



JUNE 2012

Dear Readers,

We are pleased to present our Summer 2012 issue of *Solutions*. In this edition we feature an article by [Ryan M. Burns](#) and [Martin A. Onorato](#), "Connecticut Authorizes Design-Build and CM-at-Risk Contracts on Transportation Projects," reporting on the groundbreaking legislation recently passed by the Connecticut State Legislature allowing for new delivery systems for Department of Transportation contracts. With the enactment of Public Act 70, Connecticut joins the federal government and the majority of states that allows these procurement methods. From our Boston office, [Jonathan R. Hausner](#) dissects a recent Massachusetts Appellate Court case re-defining the well-known "Due or to Become Due" language contained within Massachusetts' Mechanic's Lien statute. Also in this edition, [Elizabeth K. Wright](#) highlights a recent Connecticut Superior Court case interpreting the Fairness and Financing Act's prohibition on forward lien waivers. Finally, [Nicole A. Bernabo](#) from Robinson & Cole's labor and employment group discusses a new law requiring Project Labor Agreements on certain public school construction projects.

With each issue of *Solutions*, we aim to keep you informed of legal developments surrounding the construction and surety industries. Please consult our News and Notes for announcements of upcoming seminars, speaking engagements, and publications by our construction attorneys. As always, we encourage you to provide us with any news, information, or other comments. Of course, for the latest information about our firm and the construction and surety industries generally, please visit our webpage at [www.rc.com](http://www.rc.com).

[Peter E. Strniste Jr.](#)  
Editor

## ARTICLES

### **Connecticut Authorizes Design-Build and CM-at-Risk on Transportation Projects**

By [Ryan M. Burns](#) and [Martin A. Onorato](#)

Connecticut joined 46 other states that use design-build arrangements for transportation projects when its legislature passed Public Act 70, *An Act Concerning Department of*

*Transportation Project Delivery* (Act), at the close of its most recent legislative session. The Act specifically authorizes the Connecticut Department of Transportation (DOT) to solicit and award projects under design-build and CM-at-risk contracts with a guaranteed maximum price.

Click here to read the full article, "[Connecticut Authorizes Design-Build and CM-at-Risk on Transportation Projects.](#)"

## **Due or to Become Due? Recent Massachusetts Appeals Court Decision Expands on Subcontractor Mechanics' Lien Law**

By [Jonathan R. Hausner](#)

In Massachusetts, a central tenet of the Mechanics' Lien Law for subcontractors (General Laws Chapter 254 § 4) is that a subcontractor cannot assert or perfect a mechanics' lien against an owner's property interest unless money is "due or to become due" to the general contractor. In essence, if the owner does not owe the general contractor any money under the general contract at the time a subcontractor asserts its lien, the lien is invalid. One can imagine, with back charges, claims for defective work, and similar defenses, how the simple phrase "due or to become due" can impact a subcontractor's lien rights. Recently, the Massachusetts Appeals Court expanded the body of law around this seemingly innocuous phrase to the detriment of a subcontractor on a commercial construction project and reinforced Massachusetts courts' strict adherence to the letter of the lien laws.

Click here to read the full article, "[Due or to Become Due? Recent Massachusetts Appeals Court Decision Expands on Subcontractor Mechanics' Lien Law.](#)"

## **Recent Connecticut Superior Court Case Further Limits the Enforceability of Progressive Mechanics' Lien Waivers**

By [Elizabeth K. Wright](#)

A recent Connecticut Superior Court case, *Milone & MacBroom, Inc. v. Winchester Estates*, 52 Conn. L. Rptr. No. 21, 793 (January 23, 2012), recognized a further restriction to the enforceability of mechanics' lien waivers. Connecticut courts have previously held that a mechanics' lien waiver executed in connection with a construction contract is valid if the contractor has commenced and performed the applicable work. In the *Milone* decision, the court looked to both the language and statutory history of Connecticut's Mechanics' Lien Statutes and Connecticut's Fairness in Financing in the Construction Industry Act to hold that a mechanics' lien waiver will only be enforced if it applies to work already performed **and for which payment has already been** issued.

Click here to read the full article, "[Recent Connecticut Superior Court Case Further Limits the Enforceability of Progressive Mechanics' Lien Waivers.](#)"

## **Be Prepared: Project Labor Agreements for Certain Public School Construction Projects Now on the Horizon in Connecticut**

By [Nicole A. Bernabo](#)

In May, Connecticut Governor Malloy signed Public Act No. 12-70 (Act) requiring that public entities, entering into a contract for a new public school or renovation with a value of greater than \$10 million, determine if it would be in the public's interest to use a Project Labor

Agreement (PLA). A PLA is a pre-hire agreement establishing a set of labor-related rules to be followed by all firms bidding on a construction project.

Click here to read the full article, "[Be Prepared: Project Labor Agreements for Certain Public School Construction Projects Now on the Horizon in Connecticut.](#)"

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## FIRM NEWS & NOTES

### Announcements

Robinson & Cole LLP is pleased to welcome associate [Jonathan R. Hausner](#) as a member of the Construction Law Practice Group in the Boston office. Mr. Hausner primarily focuses his practice on the representation of public and private owners, general contractors, subcontractors, material suppliers, and construction sureties and handles all aspects of construction project consultation and construction litigation.

The Construction Law Practice Group at Robinson & Cole recently published "[Building Information Modeling: Now that you know how to spell BIM, is it right for you and your project?](#)"

### At the Podium

Construction associate [Ryan M. Burns](#) was a panelist at the CBA Construction Law Annual Update held at the CBA Law Center in New Britain, CT, on May 31, 2012.

Construction partner [Martin A. Onorato](#) presented on the legal implications of LEED at the Connecticut American Institute of Architects' headquarters on April 25, 2012.

Construction partner [Gregory R. Faulkner](#) delivered a presentation at the Engineering & Construction Law Seminar sponsored by the Connecticut Society of Civil Engineers at the Metropolitan District Commission Training Center in Hartford, CT, on March 30, 2012. Mr. Faulkner presented "Contracts-Why They Are Important and What Are The Key Clauses of Which You Should Be Aware."

Construction partner [Joseph A. Barra](#) was the keynote speaker at a meeting of the Rhode Island chapter of the American Society of Civil Engineers at the Ivy Garden in West Warwick, RI, on March 15, 2012. Mr. Barra talked about design-build joint ventures from formation through dissolution. He presented factors, from company culture to opportunities, a joint venture opens.

Construction partner [Joseph A. Barra](#) was a panelist for a presentation entitled "Design-Build Project Delivery: Is It Right For Your Project?" The New England chapters of the Construction Management Association of America and the Design-Build Institute of America sponsored the breakfast at the Wentworth Institute of Technology in Boston, MA, on January 10, 2012. Mr. Barra's talk focused on joint ventures for design-build projects.

## In the Press

The *Connecticut Law Tribune* published an article by labor and employment counsel [Nicole A. Bernabo](#) in its April 23, 2012, issue. Ms. Bernabo's article, "Court Decisions Postpone NLRA Notice Posting Rule," focused on a new rule by the National Labor Relations Board requiring employers to post a notice informing employees of their rights to unionize under the National Labor Relations Act.

Construction Practice Group partners [Gregory R. Faulkner](#) and [Martin A. Onorato](#) were contributing authors to *Connecticut Construction Guidelines: The Manual for Successful Building Projects*, 2nd Edition, published by the Connecticut Construction Guidelines Coalition. Mr. Faulkner authored the "Requests for Information" guideline and edited numerous other guidelines. Mr. Onorato authored the "Retainage" guideline and also edited other guidelines.

Construction partner [Peter E. Strniste, Jr.](#) co-authored an article titled "A Nightmare on Main Street: Subdivision Maintenance Bonds," published in the January 2012 issue of *For the Defense*, a publication of the Defense Research Institute. The article offers strategies for resolving disputes involving subdivision and maintenance performance bond claims stemming from the housing bubble crisis.

[Dwight H. Merriam](#) has published his eighth book, *At the Cutting Edge 2011: Land Use Law from 'The Urban Lawyer.'* The first book in his annual series won the Bronze Award in the third annual Robert Bruss Book Awards program of the National Association of Real Estate Editors for its originality, readability, accuracy, coverage of the subject, and scholarship. Mr. Merriam is immediate past-chair of the American Bar Association's Section of State and Local Government.

## Of Note

Construction partner [Joseph A. Barra](#) attended the American Arbitration Association Construction Conference in New York, NY, May 31-June 1, 2012.

Robinson & Cole was a sustaining member sponsor of the Massachusetts Building Congress program titled "Trends in Higher Education Capital Planning & Construction" held at the Revere Hotel Boston Common in Boston, MA, on May 17, 2012. Construction partner [Joseph A. Barra](#) was a key organizer of the event, which drew 300 attendees. Construction partner [Martin A. Onorato](#), current president of the Connecticut Building Congress, was also in attendance.

The North Cove Yacht Club recognized construction associate [Keane E. Aures](#) at the club's annual commissioning ceremony for his work on the rebuilding of the waterfront in Old Saybrook, CT. In presenting a burgee to Mr. Aures, Commodore Les Bowman said, "Without your hard work, your great skill as a lawyer, and your tireless dedication to this project, which is so critical to the future of our operations here in North Cove, Old Saybrook, we would never have realized our objectives. I thank you for a job well-done."

Construction partner [Peter E. Strniste, Jr.](#) attended the DRI Annual Surety & Fidelity Roundtable held in Chicago, IL, May 4 2012.

Construction attorneys [Gregory R. Faulkner](#), [Peter E. Strniste, Jr.](#), and [Todd R. Regan](#) attended the ABA Construction Forum annual meeting held in Las Vegas, NV, April 26-28,

2012.

Construction partner [Martin A. Onorato](#), president of the Connecticut Building Congress, attended the joint dinner for the design and construction industries on March 3, 2012, in Rocky Hill, CT. Connecticut Governor Dannel P. Malloy presented the after dinner remarks at the event, titled "Success Begins with Who You Know," hosted by Robinson & Cole. The joint dinner provides these two interconnected industries with an evening of networking, collegiality, and relationship building. This annual event is an extraordinary business opportunity for members of the professional associations invited to participate.

Land use attorney [Gregory S. Sampson](#) was recently reelected to the Board of Directors of the U.S. Green Building Council, Massachusetts Chapter. The organization promotes the design, construction, and operation of sustainable buildings and communities in Massachusetts through education, support, and advocacy. Mr. Sampson has been a director since 2010 and is involved in several of the chapter's committees, including advocacy and governance. A LEED accredited professional since 2004, Mr. Sampson also earned the LEED AP in Neighborhood Development credential in 2011, which recognizes professionals participating in the design and development of neighborhoods that meet accepted high levels of environmentally responsible, sustainable development.

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For more information, please contact [Dennis C. Cavanaugh](#), chair of the Construction Law Practice Group, in our Hartford office at [dcavanaugh@rc.com](mailto:dcavanaugh@rc.com).

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