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MEMORANDUM

TO: RPPTL Construction Law Committee

FROM: Ty G. Thompson
Surety & Insurance Subcommittee

DATE: November 12, 2012

RE: Case Law Update

In *CC-Aventura, Inc. v. Weitz Co., LLC*, 2012 WL 4839775 (11th Cir. October 11 2012), the Eleventh Circuit Court of Appeals affirmed the trial court's judgment in favor of the surety because the obligee failed to give reasonable notice to the surety before it began to remedy its principal's default. *Id.* at *1.

The obligee argued that the district court erred by following the majority opinion in *Dooley & Mack Constructors, Inc. v. Developers Surety & Indemnity Co.*, 972 So. 2d 893 (Fla. 3d DCA 2007). In *Dooley*, the trial court granted final summary judgment in the surety's favor because the obligee failed to formally notify the surety of its right to cure the principal's default under the bonds. The *Dooley* bond contained the same conditions precedent to the surety's obligations as the bond in *CC-Aventrua*. *Id.* at 895.

The Third District reversed and held that under "standard" surety bonds, such as the *Dooley* bond, the obligee's failure to give notice "would indeed result in the termination of the surety's obligations" were it not for the language in the incorporated subcontract that contained an "additional decisive provision which, to the contrary, permitted the [obligee] to proceed as it did." *Id.* at 894. Specifically, the incorporated contract gave the obligee the right to "declare the Subcontract breached and take charge of and complete the performance of the WORK with such persons, firms, or corporations as [Obligee] shall deem necessary . . . [and the Principal,] its surety and any bond shall be liable to all losses, damages, and expenses[.]" *Id.*

The *CC-Aventura* court determined that unlike the *Dooley* bond, there was an express notice requirement and the obligee did not have the right to behave as it did. *CC-Aventura, Inc.*, 2012 WL 4839775 at *2. Accordingly, the court held that under Florida law, the surety was relieved of its obligations for its failure to give the notice required by the bond. *Id.*