



Construction Law Update - March 2014

A Newsletter from the
Primerus Construction Law Practice Group



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Introduction

Byron Saintsing, Esq.

Primerus Construction Law Practice Group Chair
Smith, Debnam, Narron, Drake, Saintsing & Myers LLP
Raleigh, North Carolina

March 2014

WELCOME to the first edition of the Primerus Construction Law Practice Group E-Newsletter! The articles in this newsletter are written by Primerus lawyers to bring you news about current legal developments and trends in the construction industry. I think that you will find the articles informative and timely.



I would like to thank the other members of the Executive Committee of the Construction Law Practice Group for their time and effort in forming this practice group and their commitment to their clients in the construction industry. The other members of the Executive Committee are Ashley Belleau, of

[Group](#)

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Montgomery Barnett (New Orleans, LA), David Frenznick, of Wilke Fleury (Sacramento, CA), Greg Shelton, of Horack Talley (Charlotte, NC).

The Members of the Primerus Construction Law Practice Group should be considered as an excellent resource for anyone that has a potential construction law matter. You can find the bios of practice group members and firms on [Primerus.com](#)

Byron Saintsing, Esq.
Primerus Construction Law Practice Group Chair

About the Primerus Construction Law Practice Group

Primerus business law firms have collaborated to form the Construction Law Practice Group, which provides construction professionals, in-house counsel and corporate clients in the construction industry "hands-on" representation by seasoned lawyers without the large law firm price tag.

The members of the Primerus Construction Law Practice Group represent a very broad group of clients - businesses that range from owners/developers, architects and engineers, lenders, general contractors, subcontractors, suppliers, rental companies, and many other businesses. Some of our members concentrate their practice on transactional matters, while others focus more on litigation. To date this practice group has conducted three [webinars](#)

- one dealt with bankruptcy issues, the second covered construction defects and the third addressed negotiating tough construction contracts. The members have come to know each other well and regularly share their knowledge and experiences about substantive areas of construction law. Because of the connections made, our members also look for opportunities to network with clients together at national and regional trade association meetings, and look to refer construction law matters to each other

when appropriate. While requirements vary by state, accreditation typically involves an approved course of study followed by a written examination.

Primary Practice areas within the Group:

- Architect, Engineer, and Contractor Licensing
- Bankruptcy Issues Specific to Construction Projects
- Bond and Surety Law
- Construction Defect Litigation and Dispute Resolution

- Contract Drafting and Negotiation
- Construction Contract Litigation and Dispute Resolution
- Federal Government Contracting
- Filing and Defense of Mechanics Liens, Materialmens' Liens, and Stop Notices
- State Government Contracting
- Safety/OSHA Compliance

Construction Articles

Court Defines Liability of Architects to Third Parties

By: [Darryl J. Horowitz](#)
Coleman & Horowitz, LLP
Fresno, California

Construction defect cases have been around for some time. In those actions, all contractors, sub-contractors, and suppliers are named as parties, but architects and design professionals are not, on the basis that architects generally would not have liability to third parties for negligence in their design work. Recently, however, the Court of Appeal in *Beacon Residential Community Association v. Skidmore, Owings & Merrill LLP* (2012) 211 Cal.App.4th 1301, has determined that under certain circumstances, architects may have liability for negligence in the performance of their duties.



[\(To continue reading this article click here\)](#)

Immediate Right of Appeal Under Federal Arbitration Act, 9 U.S.C. § 1, et seq., of Orders Denying a Motion to Compel Arbitration

By: [Scott A. Fenton](#)
Lane, Alton & Horst, LLC

Columbus, Ohio

In a construction defect case we are currently defending in the United States District Court for the Southern



District of Ohio, we moved to compel arbitration pursuant to Federal Arbitration Act (FAA), 9 U.S.C. § 1, et seq. The purchase agreement for the construction and sale of a single family home contained a provision requiring that all disputes be decided by arbitration conducted by the American Arbitration Association.

[\(To continue reading this article click here\)](#)

The Florida Supreme Court Rules That Economic Loss Rule Applies Only To Products Liability Cases

By: [Brian Wagner](#)
Mateer Harbert, PA
Orlando, Florida

In a recent decision that has caused a stir in the Florida construction industry, the Florida Supreme Court limited the application of the Economic Loss Rule to cases involving products liability. The Economic Loss Rule is a judicially created doctrine that sets forth circumstances under which a tort action (a wrongful act, other than under a contract, leading to legal liability) is prohibited if the only damages suffered are economic losses. For years this doctrine was used as a defense in construction law cases to prevent a claimant from obtaining damages over and above breach of contract remedies when the only action complained of was the breach of contract itself.



[\(To continue reading this article click here\)](#)

A Short Summary of the Colorado Construction Defect Action Reform Act

By: [Anne K. McMichael](#)
Zupkus & Angell, P.C.
Denver, Colorado

For 12 years, the Construction Defect Action Reform Act (C.R.S. § 13-20-801, et. Seq.) or "CDARA", has governed how construction defect litigation and arbitration actions are conducted in Colorado. While portions of this act are reasonably straightforward, several of the sections are subject to ongoing debate as to how these concepts should be applied to achieve fair and unbiased results. The purpose of this article is to provide a summary of how CDARA is applied to construction defect claims.



[\(To continue reading this article click here\)](#)

The Federal Miller Act: The Contractor's Friend

By: [David M. Henry](#)
Kohner, Mann & Kailas, S.C.
Milwaukee, Wisconsin

While you can't file a construction lien against a federal construction job, ***you can still recover your construction receivable by perfecting and enforcing a payment bond claim.*** If you furnish labor or materials for a construction project owned by the federal government, federal law prevents you from filing a mechanics' lien against the jobsite property. ***However, generally speaking, most federal construction projects must be covered by a payment bond furnished by the prime contractor, and you may instead be able to assert a claim against that payment bond.***



[\(To continue reading this article click here\)](#)

Construction Webinars

The information and topics discussed at previous Construction Law webinars remain important and relevant today. Recordings and Power Point presentations from past webinars can be accessed using the links below, and we encourage you to review them as your time permits.

"Nothing Like a Bankruptcy Case to Torpedo Your Construction Contract Claims...What Construction Lawyers and Their Clients Need to Know"

March 13, 2013

Presenters Include:

Byron Saintsing, Esq. (Smith Debnam Narron Drake Saintsing & Myers - Raleigh, NC)

Chad Alvaro, Esq. (Mateer Harbert - Orlando, FL)

Webinar Materials:

- [Stream Webinar](#)
- [PowerPoint Presentation](#)

"Increase Your Bottom Line: Avoiding and Minimizing Construction Defect Claims"

October 15th, 2013

Presenters Include:

Dina Bernardelli, Esq. (Zupkus & Angell, P.C. - Denver, CO)

David A. Frenznick, Esq. (Wilke, Fleury, Hoffelt, Gould & Birney, LLP - Sacramento, CA)

John Hanebrink, Esq. (Mateer Harbert, PA - Orlando, FL)

Experts Include:

Jeff Pemstein (Towne Development of Sacramento, Inc. - Roseville, CA)

William C. Thomas (Affiliated Professional Services, Inc. - El Dorado Hills, CA)

Robert A. Zupkus, Esq. (Zupkus & Angell, P.C. -

Denver, CO)

Webinar Materials

- [Stream Webinar](#)
- [PowerPoint Presentation](#)

"You Want Me to Agree to What?!? Negotiating Tough Construction Contracts"

November 21, 2013

Presenters Include:

Greg Shelton, Esq. (Horack Talley - Charlotte, NC)

Barry Kaltenbach, Esq. (Kubasiak, Fylstra, Thorp & Rotunno - Chicago, IL)

Todd Masuda, Esq. (Schneider, Smeltz, Ranney & Lafond - Cleveland, OH)

(Contact [Chris Dawe](#) for additional details)

- [PowerPoint Presentation](#)

Construction Law Attorney Directory

Need a Construction Law Attorney?
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Construction Law Attorneys by clicking
below:

[Primerus Construction Law Attorney Directory
- By Location](#)

About Primerus



The International Society of Primerus Law Firms (Primerus) is a society of top-rated, independent, boutique law firms that have earned the right to display the Primerus seal of quality. As one of the most respected law firm societies, Primerus has become the size of some of the world's largest law firms. Primerus is growing at an

unprecedented pace, and is expanding throughout the U.S., Asia, Europe, Middle East, Africa, Latin America, and the Caribbean. With thousands of lawyers in the society, Primerus members, collectively, offer the breadth of expertise and jurisdictional coverage that only the world's largest law firms can offer to their clients, but at more reasonable rates. Law firms in the U.S. and Canada must be AV-rated using the Martindale-Hubbell peer review service. For firms outside of North America, consideration is given to respected resources, such as, Chambers Global Guide, Legal 500 EMEA, and IFLR 1000. Additionally, once approved for membership, every Primerus firm is audited annually to ensure that the legal services they continue to provide to clients are of a consistent, high quality, year after year. For more information, visit www.primerus.com.



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