AcademicSolutions

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Dear Readers,

Robinson & Cole has had the good fortune to work closely with many educational institutions and associations in all areas of practice. As a way of giving back to our friends in education, we are excited to present to you the inaugural issue of Robinson & Cole's Academic Solutions. We hope that this newsletter provides added benefit and service to our clients and friends in the educational field.

Gregory R. Faulkner
Martin A. Onorato
Co-Editors

Articles

No Damage for Delay Clauses: How Enforceable Are They?

By Alex E. Baez

Campus construction projects generally require contractors to commit expensive equipment, large payrolls, and significant overhead expenses during the construction phase. Academic institutions must plan their resources carefully, negotiate contracts to manage the costs of construction, and monitor progress and expenses over the time period allocated to complete the project. Consequently, a contractor's delay in performance is likely to have a tremendous financial impact on the project's final price tag.

Construction on campuses is often tightly constrained by the academic calendar. Thus, it is common for construction contracts to include language by which contractors and/or subcontractors agree not to seek additional compensation because of construction delays, regardless of responsibility. These "no-damage-for-delay" clauses typically state that contractors will not be entitled to recover additional costs. They may also add that an extension of time will be contractor's only remedy, in the event of a construction delay on the project. Goals of these exculpatory clauses include (a) avoidance of costly disputes; (b) mitigation of potentially crippling costs associated with project delays; and (c) motivation of parties to identify, contract and appropriately price project risks. However, while no-damage-for-delay clauses frequently appear in construction contracts, their treatment and enforceability vary from jurisdiction to jurisdiction. Click /A> to read full article.

New Administration Brings a Renewed Look at Project Labor Agreements

By Richard F. Vitarelli

On February 6, 2009, President Barack Obama issued Executive Order 13502, allowing federal executive agencies awarding contracts for large-scale construction projects to "require the use of a project labor agreement by a contractor." The order revokes two executive orders from the George W. Bush administration[1] that effectively prohibited federal agencies from making a project labor agreement a requirement for a federal construction project. Private universities and schools who receive any federal funds may be affected by this order, but at this point, the order clearly covers federally funded large-scale construction projects.

A Project Labor Agreement (PLA) is a prehire collective bargaining agreement often involving multiple trade unions and contractors While specific requirements can vary, PLAs set the terms and conditions of employment for employees working on a specific construction project by binding all project contractors and subcontractors, union and nonunion alike, "through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents." PLAs, as required by the order, also incorporate binding dispute resolution processes and "contain guarantees against strikes, lockouts, and similar job disturbances." Click /A> to read full article.

News and Notes

Robinson & Cole attorneys Greg R. Faulkner and Garry Berman recently attended the Higher Education Real Estate Lawyers Conference in Las Vegas. Mr. Berman presented on the topic of leasing issues arising when landlords and tenants are in financial distress.

Dennis Cavanaugh, cochair of the firm's Construction Group was elected as secretary of the University of Connecticut Alumni Association for the 2009 to 2010 term.

Kirstin M. Etela and Brian C. Freeman, environmental and utilities attorneys and members of the Sustainability and Climate Change Initiative, were recently published in the *Connecticut Law Tribune*. Their article, "A Bonus for Building Energy Efficiency Projects," assesses a new greenhouse gas program that allows building owners to benefit from energy-efficient projects.

Books authored or edited by LandLaw partners Brian W. Blaesser, Thomas P. Cody, Michael S. Giaimo, and Dwight H. Merriam recently made the American Bar Association's best seller list for the Section of State and Local Government Law: Mr. Giaimo coedited *RLUIPA Reader: Religious Land Uses, Zoning and the Courts* and also authored a chapter in the book. Mr. Merriam also authored a chapter in the book and edited *At the Cutting Edge: Land Use Law from the Urban Lawyer*. Mr. Blaesser and Mr. Cody edited *Redevelopment: Planning, Law, and Project Implementation* and also authored several chapters in the book.

Employment partner Stephen Aronson and Construction partner Martin Onorato took to the podium at a recent educational program for the Connecticut Chapter of the American Institute of Architects (AIA) entitled "Employment Practices: Difficult Times Bring Difficult Issues ." Mr. Aronson served as a speaker addressing the topics of reductions-in-force and other cost-saving techniques, misclassification of contractors and employees, response to the swine flu and business continuity approaches, protecting trade secrets and confidential information, and establishing a positive work environment. Mr. Onorato, chair of the AIA Connecticut Professional Practice Committee, served as program moderator.

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[1] Executive Orders 13202 (Feb. 17, 2001) and 13208 (April 6, 2001).

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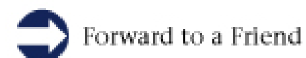

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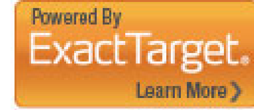

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