

Construction Law Update

DECEMBER 2021

Gordon & Rees' Construction Group is pleased to publish the latest issue of our Construction Law Update, a quarterly take on trends of interest to design professionals, contractors, and developers throughout the country.

Fourth Quarter 2021

- I. [In Oregon, a Criminal Conviction Alone Is Not Enough for the CCB To Assess a Civil Penalty](#)
- II. [Nevada Supreme Court Clarifies Retroactive Nature of 10-Year Statute of Repose for Construction and Design Defects](#)
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By **Julie Bardacke Haddon**

Allied Structural v. Construction Contractors Board, 311 Or App 40,
— P3d — (May 5, 2021)

Recently, the Oregon Court of Appeals, in an en banc decision, held that the Construction Contractors Board (“CCB”) exceeded its authority when it assessed a \$5,000 civil penalty against a licensee based on its unfitness for licensure on criminal conviction grounds. In *Allied Structural v. Construction Contractors Board*, the majority held that a criminal conviction alone is not sufficient grounds upon which to assess a civil penalty against a licensee.

The underlying case arose when Allied Structural and its principal owner applied to the CCB for a construction contractor’s license. In 2006, while holding a previous license, Allied’s owner was convicted of various sex-related crimes, including first-degree sexual abuse, attempted sexual abuse, and public indecency. Allied’s owner served a prison sentence for these crimes and was released subject to terms of parole. In 2014, Allied’s owner applied for a new construction contractor license. Under CCB rules, a license applicant must disclose criminal convictions if the convictions are less than five years old. In applying for the license for Allied in 2014, more than 5 years after the convictions, Allied’s owner did not disclose the convictions, and the CCB issued a license to Allied. After the license was issued, Allied’s owner violated the conditions of his parole, which prompted his parole officer to inform CCB. The CCB investigated the matter, which investigation culminated in the revocation of Allied’s contractor’s license and a \$5,000 civil penalty.

To read a full, expanded version of this article, [**click here**](#).

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By **Brian K. Walters**

Does a legislative extension of a statute of repose for construction and design defect claims allow a claim to proceed even if the repose period in effect when the claim was filed barred that claim?

On October 28, 2021, the Nevada Supreme Court answered this question in the affirmative when it denied the appellants’ petition for rehearing in *Dekker/Perich/Sabatini Ltd. v. Eighth Jud. Dist. Ct. in & for Cty. of Clark*, 137 Nev. Adv. Op. 53 (2021) (“*Dekker*”).

Dekker was the culmination of an evolution of Nevada Revised Statute (“NRS”) 11.202, Nevada’s statute of repose for claims based on construction and design deficiencies. Prior to 2015, a claimant had from 6 to 10 years from the date of substantial completion of a property to file a construction or design defect action, depending upon the type of defect (6 years for “patent” defects, 8 years for “latent” defects, 10 years for “known” defects with no repose period for fraud).

To read a full, expanded version of this article, [click here](#).

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Reno Partner **Brian Walters** recently negotiated a favorable settlement for a firm client, an international manufacturer of heating and cooling systems and components. Walters negotiated the settlement after obtaining a dismissal of the case, an award of the client’s attorney’s fees and two appeals. [Read more](#)

Louisville Of Counsel **Denise Motta** and Senior Counsel **Chip Clay**

obtained summary judgment on behalf of an engineering client in a claim alleging defective design of I-65. The court held that the claims asserted against the engineer were preempted and that the engineer was immune from liability.

Birmingham Partner **Stacy Moon** will be presenting at DRI's Construction Law conference, on Thursday, January 27, 2022, as part of the "Hot Topic Potpourri." She will be speaking on the challenges of determining who is responsible when an owner makes a payment, but the payment does not make it to the supplier, and how the owner can recover for any duplicate payment it must make. [Read more](#)

Hartford Partner **Joseph Blyskal** will be an invited panelist on the Construction Coverage vs. Defense Non-CLE Roundtable on Friday, March 4, 2022 at 1:05pm as part of the ABA Litigation Section 2022 Insurance Coverage Litigation Committee CLE Seminar, from March 2-5, 2022, in Tucson, Arizona.

Louisville Partner **Angela Richie** presented "When Did Steel Fabricators Become the Bank?" at the Pacific Northwest Steel Fabricators Association meeting in September

Louisville Partner **Angela Richie** and Of Counsel **Denise Motta** presented "Shortages (Lions), Escalation (Tigers), and One-Sided Contract (Bears), OH MY!" at the Southern Association of Steel Fabricators meeting in November.

On October 12, 2021, Partners **Lisa Cappelluti** and **Meredith Thielbahr** and Senior Counsel **Catherine Delorey** of the Gordon & Rees Women in Construction (WIC) team along with **Erin Fallon**, Director of Construction Advisory Services at J.S. Held LLC and **Denise Martini**, Principal Engineer at Exponent presented a webinar entitled, "Building your Delay Claim: Recovering After a Project Falls Behind Schedule," as part of the WIC Tuesday Talks Webinar Series. A recording and a copy of the presentation materials can be found [here](#).

On November 2, 2021, Louisville Partner **Angela Richie** and Of Counsel **Denise Motta** presented a client webinar entitled, “Lawyers, Guns and Money”: What You Need to Know About Defending and Prosecuting Claims Before You Get into a Dispute. A recording and a copy of the presentation materials can be found [here](#).

On October 5, 2021, Louisville Partner **Angela Richie** and Of Counsel **Denise Motta** presented a client webinar entitled, "The Best Tool in Your Tool Belt: What You Need to Know about the AISC Code of Standard Practice and How You Can Use It to Your Benefit." A recording and a copy of the presentation materials can be found [here](#).

On September 7, 2021, Louisville Partner **Angela Richie** and Senior Counsel **Scott Norman** presented a client webinar entitled, “I’ve Got a Bad Feeling about This”: What You Can Do to Avoid Having that “Bad Feeling” when You Are Trying to Collect Change Orders. A recording and a copy of the presentation materials can be found [here](#).

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The Gordon & Rees Construction Law Blog continues to post new content addressing topical issues affecting the construction industry throughout the country. From analysis of new court decisions, discussions of timely legislation, and commentary on real-world, project-specific issues, Gordon & Rees’ Construction Law Blog provides insight on the issues that affect the construction industry now.

We invite you to visit the blog at www.grconstructionlawblog.com and see for yourself what we are up to. If you like what you see, do not hesitate to subscribe under the “Stay Connected” tab on the right side of the blog. There you can choose how you would like to be informed of new content (Twitter, LinkedIn, email, etc.). If you have any questions about the blog or would like to discuss further any of its content, please do not hesitate to

contact us.

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Gordon & Rees' Construction Group consists of more than 160 lawyers in offices nationwide. In 2019, the firm opened its 68th office, creating the world's first 50-state law firm. The full list of Gordon & Rees' offices and local contacts can be found [here](#).

Gordon & Rees' construction attorneys focus their practice on the comprehensive range of legal service required by all participants in the construction industry – architects, engineers, design professionals, design joint ventures, owners, developers, property managers, general contractors, subcontractors, material suppliers, product manufacturers, lenders, investors, state agencies, municipalities, and other affiliated consultants and service providers.

We serve clients who design, develop, or build all types of structures, including commercial buildings, single and multifamily residential projects, industrial facilities, universities, hospitals, museums, observatories, amusement parks, hotels, shopping centers, high-rise urban complexes, jails, airports, bridges, dams, and power plants. We also have been involved in projects for tunnels, freeways, light rail, railway stations, marinas, telecom systems, and earth-retention systems. Our experience includes private, public, and P3 construction projects.

If you have questions about this issue of the Construction Law Update or our nationwide construction practice, [click here](#) to visit our practice group page or contact partner **Daniel Evans**.

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