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CONSTRUCTION UPDATE:
Solutions

MARCH 2010

Dear Readers,

In our continually changing economy, we realize how important it is to stay abreast of legal developments facing the construction industry. Therefore, in this, our Spring Issue of Robinson & Cole's *Solutions: Construction Update*, we feature an article discussing the benefits and risks associated with "no-damage-for-delay" clauses in public and private construction projects. These clauses are appearing more frequently in prime and subcontracts and have the effect of transferring the costs associated with construction delays to contractors and subcontractors. This edition of *Solutions* also highlights two articles dealing with important tax implications on construction projects as well as an article on condominium law amendments and a final article addressing the intellectual property rights associated with architectural drawings.

As always, our readers are encouraged to provide us with any news, information, or other developments from the construction industry. Of course, for the latest information about our firm and construction legal issues, please be sure to visit our website at www.rc.com. Thank you for your continued support.

Peter E. Strniste, Jr.
Editor

Articles

When Workers Cross State Lines

By: John R. Shaughnessy, Jr.

The Connecticut Department of Revenue Services (DRS) recently addressed the requirements for withholding Connecticut income tax on wages paid to employees who are residents of other states performing services in Connecticut. *Click [here](#) to read full article.*

Connecticut Sales Tax Rules on New Construction

By: Felicia S. Hoeniger

Unlike most states, Connecticut taxes construction contractor services. Connecticut imposes the sales tax on a contractor's services rendered to industrial, commercial, and income-producing property. A Connecticut regulation provides that the services are taxable if rendered to existing industrial, commercial, and income-producing property and are not taxable if rendered to new property. *Click [here](#) to read full article.*

No Damages for Delay Clauses: How Enforceable Are They?

By Gregory R. Faulkner and Alexandria Baez

Construction projects generally require contractors to commit expensive equipment, large

payrolls, and significant overhead costs during the construction phase. Both contractors and owners 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. *Click [here](#) to read full article.*

Condo Law Amendments Are Good News for Builders

By: Edward S. Hill, Esq., CRE

One of the changes to Connecticut's Common Interest Ownership Act ("CIOA"), the law that governs the creation and operation of condominiums, planned unit developments and other common interest communities, contains good news for builders faced with claims for construction defects. ¹ Effective July 1, 2010, the homeowner's association may not begin or pursue any proceeding that claims a construction defect, whether by litigation, mediation, arbitration, or administrative proceeding, against the declarant of the community or any employer, independent contractor, or other person who directly or indirectly provided labor or materials to the declarant, without complying with the statute. The statute provides a procedure to allow the person that the association seeks to hold responsible to address the claimed defects and to resolve the claims before any litigation can be started. There are obvious cost- and time-saving benefits for both the builder and the association when issues can be worked out without resort to legal proceedings. *Click [here](#) to read full article.*

Understanding Copyright Claims in Architectural Works

By: Kathleen M. Porter and Brendan J. Witherell

The intellectual property rights in architectural works are often an undervalued component of many construction projects. Frequently, builders, architects, and investors focus on the steel and glass of a project without assigning sufficient value to the intellectual property that results from the project. That intellectual property often is protectable as a copyright. In some cases, the copyright is nearly as valuable as the underlying structure because a copycat building decreases the value of the original while the licensing of the copyright provides an additional revenue stream from an already completed project. Being able to realize this value requires an understanding of what category of works are eligible for protection, the scope of the protection available, and the limitations inherent in the copyright of architectural works. This article provides a nuts and bolts overview of the copyright of architectural works that will familiarize you with the basics of this important type of intellectual property. Understanding the basics both maximizes your ability to protect your copyright ownership in architectural works and reduces the chances you will create works that infringe copyrights of others. *Click [here](#) to read full article.*

Firm News & Notes

At the Podium

Construction partner Martin A. Onorato chaired a roundtable meeting of the Connecticut Chapter of the American Institute of Architects (AIA) in New Haven with Intellectual Property chair Kathleen M. Porter. Mr. Onorato and Ms. Porter discussed recent developments in copyright protection of architectural works and drawings, and the value of copyright to the practice of architecture.

Tax counsel John R. Shaughnessy Jr. will be a panelist in a discussion entitled "State and Local Tax Issues for Construction Contractors" at the Advanced Sales Tax Seminar sponsored by the American Bar Association and the Institute for Professionals in Taxation in New Orleans on March 24, 2010.

Real Estate partner Edward S. Hill was a panelist in a presentation sponsored by the Connecticut Bar Association on the 2009 Amendments to the Common Interest Ownership Act.

In Print

Environmental and Utilities partner Joey Lee Miranda was quoted in the article "Getting a Piece of the Renewable Energy Market," published in the February 2010 issue of Civil Engineering News. The article, written by Theresa M. Casey, discusses how civil engineering firms can

benefit from a growing number of wind, geothermal, solar, and alternative fuels projects. Ms. Miranda spoke on how states focus on different renewable sources and offer various incentives.

In Attendance

Robinson & Cole's Construction Practice Group was the title sponsor of the AIA Joint Industry Dinner held on March 3 at the Race Brook Country Club in Orange, Connecticut.

Of Note

- Construction partner Martin A. Onorato recently was elected to a two-year term to the Board of Directors of the Connecticut Chapter of the American Institute of Architects (AIA). Mr. Onorato also chairs the Professional Practice Committee for AIA-Connecticut.
- St. Luke's LifeWorks has appointed Real Estate attorney April F. Condon to its Board of Directors. Ms. Condon's three-year term started January 1. St. Luke's LifeWorks is a nonprofit organization in Stamford, Connecticut, providing learning opportunities, housing, and support services to people overcoming homelessness in lower Fairfield County.
- Land Use attorney Gregory S. Sampson was recently elected to the Board of Directors of the Massachusetts Chapter of the U.S. Green Building Council. The recently formed chapter promotes the design, construction, and operation of sustainable buildings and communities in Massachusetts through education, support, and advocacy.
- Real Estate partner Edward S. Hill has been elected president of the Connecticut Chapter of The Counselors of Real Estate. Mr. Hill was also appointed to the State of Connecticut Electronic Recording Study Committee.

[1] Section 38 of PA 09-225, codified as Section 47-216f of the Connecticut General Statutes, as amended.

For more information, please contact Dennis C. Cavanaugh (dcavanaugh@rc.com).

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