



CONSTRUCTive Talk

Construction Law Committee Newsletter, a committee of the Florida Bar Real Property, Probate & Trust Law Section



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CHAIR REPORT

By: Sanjay Kurian, Esq., Becker & Poliakoff, Fort Myers, FL

Hello CLCers,

A reminder that the Construction Law Committee ("CLC") is a committee of the Florida Bar's Real Property Probate and Trust Law Section ("RPPTL"). As of today the CLC consists of nearly 570 members running the full gamut of construction law in the state of Florida.

I have had the pleasure of serving for many years as vice-chair and chair of the Construction Law Institute and also as vice-chair and chair of the CLC. It has

been a lot of work but also introduced me to many construction law practitioners through-



out the state. I am always impressed, not only of the breadth of knowledge of these practitioners but also the incredible nuance of thought on many issues. Whether the

discussion involves the latest iteration of Chapter 558, the intricacies of the lien law, the vagaries of the economic loss rule, or developing case law in any number of areas, the thought leadership within the CLC is incredible.

I have had the opportunity to deal with construction law practitioners in other states through both litigation and volunteer bar associations. In those interactions I have been impressed by the lawyers in those other states but have always felt that our state construction

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Articles and Submissions:

Here at **CONSTRUCTive Talk**, we are always looking for timely articles, news and announcements relevant to Construction Law and the Construction Law Committee. If you have an article, an idea for an article, news or other information that you think would be of interest to Construction Law Committee members, please contact: Peter J. Kapsales, Esq. at pkapsales@milnelawgroup.com or Hilary Morgan at hmorgan@shermanhoward.com.

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Contributor

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bar takes a back seat to no other in its levels of professionalism and construction law knowledge. Use of alternative dispute resolution being an example of where, in my experience, Florida practitioners led the way.

I consider myself fortunate to be part of the Florida construction bar. The standard was set well before my involvement and if we wish to maintain that high standard it is imperative that we, as a group, continue to stay on the cutting edge in our substantive knowledge as well as maintaining our professionalism. Being active in the Florida Bar construction committees is a part of that in my opinion. There is simply no better place to learn of the latest developments in the practice.

I encourage all CLC members to get active in one of the many subcommittees under the CLC umbrella. Subcommittees exist for construction litigation, construction transactions, construction regulation, alternative dispute resolution, pro bono, legislation, publications, government contracting, and in-house attorneys. Each of these committees meet and also afford opportunities to speak and publish. Even if you prefer to keep a low profile, by participating you will meet and discuss with some of the best construction practitioners anywhere on the latest caselaw, legislation, or thoughts in our chosen field of construction law.

OTHER

News

**INSURANCE COVERAGE LAW MOVES CLOSER TO BOARD
CERTIFICATION STATUS**

Debbie Crockett
dscrockett@napleslaw.com

Recently, through the RPPTL Insurance and Surety Committee (ISC), the Florida Bar Board of Legal Specialization & Education's Program Evaluation Committee voted unanimously to approve a proposed "Insurance Coverage Law" board certification area. This practice area includes issues, disputes, and matters among or between insurers, policyholders, or third-party beneficiaries concerning the rights, duties, and coverages that arise out of policies, with specialties being first-party, third-party, bad faith/extracontractual claims, and state regulatory procedures and practices.

To learn more, read this [article](#) or contact ISC co-chair, Debbie S. Crockett (DSCrockett@NaplesLaw.com) for more info about how you can show your support.

Legislative Update



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During the 2025 Legislative Session, the CLC authored a white paper and proposed revisions to HB 893, which sought to lower tiered lien rights in the event of an owner's payment to its contractor. The RPPTL received approval from the Florida Bar Board of Governors to advocate against HB 893 during session, and the bill ultimately did not pass. Below is a description of proposed HB 893 and the reasons for RPPTL's opposition.

House Bill 893 – Changes to Lower Tier Lien Rights

Proposed House Bill 893 focused on lien rights for all lienors other than the general contractor in privity with the owner, and would have fundamentally transformed the lien rights of those individuals and entities under Florida law. The proposed bill would have mandated the use of statutory forms for partial and final lien releases and precludes any revisions or additional conditions from being added to the forms.

More importantly, however, the bill also would have eliminated lien rights for design professionals, subcontractors, sub-subcontractors, laborers and suppliers if the construction project owner paid its contractor, regardless of whether the contractor in turn pays its downstream vendors.

RPPTL opposed this change for several reasons. First, by removing the long-standing security lienors have for the credit they extend for their work, the CLC anticipated that suppliers, subcontractors, and sub-subcontractors might start requiring "up front" or advance payments for work as an industry standard. The CLC further anticipated these changes would cause the cost of construction will go up, as subcontractors, sub-subcontractors and suppliers would increase their prices to compensate for the risk of nonpayment inherent on every job. Finally, smaller subcontractors and suppliers would not be able to bear the risk of non-payment and will go out of business or leave the industry, making it harder to find materials and labor, causing delays in construction and difficulties in finding anyone to do the work in some geographical areas of the state.

As an alternative, RPPTL proposed that the legislative goals in HB 893 could have been accomplished by improving notice to and education of the owners about the proper payments and lien release process. Ultimately, none of these changes were made by the legislature.

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House Bill 683 – Construction Regulations

HB 893, which has been enrolled and submitted to Governor Desantis, reforms construction permit requirements and streamlines the process by eliminating certain documentation requirements imposed by local governments. The bill prohibits local governments from requiring builders to submit contracts or associated documents, as a condition for obtaining building permits.

These bills also create Section 218.755, Florida Statutes, addressing change orders on public projects. Specifically, the proposed amendments seek to substantially alter the process of the processing of proposed change order by governmental entities. The newly created statute requires local governmental entities to approve or deny change orders submitted by a contractor within 35 days of receipt. Further, if the government owner denies the proposed change order, it must specify the alleged deficiencies in the price quote and the actions necessary to remedy those deficiencies.

If the government owner fails to provide this information in the denial notice, it is liable to the contractor for all additional labor, staffing, materials, supplies, equipment and overhead associated with the change order. This legislative change responds to complaints by public works contractors of slow government response times to proposed changes, and the costs associated with such delays.



Case Law Update



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Michael Feinberg, Esq.
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Jacksonville, FL

Below is a case that confirmed the proper measure of damages in a construction defect case is based on the date of the breach. This case has significant implications for all lawyers who handle defect cases.

Bandklayder Dev., LLC v. Sabga, No. 3D23-1906, 2025 Fla. App. LEXIS 49 (3d DCA Jan. 2, 2025)

This appeal concerns whether the homeowners failed to establish the proper measure of damages at trial in a construction defect case. The homeowners entered into a contract with the builder to build a new home. The agreement provided the homeowners with a one (1) year warranty and required the builder to complete punch-list items following a walkthrough of the property. The transaction closed in June 2017, but several construction issues remained. The builder failed to address the defects to the home and ceased all communications with the homeowners in March 2018. In April 2018, the homeowners served written notice to the builder demanding compliance with the contract.

The homeowners eventually filed suit and the case proceeded to a non-jury trial. The homeowners' expert testified that the homeowners suffered damages in the amount of \$322,916.36 as of January 19, 2022, the date of his report. He further testified that, as of the date of the trial (May 2023), the cost to complete the unfinished work had increased by 35% to \$435,936.75 due to an increase in construction costs. The homeowners' expert, however, did not testify to the amount of damages as of the date of the breach (June 2017 when the transaction closed and the property was turned over to the homeowners, or at the latest April 2018 when the homeowners served their Chapter 558 notice on the builder). The homeowners failed to present any other evidence to establish the measure of damages as of the date of the breach.

The trial court entered final judgment in favor of the homeowners and awarded them \$425,936.75 in damages based on the testimony of the homeowners' expert. The builder appealed.

The Third District reversed, holding the homeowners failed to establish the proper measure of damages, which is measured as of the date of the breach (June 2017 or, at the latest, April 2018). In *Grossman Holdings v. Hourihan*, 414 So. 2d 1037 (Fla. 1982), the Supreme Court adopted subsection 346(1)(a) of the Restatement (First) of Contracts and held that "[d]amages for a breach of contract should be measured as of

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the date of the breach.” Applying *Grossman*, the Third District determined that the homeowners were required to prove their damages as of the date of the breach, which they failed to do because they presented evidence of their damages as of January 2022 and May 2023. The Third District observed that the homeowners’ testimony on damages underscored the uncertainty and guesswork that would necessarily accompany an estimate of damages that was five or six years after the breach.

The homeowners argued that they should be given an opportunity to establish and calculate damages as of the date of the breach if the Court reversed and remanded. The Third District disagreed, holding the homeowners failed to prove an essential element of their claim—damages. The Third District had consistently held that when a party has failed to meet its burden of establishing the correct measure of damages at trial, and such failure was not the result of judicial error, that party is not entitled to a new trial on damages.

Accordingly, the Third District reversed the final judgment in favor of the homeowners and directed the trial court on remand to enter final judgment in favor of the builder.

In-House Corner



David J. Ehrlich, Esq.
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Tampa, FL



D. Joseph Darr, Esq.
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Winter Park, FL

The In-House Counsel Subcommittee was recently formed in June 2024, under the umbrella of the Construction Law Committee (CLC). Since then, it has attracted the membership of forty-five (45) Florida in-house counsel practicing in the construction field, including owners/developers, contractors, subcontractors, designers, and insurance/surety providers. The Subcommittee's membership is exclusive to in-house counsel, with the intent of creating a forum where ideas and best practices can be openly exchanged.

The Subcommittee kicked off this year with a meeting on January 21, 2025, at which James Moyer (NHG Specialty, Miami, FL) presented on *How In-House Counsel Can "Bridge the Gap" in Risk Management*. The presentation primarily focused on Builder's Risk insurance, and covered (i) delay in completion (DIC) endorsements, regarding the applicable time-based deductible and nature of damages that may be recoverable (i.e. if solely owner "soft" costs or also contractor costs); (ii) ability to recover claim preparation costs (for consultants or otherwise); (iii) applicability of LEG endorsements with respect to construction defect claims (if included in the policy); (iv) the nature of BRI sitting primary to CGL during the course of construction but potential for triggering both policies under a single loss; and (v) considerations regarding policy sublimits and exclusions. The Subcommittee met again on March 25, 2025, at which Leanne Palmer (CIANBRO, Orlando, FL) presented on *Trending AIA Contract Modifications (Round 2)*. It purposefully was titled "Round 2" after receiving superb feedback from an earlier presentation on the same topic by Co-Chair, Joe Darr. This "Round 2" presentation focused on strategies and fallbacks in negotiating the following contract clauses: (i) escalation/tariffs; (ii) lender consents; (iii) definition of substantial completion; (iv) delay; and (v) subcontractor relationships and ODP requirements. Finally, the Subcommittee enjoyed gathering in-person for the first time (but certainly not the last) for an exclusive happy hour on March 7, 2025, at CLI.

The Subcommittee continues to accept new members. If personally interested or you know an in-house colleague who may be, please email Joe Darr (jdarr@brasfieldgorrie.com) or Davide Ehrlich (dehrlich@tcco.com).



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Hardy Roberts, Esq.
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Pro Bono Update



According to [a December 2023 article in The Florida Bar News](#), “Florida has a poverty rate . . . of 13.1% compared to the national poverty rate of 11.5%. And . . . 1.7 civil legal aid attorneys serving every 10,000 Floridians, compared to the national average of 2.8 . . .”

Our Construction Law Committee has over 550 members statewide. We have a unique opportunity to help our members meet their annual pro bono goals by providing critical services within their specific area of expertise—construction law—to those who otherwise would not have access to legal representation.

The CLC's Pro Bono Subcommittee has three primary goals:

1. **Build Connections:** We are establishing relationships with legal aid organizations statewide that serve clients needing pro bono construction law services. We aim to identify committee members willing to serve as liaisons with their local legal services providers.
2. **Provide Educational Resources:** We plan to offer educational content to legal aid societies and attorneys handling pro bono construction law matters, helping them better serve low-income clients.
3. **Foster Local Networks:** We want to encourage and facilitate the creation of local networks of attorneys ready to provide or assist with construction-related pro bono services in their communities.

Last year, the CLC helped with 8-10 pro bono matters through the Subcommittee. We aim to significantly increase this as we go forward. While those who are willing and able to take a pro bono case are greatly appreciated, we also need folks to assist by serving as liaisons with local Legal Aid organizations, helping with outreach and education, and assist-

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ing with subcommittee administrative and organizational work. If you are will to help or serve as a liaison with a local aid or pro bono program, please email the Sub-Committee Co-Chairs, Pamela Holcombe and Hardy Roberts at pamela@anastasiaLaw.net and hroberts@careyomalley.com.

Expanding Pro Bono Partnerships in Florida—Free Webinar Series

The CLC Pro Bono Subcommittee participated in a two-part webinar series titled “Expanding Pro Bono Partnerships in Florida.” This Webinar Series was put on by Florida Legal Services and the RPPTL Section of the Florida Bar. For those who were unable to attend the series, below is a brief description of each part, along with a link to watch each CLE presentation, which is available for free.

Part 1: Expanding Pro Bono Partnerships in Florida – Connecting with Civil Legal Aid

In this CLE Webinar, Aaron Irving, Esq. of Jacksonville Area Legal Aid (JALA) gave an overview of the pro bono landscape in Florida, and how lawyers can connect with their local legal aid clinic.

Watch [Part 1 on YouTube](#).

Part 2: RPPTL’s Pro Bono Initiatives and the Certified Lawyers on Call (CLOC) Service

In this CLE Webinar, RPPTL Section members, including Pam Holcombe gave an overview of the RPPTL Section’s pro bono initiatives.

Watch [Part 2 on YouTube](#).

Submissions

Do you have an article, case update, or topic you would like to see in CONSTRUCTive Talk?

Submit your article, note, or idea to:
pkapsales@milnelawgroup.com or
hmorgan@shermanhoward.com

Editor's Corner



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Construction Law Committee Meetings

Join us for our upcoming Construction Law Committee meetings. Benefits of the meetings include 1 hour of CLE each meeting, a timely update on developing case law, statutes and administrative rulings, and informative reports from our subcommittees.

The CLC meetings occur the second Monday of every month beginning promptly at 11:30 a.m. EST. To join, please use the Zoom Link Below:

Zoom Link Join Zoom Meeting <https://beckerlawyers.zoom.us/j/82503132938>

Meeting ID: 825 0313 2938

One tap mobile +13017158592,,82092809184# US (Washington DC)
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Dial by your location

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+1 253 215 8782 US (Tacoma)

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+1 669 900 6833 US (San Jose)

Meeting ID: 820 9280 9184

Subcommittee News

Interested in joining the Construction Law Committee?

It's as easy as 1, 2, 3:

1. Become a member of the Florida Bar.
2. Join the Real Property Probate and Trust Law Section.
3. Email Sanjay Kurian at skurian@beckerlawyers.com advising you would like to join the CLC and provide your contact information.

Get On Board!

Interested in getting involved? Contact one of the persons listed below:

ABA Forum on Construction Law

Tony Lehman
alehman@hlpwlaw.com

The ABA Forum Fall Meeting will be on September 3-5, 2024 in Louisville, KY. A new publication on owner representation is out now, "Representation of a Construction Owner", co-written/edited by our own Sanjay Kurian. The is also a young attorney writing competition with prizes including publication and a free trip to the fall meeting in October. This is great for summer associates. Papers are due on June 29, 2025. The regional meetings on November 13-14, 2025 will include an Orlando meeting. Attendees will receive a copy of "Sticks and Bricks," and is a great basic skills course.

ADR

Reese Henderson, Bryan Rendzio
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The ADR Subcommittee is continuing to expand and to provide ongoing updates for the CLC group. We are still seeking more members who actively want to assist with our ADR section. We would also encourage any interested members to submit an article to the CLC on any ADR-related topic.

Certification Exam

Bruce Alexander, Dara Lindquist
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The Construction Law Board Certification Application Cycle will run from September 1 to October 31, 2025. The 2026 Construction Law Board Certification exam will be administered on Thursday, May 14, 2026. For those lawyers seeking recertification (i.e., 1995, 2000, 2005, 2010, 2015, or 2020), the deadline to submit recertification applications is July 31, 2025.

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Certification Review Course

Scott Pence, Greg Hutt
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The Construction Law Certification Review Course will be held on March 4 to 7, 2026 at the JW Marriott—Grande Lakes, Orlando, Florida.

Construction Law Institute

Brad Weiss, Trevor Arnold, Haley Maple
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The CLI will be held on March 5 to 7, 2026 at the JW Marriott—Grande Lakes, Orlando, Florida.

Construction Litigation

Jason Lambert, Michael Feinberg
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The Litigation Subcommittee meets the first Thursday of every month at 11:00am via Zoom. The Subcommittee examines recent case law developments and procedural issues of interest to construction litigators. To join the Subcommittee Zoom call or read recent case law updates, please click [here](#).

Newsletter

Peter Kapsales, Hilary Morgan
pkapsales@milnelawgroup.com, hmorgan@shermanhoward.com

The Newsletter Subcommittee is seeking submissions for the CONSTRUCTive Talk Newsletter for 2025. Please submit shorter form articles for inclusion in an upcoming edition to Peter and Hilary, which should be 1000 words or less.

Pro Bono

Pam Holcombe, Hardy Roberts
pamela@anastasiaalaw.net, hroberts@careyomalley.com

There are many ways, both small and large, for CLC members to assist the provision of pro bono services. In addition to taking a pro bono case, we also need folks to assist as liaisons to local Legal Aid organizations, helping with outreach and education, and assisting with subcommittee administrative and organizational work. Please contact Pamela or Hardy with your offers to help or if you are interested in attending the next CLC Pro bono meeting.

*(Continued from page 12)***Publications***Andrew Foti, Michael Rothfeldt**afoti@stearnsweaver.com, mrothfeldt@carltonfields.com*

The Publications Subcommittee is seeking submissions for ActionLine for the 2025 bar year. Articles should be 1000-3000 words in length and the submission deadline is June 15, 2025. The subcommittee is also seeking submissions for the Florida Bar Journal on behalf of the section. These submissions should be 3000-5000 words in length. Please reach out to Andrew or Michael if you are interested.

Construction Regulation*James Gonzalez, Chris Cobb**jgonzalez@cobbgonzalez.com, ccobb@cobbgonzalez.com*

Florida House Bill 1383 (2023) and Senate Bill 1142 (2024) introduced 13 new certified specialty contractor license categories, with voluntary licensure overseen by the Construction Industry Licensing Board (CILB). These categories include structural aluminum enclosures, marine dock work, structural masonry, rooftop solar installation, and window and door installation. The pre-emption on local licenses was extended through July this year. The CILB has now incorporated the specialty licenses into its administrative code. Local licensing requirements, initially set to expire in 2024, are extended to 2025.

Construction Transactions*Claramargaret Groover, Alex Leon**cgroover@beckerlawyers.com, aleon@haberlaw.com*

The Construction Transactions Subcommittee provides practical resources to construction transactional attorneys to refer to when drafting, updating, or customizing construction contracts.

Contractor's University*David Zulian, James Barlow**dazulian@napleslaw.com, jbarlow@careyomalley.com*

Contractor's University will be setting up regional workshops which offer CEU credit through practical seminars for contractors across the state on various topics such as lien law and contract clause tips.

(Continued from page 13)

Construction Legislation

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In-House Counsel

David Ehrlich, Joe Darr

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The In-House Counsel Subcommittee is exclusively comprised of Florida in-house counsel practicing in the construction field, including owners/developers, contractors, subcontractors, designers, and insurance/surety providers.

Membership

David Zulian, Mark Smith

dazulian@napleslaw.com, msmith@careyomalley.com

The CLC's membership includes 555 members. If you are aware of a RPPTL Section member who would like to become a member of the CLC, please contact David and Mark.

Government Contracts

Lisa Colon, Belinda Bacon

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The Government Contracts subcommittee meets the fourth Friday of the month at noon. The subcommittee welcomes members who have experience in the field of government construction contracts, and the work of the subcommittee focuses on tracking case law as well as regulatory and administrative changes and cases that affect government contracting, including small business and MBE/WBE programs.

Website

Jack Taylor, Klarika Caplano

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The CLC webpage can be found [here](#) and is regularly updated with monthly meeting minutes and agendas, CLE materials and course numbers for credit, case law and legislative updates, and subcommittee information.

CLE*Sean Sullivan, Jill Dutmers**ssullivan@beckerlawyers.com, jdutmers@shutts.com*

The CLE Subcommittee hosts a monthly free CLE for Construction Law Certification credit on the second Monday of every month. Please contact Sean and Jill if you would like to present a topic in 2025.

CLC member Tony Lehman will be presenting a CLE on AI with an ethics component and how it affects construction and land use practices. Click [here to register](#) for the webinar below.

