

Construction Law Update

SEPTEMBER 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.

Third Quarter 2021

1. [Federal Judge Enjoins Section of New Florida Insurance Reform Law Relating to Advertising and Solicitation by Roofing Contractors](#)
2. [When Parties Arbitrate: The Powers and Limitations of Discovery in Arbitration under the Federal Arbitration Act](#)
3. [Right to Repair Past, Present & Future](#)
4. [50 State Survey for 2021 – Insurance Carrier Record Retention Requirements](#)
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By **Kristina L. Marsh**

On July 1, 2021, Florida’s Senate Bill 76 (“SB 76”), which modified several provisions that impact Florida’s property insurance litigation, went into effect. This bill was Florida’s latest attempt to stabilize the rising insurance premiums and reduce the burden on Citizens Property Insurance Corporation by encouraging private carriers to write new policies on homes in Florida due to double-digit insurance rate increases, restricted coverage, or being forced to turn to the state’s insurer of last resort, Citizens. More specifically, Florida homeowner’s insurance lawsuits accounted for 76% of all litigation against insurers across the country in 2019. “When Florida accounts for only 8 percent of the nation’s property insurance claims but 76 percent of national property insurance litigation, you know there is a problem,” said Mark Wilson, president and CEO, Florida Chamber of Commerce. The new law also includes changes to the state’s one-way attorney fee statute, and imposes deadlines to file claims. It also placed new requirements and restrictions on roofing contractors, prompting several roofing companies to challenge constitutionality of the new law and new restrictions.

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

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By **Mark A. Nickel** and **Tyler Martin**

More and more architects, engineers, and other design professionals have the ability to perform and work remotely—often times far from the actual construction site. COVID-19 has forced general contractors and owners to experiment with using and communicating with professionals who may reside outside of the state where the construction is occurring. Even though the parties’ contract may have a general choice of law provision, if the parties engaged in interstate commerce, then the Federal Arbitration Act (“FAA”) may apply to the parties’ arbitration clause.

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

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By **Lisa M. Cappelluti**

Now that we are several years into a legislative implementation of Right to Repair statutes in many states, here are the highlights of the key practical and legal issues for consideration non right to repair efforts as a tool for resolution of your construction dispute.

I. Practical Issues of Pre-Litigation Repairs – Scope of Project, Coordination, Design Issues and Product Manufacturers

A. Use of Right to Repair Approach as Effective Tool for Claim Resolution

Are pre-litigation repairs the solution or the problem as a resolution option in our tool- box of resources to handle construction claims? Our industry has been encouraged for years to engage in early, “practical resolutions” of construction issues in various contexts that provide effective and productive means to handle these types of claims. Most states across the country have enacted right to repair legislation and have various risk transfer statutes aimed at encouraging these resolution efforts. All but 16 states currently have pre-litigation repair statutes and each have its own technical compliance and issues to consider so please refer to your current state statutes for these requirements and deadlines. We have attached our 50 State Survey of the Right to Repair Legislation which references the relevant statutes for each jurisdiction.

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

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By **Kimberly A. Blake**

As a follow up to our 2021 50 State Surveys released in January, we bring you our 50 State Survey for Insurance Carrier Record Retention Requirements. Click on the chart title below to download.

Insurance Carrier Record Retention Requirements

Historically, insurance carriers have been required by state law to retain physical records for a specified number of years. In recent years, nearly every state has enacted statutes that replace previous requirements for retention of physical records with standards allowing insurance companies to satisfy retention requirements with electronic records. The survey provides insurance record retention requirements for each state, including specific categories of records that must be maintained, the minimum number of years required for retention, and also identifies those states that have adopted an electronic record standard.

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Hartford partner **Joseph Blyskal** recently obtained summary judgment on behalf of a roofing contractor in the United States District Court for the District of Connecticut in connection with a \$500,000 roofing project. The insurer for the owner sought subrogation in connection with alleged damage arising from a water leak occurring during the course of the project, and Gordon & Rees sought summary judgment on the basis of the waiver of subrogation provisions contained in the AIA Form A104-2017 contract. The court had earlier denied Blyskal's motion to dismiss on the same grounds, but permitted limited discovery regarding the owner's and our client's intention to be bound by the provision, after which Blyskal renewed the argument by way of summary judgment. Following argument the court issued its decision and agreed that the provision bound the owner's insurer, and barred the subrogation suit.

Miami Partner **Capri Trigo** and Senior Counsel **Chantel Wonder** recently prevailed at a trial in Monroe County Court for a client that owns a plumbing company. The plumbing company was sued as a co-defendant for allegedly defective work performed by an employee plumber outside the normal

scope of his employment. The judge agreed with Gordon & Rees counsel that the plumbing company was not responsible for the work since it received no benefit from the work and had no control over the scope of the work. The judge granted a full dismissal of Gordon & Rees' client. The trial was conducted over Zoom.

San Diego Partner **Kimberly Blake** authored "Contractors Licensing & Contract Requirements 50 State Surveys," republished by the National Association of Surety Bond Producers ("NASBP") on their blog. This article was first published in the Gordon & Rees Q2 2021 Construction Law Update. Her article provides a state by state look at licensing and contract disclosure requirements. **Read more**

On August 3, 2021, Louisville Partner **Angela Richie** and Associate **Connor Cafferty** presented a client webinar entitled, "Recent Cases That Are Impacting Relevant Construction Case Law." A recording and a copy of the presentation materials can be found **here**.

On July 21, 2021, Louisville Partner **Angela Richie**, Senior Counsel **Rheanne Falkner**, and Associate **Connor Cafferty** presented a client webinar entitled, "It's a Hard Day: COVID-19, FMLA and Wage and Hour Issues." A recording and a copy of the presentation materials can be found **here**.

On June 8, 2021, Louisville Partner **Angela Richie** and Of Counsel **Denise Motta** presented a client webinar entitled, "Common Communication Errors to Avoid, Which Often Lead to Disputes." 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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