

Construction Law Update

SEPTEMBER 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.

Third Quarter 2020

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By **Benjamin Patrick**

The primary intellectual property protection afforded for construction designs is copyright, which protects the author of construction designs against having competitors rip off their unique designs and creativity. Copyright infringement occurs when someone other than the author or a license holder reproduces the copyrighted work, prepares a derivative work based on the copyrighted work, or prepares a work that is impermissibly similar to the copyrighted work. Generally, an author must prove three things in order to demonstrate copyright infringement: the author is the owner of a valid copyright in the allegedly infringed work; the defendant had access to the copyrighted work; and the allegedly infringing work is substantially similar to the copyrighted work.

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

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By **David L. O'Daniel** and **Glenn B. Coffin**

The purchase of a company or its assets occurs occasionally in the construction industry in Arizona. The purchaser should, however, consider structuring the transaction so that the purchaser is not saddled with responsibility for the debts and liabilities of the other company. A lawsuit naming the purchaser as the successor in interest for the other company has the potential for exposing the purchaser to millions of dollars of unforeseen liability for construction defects.

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

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By **Kimberly A. Blake**

We would like to provide you with updated 2020 national matrices regarding the different state statutes for (1) statute of limitations, (2) repose, (3) right to repair and (4) anti-indemnity. The majority of the 2019 state statutes remained unaffected by any enactment of new state legislation. However, there were some noticeable changes highlighted below. Click on a chart to download.

(1) Statute of Limitations Chart

There were no noticeable changes concerning the statutes of limitation.

(2) Statute of Repose Chart

In regards to statutes of repose, both Nevada and Wisconsin made significant changes. Nevada has increased its statute of repose from 6 years to 10 years following substantial completion. Conversely, Wisconsin decreased its statute of repose from 10 years to 7 years following substantial completion. Moreover, although there have been no changes to the Colorado laws set forth in 2019, it is important to note the significant effect the 2017 case *Goodman v. Heritage* has on the Colorado laws of repose. For third-party and/or contribution claims, *Goodman v. Heritage* effectively allows for the statute of repose (as well as the statute of limitations) to be extended to 90 days after settlement or judgment of the underlying action.

(3) Right to Repair Chart

In regards to the right to repair, Virginia repealed VA Code § 55-70.1, subsequently repealing its right of repair provision without providing for it elsewhere in the Virginia Code.

(4) Anti-Indemnity Chart

In regards to anti-indemnity, Nevada has set forth a limited indemnity statute for residential contracts entered into after February 24, 2015. Pursuant to Nev. Rev. Stat. Ann. § 40.693, contracts requiring subcontractor to indemnify the general contractor or developer for the contractor's negligence (whether active, passive, or intentional) are unenforceable.

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Louisville Partners, **Angela Richie** and **Jean Terry**, successfully defended their steel fabricator client against a delay claim made by the prime contractor and recovered unpaid contract balances which the prime had refused to pay.

Jean Terry obtained a Temporary Restraining Order against a utility contractor who was trespassing on her client's private property.

Gordon Rees Scully Mansukhani has been ranked the #5 construction law firm in the nation by Construction Executive in the magazine's 2020 ranking of *The Top 50 Construction Law Firms*. Gordon & Rees is the only California-based law firm to rank in the Top 25. [Read more](#)

Las Vegas Partner, **Robert Schumacher**, was selected as Nevada's "Legal Elite 2020" by *Nevada Business* magazine. Schumacher was recognized for his expertise in the areas of construction claims & defects, commercial litigation and employer liability. [Read more](#)

Los Angeles Partner, **Brenda Radmacher**, authored an article entitled, "Don't Let the Distance Destroy Your Communication — Lessons Learned from Arbitration by Zoom," published by the American Bar Association's Forum on Construction Law, *The Dispute Resolver*. The article, in blog format, describes various aspects of remote procedures and provides four key considerations for an effective remote arbitration. Radmacher offers insight on non-verbal communication and successful approach tactics to ensure a smooth remote process. The full article can be found [here](#).

Birmingham Senior Counsel, **Stacy Moon**, authored an article entitled, "Post-Shutdown Dealings with Owners and Employees," published in the latest edition of DRI's Construction Law Committee Newsletter, *The Critical Path*. The article describes the concerns and risks associated in the post-shutdown climate within the construction industry for owners and employees. Owners' concerns include delays caused by COVID-19, potential employee shortages, and additional exposure to the virus. Employee concerns' include unemployment compensation and safety on the jobsite. The full article can be found [here](#).

On July 29, 2020, **Brenda Radmacher** moderated a panel entitled, "In the Pandemic Age: What Does General Counsel Want from Outside Counsel," with the Society of Construction Law – Southern California Region. The webinar featured a panel discussion on how COVID-19 has affected what general counsel wants from outside counsel.

On June 2, 2020, **Angela Richie** and Associate **Angelo DiBartolomeo** 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 link to the presentation can be found [here](#).

On July 7, 2020, **Angela Richie** and Associate **Chip Clay** presented a client webinar entitled, "Livin' on a Prayer: What Due Diligence Do You Need to Do Before You Bid or Start Work?" A link to the presentation can be found [here](#).

On August 27, 2020, **Angela Richie** and **Jean Terry** presented a client webinar entitled, "I Can't Make It on Time: How to Defend and Prosecute Delay and Acceleration Claims." A link to the presentation can be found [here](#).

On August 19, 2020, San Francisco Associate **Matthew Peng** served as a panelist for the presentation, “California Construction Law Update,” for the Bar Association of San Francisco, Construction Law Section of the Barristers Club. The presentation covered topics on what’s unique about CA construction law; what’s new with CA construction law; and what potential changes are on the horizon. A link to the presentation 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 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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