georgia AGC.

February 28-29, 2008 – Atlanta, Georgia as part of our 2008 Construction Industry Update Program.

March 11-12, 2008 – Las Vegas, Nevada, in conjunction with the 89th Annual Convention of the AGC of America.

For more information, please e-mail Tom Kelleher at tjkelleher@smithcurrie.com.

This newsletter is intended to be a source of general information on new or current topics on construction law, government contracts and commercial law. It is not intended to render legal advice on specific problems. In assessing specific problems, advice and counsel should be sought from experienced professionals.



2700 Marquis One Tower
245 Peachtree Center Avenue, N.E.
Atlanta, Georgia 30303-1227
404/521-3800

PRESORTED STANDARD
US POSTAGE
PAID
PERMIT NO. 4866
ATLANTA, GA

Address Service Requested