



Construction Law Zone

Current Developments and Recent Trends in All Areas of Construction Law

April 2023

Members of Robinson+Cole's Construction Group continue to follow developments and trends in all areas of construction law. Below are excerpts from our [Construction Law Zone](#) blog, where we post regulatory and legal developments affecting the industry that are useful to construction professionals, as well as consultants, industry trade groups, the media, and others interested in construction law. For more updates on news and developments for the construction industry, we invite you to [subscribe](#).

[Agree First or it May Cost You Later](#)

Business relationships often begin before parties execute a written agreement containing the terms and conditions by which the relationship will be governed. With little more than a Letter of Intent ("LOI") or Letter of Award ("LOA") one party is typically pressured to begin investing time and money to start preliminary work on a project. If such LOI or LOA contains nothing more than an agreement to agree later, the performing party should minimize its investment until the later agreement is executed. A recent court decision in New York confirmed the danger to the performing party under "agreement to agree" provisions. [Read more](#)

[Will the Connecticut Legislature Ignore the Construction Industry and Expand the False Claims Act?](#)

Published in High Profile magazine on April 4, 2023

After a public hearing held on March 6, House Bill No. 6826, An Act Concerning Liability for False and Fraudulent Claims was voted out of committee by a wide margin, and then added to the House Calendar on March 28. This bill expands the scope of Connecticut's current False Claims Act by eliminating the limitation that it only applies to state-administered health and human services programs. [Read more](#)

[More Funding Brings More Bureaucracy to Federal Projects](#)

On November 15, 2021, President Biden signed into law the Infrastructure Investment and Jobs Act (IIJA) (Public Law 117-58). The IIJA includes the Build America, Buy America Act which declares that "none of the funds made available for a federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States." The Office of Management and Budget (OMB) released its initial guidance on how to implement the new law and define certain terms in the Buy America Act on April 18, 2022. The OMB provided additional guidance on February 9, 2023. Such guidance is contained in a new 2 CFR Part 184 amendment which is poised to broaden the scope of the Buy America Act requirements on federally-funded infrastructure projects to include an ever-growing list of construction materials. [Read more](#)

[A New Template Contract for Prefabricated Construction](#)

Over the past several years, modular construction has been on the rise and this method of construction has been used in the creation of health care facilities, education facilities, and apartment buildings. With the increased demand for housing, the popularity and use of modular construction has grown even more rapidly throughout the

industry. In response to modular construction's growing popularity, in 2020, the ConsensusDOCS Coalition released the first industry-standard contract document in this area—the ConsensusDOCS 753 – Standard Subcontract for Prefabricated Construction. On February 2, 2023, the ConsensusDOCS Coalition announced the publication of the ConsensusDOCS 253 Prime Agreement and General Conditions for an owner to procure prefabricated construction materials and components. This is the industry's first standard prime-level contract document to address the unique features and legal implications created by the prefabrication process. The ConsensusDOCS 253 provides best practices and risk allocation when the owner purchases the prefabricated components directly from the prefabricator. [Read more](#)

[A Prevailing Party Provision Should Define What It Means to Prevail](#)

A typical prevailing party contract provision allows the prevailing party in litigation or arbitration to recover their attorney's fees from the other party. It is an attractive provision when negotiating a construction contract and its existence often weighs on the decision to pursue litigation or arbitration. However, which party "prevails" is not always easy to determine. What happens if both parties bring claims and both prevail on certain aspects of the underlying case? The Rhode Island Supreme Court recently weighed in on this issue in *Clean Harbors Environmental Services v. 96-108 Pine Street, LLC*, 286 A.3d 838 (R.I. 2023). [Read more](#)

[WARNING for Companies—Complying With WARN Act Requirements During a Layoff](#)

Published in Construction Executive on February 21, 2023

Since last fall, news of layoffs in the technology sector have set off a ripple effect in a variety of other industries. Companies engaging in layoffs must be thoughtful and prepared when it comes to taking such action. While the construction industry generally has one of the highest layoff rates, and human resource personnel may be very knowledgeable with regard to related risks and exposure, there are a number of additional issues to consider when there are mass layoffs or closings. Further, expensive litigation awaits if companies are not meticulous in complying with state and federal laws regarding such large scale reductions in force. [Read more](#)

[Cyber Insurance for the Construction Industry](#)

Cyber-crime is an increasingly prominent threat to many industries, and construction is no exception. With the growing use of digital technologies in what was once a primarily "offline" industry, cyber-attacks can pose a significant threat at every level of the construction industry. The construction industry routinely handles sensitive information that is of value to cybercriminals, including project plans, client information, financial records, and employee data. Furthermore, due to the tight project deadlines and complicated project scheduling common in the construction industry, it can be particularly susceptible to ransomware attacks that disrupt critical digital assets to extort "ransom" from their victims. Struck by a ransomware attack at the wrong time, a contractor, construction manager, or design professional may face the unenviable position of choosing between contractual penalties for delay or paying an anonymous hacker large sums of money to free compromised data or digital systems. [Read more](#)

If you have any questions, please contact any member of Robinson+Cole's [Construction Group](#):

[Martin A. Onorato \(Chair\)](#) | [Lisa B. Andrzejewski](#) | [Joseph A. Barra](#)

[Dennis C. Cavanaugh](#) | [Josh L. Coker](#) | [Gregory R. Faulkner](#) | [Frederick E. Hedberg](#)

[Choity R. Khan](#) | [Jessica L. Rothman](#) | [William A. Stoll](#) | [William S. Wilson](#)

Visit Our Blog



Construction Law Zone

Subscribe to our [Construction Law Zone](#) blog to follow developments, insights, and trends in all areas of construction law.



© 2023 Robinson & Cole LLP. All rights reserved. No part of this document may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without prior written permission. This document should not be considered legal advice and does not create an attorney-client relationship between Robinson+Cole and you. Consult your attorney before acting on anything contained herein. The views expressed herein are those of the authors and not necessarily those of Robinson+Cole or any other individual attorney of Robinson+Cole. The contents of this communication may contain ATTORNEY ADVERTISING under the laws of various states. Prior results do not guarantee a similar outcome.