

Construction Group Out + About

February 2021

Members of Robinson+Cole's Construction Group speak and are published on various construction-related topics, are recognized in the community, and participate in high-profile industry group programs throughout the country. We hope to see you while we are "out and about."

Even when we're away from the office, we continue to follow developments and trends in all areas of construction law and to share our insights in our [Construction Law Zone](#) blog. If you haven't checked out the blog, we encourage you to do so and to sign up to receive e-mails when new content is posted. We welcome your feedback and input on topics you'd like us to cover.

HONORS + AWARDS

Robinson+Cole's Construction Group Receives First-Tier Metropolitan Rankings in Latest *U.S. News – Best Lawyers* "Best Law Firms"

Robinson+Cole's Construction Group received Tier-1 metropolitan rankings for Hartford, CT in the categories of Construction Law and Litigation – Construction in the 2021 Edition of *U.S. News – Best Lawyers* "Best Law Firms." Law firms included in the publication are recognized for professional excellence with consistently impressive ratings from clients and peers. Read more in the [press release](#).



[Virginia K. Trunkes](#)

Virginia Trunkes Named to the New York Metro *Super Lawyers*® List for 2020

Construction Law Group member [Virginia "Ginger" Trunkes](#) was named to the New York Metro *Super Lawyers*® list for 2020 in the category of Construction Litigation. Read more in the [press release](#).

Diversity, Equity + Inclusion



[Gregory R. Faulkner](#)



Robinson+Cole Commits to AGC's Culture of CARE in Support of Construction Industry

Robinson+Cole has committed to the Culture of CARE, an initiative created in partnership between the Associated General Contractors of America (AGC) and the AGC of Washington to

advance the construction industry as the industry of choice for diverse and talented workers by building inclusive work environments in construction firms nationwide.

"At Robinson+Cole we have long fostered an inclusive culture where the diverse backgrounds of all of our attorneys and other professionals are respected and each individual is empowered to succeed. That culture carries through to our

client and community relationships,” said [Gregory R. Faulkner](#), Chair of the Construction Law Group at Robinson & Cole LLP and Board Director of the AGC of Connecticut. “We are proud to join our clients and colleagues in the construction industry to build a culture that is diverse, safe, welcoming and inclusive for all.” Read more in the [press release](#).



[Martin A. Onorato](#)

Marty Onorato Attends the NOMAct Roundtable Discussion Featuring Leaders on Diversity, Equity and Inclusion

Construction Law Group member [Marty Onorato](#) attended the NOMAct roundtable discussion, “DEI into Action: From Ideas to Policy,” on January 26, 2021. The virtual webinar featured leaders on diversity, equity and inclusion in Connecticut who have been promoting inclusive change for many years prior to our current social crisis, and was moderated by nonprofit developer of independent living projects, Diana Deng of CIL. They discussed how organizations can promote and elevate changes to replace systematically discriminatory policies with inclusive ones.

Presentations



[Joseph A. Barra](#)

MA Prompt Pay Act and Recent MA Superior Court Decision Are Focus of Joe Barra's BSCES Presentation

Construction Law Group member, [Joe Barra](#), presented the Boston Society of Civil Engineers Section's (BSCES) webinar, "MA Prompt Pay Act: Implications for Management of Private Construction Projects" on January 28, 2021. The presentation discussed *Tocci v. IRIV Partners, LLC*, a recent decision by the Massachusetts Superior Court strictly construing the Massachusetts Prompt Pay Statute, which imposed specific requirements on owners, contractors and subcontractors of private projects over \$3 million with regard to submitting, processing and approving requests for payment and change orders. Joe addressed the rationale supporting the Decision, lessons learned, and what lies ahead for design professional who process pay requisitions and manage change orders on behalf of their private clients.

For a related presentation on this topic, please see “Upcoming + Recent Events” below.



[Virginia K. Trunkes](#)

Ginger Trunkes Presents on Construction Disputes During the AGC's 2021 Construction Risk Management Program

[Ginger Trunkes](#), co-presented "Where You Stand Depends on Where you Sit: Different Perspectives on Construction Disputes" during the "First-Half Outlook: Key Construction Risks" presentation at the Associated General Contractors of America (AGC) 2021 Construction Risk Management Program. The January 26th session explored the different viewpoints that a contractor, subcontractor and owner will have in looking at the same issue. The discussion also delved into the contractual remedies that exist and whether, from a practical standpoint, they should be exercised. The full three-day program was designed to provide an outlook for the first-half of 2021 on the U.S. economy, the surety and insurance marketplace, and the construction risk environment. The four virtual, live-panel discussion sessions were recorded and are available to all registrants.

Ginger Trunkes Presents “I. JUST. CAN’T. Contractual Non-Performance Theories of Impossibility and Impracticability in the COVID Era”

[Ginger Trunkes](#) presented the webinar, "I. JUST. CAN'T. Contractual Non-Performance Theories of Impossibility and Impracticability in the COVID Era," hosted on November 18, 2020, by the Corporate & Commercial Committee of the Westchester Women's Bar Association.

Ginger Trunkes Presents "Reducing Pitfalls in Health Care Construction"

[Ginger Trunkes](#) presented the R+C- and GREYHAWK-hosted webinar, "Reducing Pitfalls in Health Care Construction," on November 10, 2020, alongside GREYHAWK's Charles Boland and Barrett Richards. Unexpected claims and disputes in health care construction projects can cost millions of dollars in legal and consulting fees, in addition to related construction and delay charges. Outside counsel and subject matter experts can save time and money by identifying and addressing potential problems earlier in the process. The program covered several key areas to consider in achieving the on-time, on-budget, quality completion of a health care construction project.

Ginger Trunkes and Kathryn Rattigan Co-Present "The Commercial Use of Drones in Real Estate Development and Construction: Benefits, Legal Compliance, Respecting Privacy and Best Practices"

[Ginger Trunkes](#) and Data Privacy + Cybersecurity Team member, [Kathryn Rattigan](#), co-presented the CLE webinar, "The Commercial Use of Drones in Real Estate Development and Construction: Benefits, Legal Compliance, Respecting Privacy and Best Practices" on December 3, 2020. The webinar was hosted by myLawCLE and the Federal Bar Association. The commercial application of drones continues to expand, and their current and potential benefits in real estate development and construction are unparalleled. The unique characteristics of drones enable engineers to provide real estate developers and contractors with real-time, highly-detailed data for urban planning, land use, construction and post-construction forensics. The multiple benefits of drones are particularly valuable in the context of COVID-19-related issues and restrictions. But advancing technology comes with a cost, and for drone activity that cost is intensified privacy concerns. Discussion topics included the regulatory framework for drones used in the private sector, drones' device characteristics and abilities, the current state of privacy laws, and tips for businesses seeking to address privacy concerns to use drones without controversy.

Articles

R+C Legal Update Reflects on 2020 and Looks Ahead to Prospects for 2021

Construction Law Group members [Lisa Andrzejewski](#), [Dennis Cavanaugh](#), [Niel Franzese](#), and [Choity Khan](#) co-authored the R+C Legal Update, "Out With the Old, In With the New: An Overview of Construction/Surety Industry Trends in 2020 — What We Can Expect in 2021 and Beyond." As 2020 came to a much-anticipated and welcome close, and as we approach the one-year anniversary of the start of the global COVID-19 pandemic, the article reflects on the impacts the health crisis has had on the construction marketplace and surety industry and its likely lasting effects in the years to come. The article surveys industry leaders for their thoughts on how the world has - or hasn't - changed, and emerging themes and trends identified in our collective thought processes. View the full [article](#).



[Lisa B. Andrzejewski](#)



[Dennis C. Cavanaugh](#)



[Niel P. Franzese](#)



[Choity R. Khan](#)

COVID-19 Vaccine in the Workplace Article for Construction Executive

Labor and Employment Group lawyers [Stephen Aronson](#), [Britt-Marie Cole-Johnson](#), [Natale DiNatale](#), [Abby Warren](#), [Kayla West](#) and [Emily Zaklukiewicz](#) authored the article "One Shot to Get It Right: Navigating the COVID-19 Vaccine in the Workplace," published in Construction Executive on January 6, 2021. The article covers several legal and practical issues that employers may wish to consider as they prepare for widespread distribution and availability of the COVID-19 vaccine in 2021. Read the full [article](#).



[Lisa B. Andrzejewski](#)

Lisa Andrzejewski Article is Published in New England Real Estate Journal

[Lisa Andrzejewski](#) authored the article “Construction industry forecast: Cloudy with a chance of sun,” published in the New England Real Estate Journal on January 22, 2021. Describing 2020 as a year “of change and uncertainty,” Lisa writes “most commentators agree that an industry-wide recovery will occur – however, a question remains as to whether it will be in 2021, or later.” Read the full [article](#).

Lisa Andrzejewski Writes National Law Review Story on DBE Gross Receipts Cap Adjusted for Inflation

In December 2020, the United States Department of Transportation (DOT) amended the small business size limit under the Disadvantaged Business Enterprise (DBE) program (section 1101(b) of the Fixing America’s Surface Transportation (FAST) Act (Pub. L. 114-94, Dec. 4, 2015)). [The rule](#), which became effective on January 13, 2021, increases the DBE gross receipts cap (averaged over the firm’s previous three fiscal years) to \$26,290,000 for Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) related work. View full [article](#).



[Joseph A. Barra](#)

Joe Barra Authors “Cautionary Tale” Article on the Massachusetts Prompt Pay Statute Published by the AGCMA

In a story published by the Associated General Contractors of Massachusetts on December 14, 2020, “The Massachusetts Prompt Pay Statute: A Cautionary Tale for Those Who Don’t Read the Fine Print,” [Joe Barra](#) examined a recent decision concerning the Statute that is likely to have a significant impact on the way private construction projects in Massachusetts are managed, construing the way the Statute was meant to be enforced, but contrary to most current construction practice. Read the full [article](#).

On the same subject, Joe also was quoted in the article “Judge strictly construes Prompt Payment Act” published in *Massachusetts Lawyers Weekly* on December 10, 2020. That story focused on the same decision by the Massachusetts Superior Court (*Tocci v. IRIV Partners, LLC*, et. al.) confirming that Massachusetts Courts intend to strictly construe and apply the original intent of the Massachusetts Prompt Pay Statute. “I believe [the decision] will have serious and far-reaching implications in the way private construction projects in Massachusetts will be managed,” Joe said. Read the [article](#).



[Niel P. Franzese](#)

Niel Franzese Writes for ISHN on Altering Operations when Remote Work Isn’t Possible

Construction Law Group member [Niel P. Franzese](#) authored the article, “How to alter operations when remote work isn’t an option,” published in *ISHN* (Industrial Safety & Hygiene News) on December 4, 2020. The article focuses on how industries unable to engage in remote work are now considering adapting more long-term or permanent strategies in response to the ongoing COVID-19 pandemic, and offers examples, such as increasing air circulation and redesigning spaces. View the full [article](#).

High Profile Magazine Publishes Niel Franzese Article on the Impact of COVID-19 on Design and Construction

[Niel P. Franzese](#) authored the article “Impacts of the COVID Pandemic on Design and Construction: HVAC Upgrades, published in *High Profile* magazine on October 27, 2020. The article acknowledges the heightened focus of improvements to the design and construction of new and existing facilities, a result of the COVID-19 pandemic, with a prime example being HVAC systems.

The story also includes the list of recommendations from the U.S. Centers for Disease Control and Prevention for creating safe and healthy work and business spaces. View the full [article](#).



[Frederick E. Hedberg](#)

Fred Hedberg Writes on “COVID-izing Your Construction Contract” in *Construction Executive Magazine*

Construction Law Group member [Fred Hedberg](#) authored the article “COVID-izing Your Construction Contract” published in the December issue of *Construction Executive* and on the magazine’s website on December 8, 2020. With projects throughout the country adversely affected by unplanned work stoppages, delays, disruptions to the supply chain, price escalations and other unanticipated events as a result of the COVID-19 pandemic, the article encourages owners, developers, contractors and suppliers to reflect on their experiences over the past year and account for the COVID-19 pandemic when drafting and negotiating contracts for their projects. Read the full [article](#).



[Kenneth A. Sherman](#)

Ken Sherman Writes Article on Builders’ Risk Insurance Published in *High Profile Magazine*

Construction Law Group lawyer [Ken Sherman](#) authored the article “Federal Court Decision Reminds Construction Project Participants to Secure Additional Insurance Coverage at Project’s Start” published in *High Profile* magazine on November 20, 2020. Using *Factory Mut. Ins. Co. v. Skanska United States Bldg.*, No. 18-cv-11700-DLC, 2020. U.S. Dist. LEXIS 95403 as an example, where the Federal Court in Massachusetts held that a construction project’s general contractor and sub-contractor were not additional insureds under the construction project’s owner’s Builders Risk insurance policy (Policy), Ken emphasizes the importance of the language contained in the policy itself and not by contract, agreement, custom, practice, or factual circumstances. “As we see from *Factory Mutual*, failing to confirm insurance coverage in advance of an otherwise insurable event might leave a party exposed to having its additional insured coverage determined by a non-party to the underlying construction project, such as an insurance coverage analyst or a judge, should the question of insurance coverage end up in litigation.” Read the full [article](#).



[Virginia K. Trunkes](#)

Ginger Trunkes Writes Article on Legal Considerations for Constructing Health Care Facilities

[Ginger Trunkes](#) wrote the article “Seven Legal Considerations for Constructing Healthcare Facilities” published in *Healthcare Facilities Today* on January 11, 2021. As a result of the COVID-19 pandemic, health care institutions are altering their approach to facility design and construction and equity investors and contractors are also ready to familiarize themselves with health care construction. Derived from the November 10, 2020 R+C hosted program “Reducing Pitfalls in Health Care Construction,” the article shares seven legal considerations for a successful health care construction project. Read the full [article](#).

Ginger Trunkes Pens *New York Real Estate Journal* Article on Knowing the Risks Before Terminating Commercial Contracts

[Ginger Trunkes](#) authored the article “Know the risks before terminating contracts when repurposing real estate developments” published in the *New York Real Estate Journal* on December 15, 2020. Using *407 E. 61st Garage, Inc. v. Savoy Fifth Ave. Corp.*, 23 N.Y.2d 275 (1968) as an example, the article encourages companies considering a modification of their business operations to offset lower revenue to be mindful of existing commercial contracts. “It is crucial to incorporate into property-repurposing decisions the review of contract terms and, if necessary, the cost of contract-breach damages.” Read the full [article](#).

Upcoming + Recent Events

"The Commercial Real Estate & Building Industry Breakfast: Building Foundations"

February 4, 2021 - Webinar

We were pleased to sponsor the United Way of Central and Northeastern Connecticut's fundraising event, which was intended both to raise awareness and resources to prevent children and families from slipping into homelessness as well as to secure stable housing for those currently living in shelters.

"What the "Hack?!": Data Security Issues for your Firm and your Clients"

February 17, 2021 - Webinar

[Ginger Trunkes](#), will moderate the Westchester Women's Bar Association's webinar, "What the "Hack?!": Data Security Issues for your Firm and your Clients" on February 17, 2021. Ginger is Co-Chair of the WWBA Corporate & Commercial Committee.

"MA Prompt Pay Act Implications for Management of Private Construction Projects"

February 23, 2021 - Webinar

[Joe Barra](#) will present the Construction Management Association of America (CMAA) New England Chapter's webinar, "MA Prompt Pay Act Implications for Management of Private Construction Projects," on February 23, 2021. The program discussed a recent decision by the Massachusetts Superior Court - *Tocci v. IRIV Partners, LLC, et. al.* - confirming that Massachusetts Courts intend to strictly construe the terms of the Massachusetts Prompt Pay Statute, which imposed specific requirements on owners, contractors and subcontractors of private projects over \$3M with regard to submitting, processing, and approving requests for payment and change orders. Topics included the rationale supporting the decision, the lessons learned, and what the Statute means for construction managers who process pay requisitions and change orders on behalf of their private owner clients. Joe serves on the CMAA New England National Board of Directors.

Robinson+Cole's [Construction Group](#):

[Lisa B. Andrzejewski](#) | [Joseph A. Barra](#) | [Dennis C. Cavanaugh](#) | [Gregory R. Faulkner](#) (Chair)

[Niel P. Franzese](#) | [Frederick E. Hedberg](#) | [Christopher J. Hug](#) | [Choity R. Khan](#)

[Martin A. Onorato](#) | [Kenneth A. Sherman](#) | [Virginia K. Trunkes](#)

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