

Construction Law Update

JUNE 2020

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.

First Quarter 2020

- I. [Ready to Rumble: Florida's Legislature Clashes With Court Over Repose Period to File Construction Defect Claims](#)
- II. [Washington Supreme Court Confirms and Expands General Contractors' Broad Duty to Provide a Safe Worksite](#)
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By **Daniel A. Garcia**

In July 2019, the Florida Legislature mandated that filing pre-suit notice for construction defect claims does not toll the 10 year repose period to bring these actions. The Legislature essentially overruled *Gindel v. Centex*, 267 So. 3d 403 (Fla. 4th DCA 2018), a decision entered into by Florida’s Fourth District Court of Appeal in September 2018.

At issue in *Gindel* was whether filing the mandatory pre-suit notice for construction defect claims pursuant to Section 558.004, Florida Statutes (2018) commenced an “action” that tolled the allowed 10 year repose period. 267 So. 3d at 404.

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

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By **Ryan G. Foltz**

Under well-established Washington legal authority, a general contractor has a nondelegable duty to ensure the safety of all workers on a jobsite. First, a general contractor has a general common law duty to maintain a safe workplace. Second, a general contractor has a specific statutory duty to comply with the Washington Industrial Safety and Health Act (“WISHA”). Breach of either of these two duties may lead to direct liability. The Supreme

Court in *Crisostomo Vargas v. Inland Wash., LLC*, 194 Wn.2d 720, 452 P.3d 1205 (2019) addressed a general contractor's exposure to vicarious liability arising out of a worksite injury caused by the actions or omissions of its subcontractors.

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By **Brian H. Myers** and **Erich P. Nathe**

On August 20, 2019, Governor J.B. Pritzker signed SB 1636 into law amending the Illinois Contractor Prompt Payment Act, 815 ILCS 603/1, *et seq.* ("The Act"). The Amendment added additional protections for contractors, codifying retainage caps as it relates to private construction projects. Illinois has now joined the vast majority of states who have enacted similar retainage cap laws.

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The Louisville office obtained the following client victories:

- Partner **Angela Richie**, Of Counsel **Denise Motta**, and Associate

Chip Clay obtained a \$200,000 settlement on behalf of a client in a payment dispute arising from a bridge project where the client had not been paid due to alleged project delays and erection errors.

- **Richie, Motta, and Clay** obtained payment in the amount of \$300,000 on behalf of client in relation to payment dispute over two projects. The first project involved alleged delay claims and other backcharges against the client, and on the second project the general contractor claimed there was no contract and no entitlement to payment.
- **Motta** resolved a case on behalf of a client in a payment dispute with a subcontractor who was terminated from the project. For the same client, Motta also secured payment in excess of \$150,000 for the client in a collection matter stemming unpaid shipping invoices without the necessity of filing suit.
- **Richie, Clay, and Senior Counsel Scott Norman** obtained payment of approximately \$1.7 million as interim payment dispute on behalf of client while litigation remains pending.

Los Angeles Partner **Brenda Radmacher** will moderate a panel entitled, "Groundbreaking Leaders in AEC," during Women in Construction (WIC) week on Thursday, March 5, 2020. The Women in Construction Week "Groundbreaking Leaders in AEC" Luncheon panel will feature a discussion with executive leaders from private and public sector organizations within the design, engineering and construction disciplines. More information on the Luncheon can be found [here](#).

Radmacher will also be a panelist at the 2020 CLM Annual Conference March 18-20 in Dallas, Texas. Approximately 1,500 professionals in the claims resolution and litigation management industries will attend the 2020 conference. On March 19, Radmacher will participate in a five-person panel titled "Dipping into the Secret Sauce — Preparing for and Responding to Challenges in Mediation." As part of a qualitative study of the mediation dynamic in litigated disputes, attorneys, mediators, and insurance claims professionals were asked to identify and explain the "challenges" they face in the mediation process. During this interactive session, the panel will

discuss the answers that were uncovered, the varied perceptions of mediation's fundamental elements, and will bring their expertise in effective mediation to the discussion. To learn more about the 2020 CLM Annual Conference, please click [here](#).

Seattle Partner **Meredith Thielbahr** will present a webinar entitled, "When the Feds Come Knocking: Anatomy of an Internal Investigation & Managing Risk Under the FCA." The webinar will be held on March 31, 2020 from 1:00-2:30 pm ET and is co-sponsored by the ABA Forum on Construction Law and the ABA Section on Public Contract Law. Panelists will discuss recent developments under the False Claims Act that drive procurement fraud prosecutions and related investigations, including courts' application of the Supreme Court's Escobar decision. Panelists will also discuss the anatomy of an internal investigation, commencing with a target's receipt of a Civil Investigative Demand (CID) or federal raid.

On February 4, 2020, Louisville Partner **Angela Richie** and Associate **Chip Clay** 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.

On January 31, 2020, Louisville Senior Counsel **Jean Terry** presented a client webinar entitled, "Poison Pill: Dealing with a Problem Employee."

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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 150 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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