

Construction Law Update

MARCH 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 2020

- I. [Construction Industry's Emerging Best Practices for Navigating the Haze of Marijuana Legalization](#)
- II. [The Impact of Covid-19 on the Construction Industry in Sparsely Populated States](#)
- III. [The Pandemic May Be in Its Ninth Month, But Your Construction Contract Should Still Address COVID-19 Head On](#)
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By **Rheanne Falkner**

On November 3, 2020, marijuana emerged from election night on fire! Marijuana was on the ballot in five states and proved victorious in all five. South Dakota voters voted to legalize both recreational and medicinal marijuana use. Arizona, Montana, and New Jersey voted to legalize the recreational use of marijuana, while Mississippi voters voted to legalize medicinal marijuana use. Currently, 34 states and two territories allow medical marijuana use and 15 states, Washington D.C and two territories allow recreational use of marijuana.

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

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By **Lance E. Shurtleff**

Sparsely populated states such as Wyoming and the Dakotas, and their construction industries, have felt COVID's impact differently from much of the nation. Like most states, Wyoming and the Dakotas deemed construction an essential industry at the outset of the pandemic. Unlike many other states, Wyoming and the Dakotas did implement similar restrictions with respect to other businesses, government offices, or courts as other states. Given the lack of densely populated areas, these states did not see the rising number of COVID cases during the early months of the pandemic, and construction projects, including government

projects, residential projects, and commercial projects continued.

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By **[Ari C. Shapiro](#)** and **[Andrew R. Schindler](#)**

Every construction contract MUST address COVID-19. Period. Full Stop. The virus impacts construction projects in several ways, just as it affects our daily lives in a myriad of ways. Regulations at the local, state, and federal levels—including workplace restrictions and total shutdowns—COVID-related materials shortages, and owner decisions to suspend performance, increased sanitization measure, and workplace safety claims, leave developers and contractors exposed to financial loss and/or liability. All these things impact the project- timeline and profitability of the project.

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Las Vegas Partners **[Robert Schumacher](#)** and **[Brian Walters](#)** obtained a

Supreme Court affirmation of summary judgment of a multi-million dollar construction defect claim at trial court on behalf of their client Lands West Builders, Inc. [Read more.](#)

Louisville Partner **Angela Richie** and Associate **Angelo DiBartolomeo** prevailed in arbitration on behalf of a client in relation to delay and change order claims, resulting in award in the amount of \$644,000 for client's change order claims and attorneys' fees as the prevailing party. The general contractor was awarded nothing on its \$4 million claim against the client.

Louisville Partner **Angela Richie**, Of Counsel **Denise Motta**, and Senior Counsel **Bradley Taylor** successfully briefed and argued a motion to compel arbitration and stay litigation in relation to claims filed by two bond claimants against a client's payment bond where there were questions as to whether claims asserted against the client and the surety were subject to contractual arbitration provisions. Significantly, the court agreed with the argument that incorporation of the subcontract containing an arbitration provision into the bond subjected the bond claim to arbitration, even where the bond stated that legal action must be commenced in state or federal court.

Louisville Partner **Angela Richie** has been named to the Construction Practice Group's National Leadership team. Effective immediately, Richie joins **Allen Estes** and **Ernie Isola** as co-chair of the firm's national practice group. [Read more.](#)

Hartford Partner **Todd Regan** was featured in the article "Hot Topics in Construction and Surety Risk Management" published in NASBP's Surety Bond Quarterly. [Read more.](#)

Denver Partner **Christine Kroupa** authored an article "Keeping On with Staying Sane during COVID-19" published in the Fall 2020 edition of DRI's Sharing Success publication, the newsletter of the Women in Law Committee. [Read more.](#)

San Francisco Partner **Ben Patrick** authored an article "Do Those Plans

Infringe on My Plans? Depends Where You Are," published in the November 2020 edition of the Intellectual Property & Technology Law Journal. The article discusses copyright protections and infringement within the construction industry and summarizes how different federal court circuits have articulated the test for substantial similarity in construction designs. [Read more.](#)

On December 8, 2020, Los Angeles Partner **Brenda Radmacher** will lead, "Negotiation Tactics & Training," for the 5th Annual Women in Design+Construction Conference. This workshop will be part of this year's virtual conference. Radmacher will explore and discuss tactics for successfully negotiating job offers, promotions, and contracts. Her interactive workshop will focus on the 4 step plan to negotiation (assess, plan, ask, package), and will walk each participant through specific negotiation scenarios. [Learn more and register.](#)

On November 19, 2020, **Brenda Radmacher** served as a panelist for "Find Your Strength: Becoming a Fierce Negotiator and Leader," a live 60-minute webinar. The session was part of the Los Angeles Virtual Women's Entrepreneurship Day (LA WED). [Read more.](#)

On September 30, 2020, San Francisco Partner **Lisa Cappelluti** presented "Navigating the Right to Repair Laws: Opportunities for Failures and Strategies for Success," at the Claims and Litigation Management Alliance ("CLM") Construction Virtual Conference. [Read more.](#)

On November 3, 2020, **Angela Richie** and **Rheanne Falkner** presented a client webinar entitled, "Construction Industry Employers' Rights in an Age Where Pot Is Legal."

On October 27, 2020, **Angela Richie** and Associate **Spencer Eastwood** presented a client webinar entitled, "Stayin' Alive: What You Need to Know and Do on the Front End to Make Sure Your Company Gets Paid."

On September 10, 2020, **Angela Richie** and Senior Counsel **Scott Norman** presented a client webinar entitled, "Keeping OSHA out of Your Bank Account."

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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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