



CONSTRUCTive Talk

Construction Law Committee Newsletter, a committee of



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CHAIR REPORT

By: Bruce Partington, Esq., Jones Walker LLP, Pensacola, FL

Hello CLCers,

I'm writing this column while attending the ABA Forum on Construction Law's annual meeting that also commemorates the Forum's 50-year anniversary. It's a good opportunity for us to consider our colleagues from Florida who have been formative both for the Forum and our own construction bar in Florida. Leslie King O'Neal was an "early adopter" of the Forum and has been a consistent leader in Florida as well; she chaired the Forum in 1997-98. Other lions of the con-

struction bar in our state who also chaired the Forum include Michael Neuchterlein



(1995-96), George Meyer (2010-11), Steve Lesser (2014-15), and Cary Wright (2022-23). Incoming Forum chair Tony Lehman (2026-27) is also ac-

tive in our own CLC. And we have within our CLC a host of others who are and have been leaders and active in the Forum – who are too many to try to list because I will certainly omit some unintentionally.

Also, many of the reflections at the meeting about the culture and value of the Forum are reflected in our CLC and its activities, including the Construction Law Institute. And for that I am deeply grateful. I am grateful for the active committees and their leader-

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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, Hilary Morgan, Esq. at hmorgan@taftlaw.com, or Clark S. Girges, Esq. at cgirges@carltonfields.com

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ship whose work you'll see in this newsletter. I'm grateful for the work of those who put together the CLI and getting to experience another fantastic event this March. I'm grateful for all those who both organize and manage our monthly meeting CLE programs. I'm grateful for the Certification Committee and its challenging but rewarding work. And I'm grateful for the comradery and professionalism that is so widespread in the construction bar in Florida. I know that this level of practice and professionalism is, sadly, not present in some other practice areas, and is not as universal as it should be within our bar. But by being examples of what our practice **should** be, hopefully our examples will continue to spread and set higher expectations for others.

But for the last few months, I am incredibly grateful for the leadership and assistance of Brett Henson and Jason Quintero. It is challenging and disruptive to change law firms after 35 years in one place, and they have graciously and professionally kept things moving ahead for our CLC when I simply haven't had the bandwidth to do so. I'm feeling more settled in now, but I wanted particularly to thank those two gentlemen for their assistance.

We sometimes tend to think about things that we "have to" do, but these reflections suggest that we should perhaps rephrase this as things that we "get to" do. (I can't claim ownership of this rephrasing; I first heard it from a friend and client). I don't **have** to practice construction law, I **get** to practice construction law. I don't **have to** be active in the CLC, I **get to** be active in the CLC. I don't **have to** go the CLI, I **get to** go to it. We in the CLC are fortunate to have a legacy of great leaders, and an active group of current and future leaders as well. I'm grateful that we get to spend time together.

- Bruce Partington, Esq.

WHAT ARE THE BOUNDARIES FOR THE USE OF AI in ARBITRATION?

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*A full version of this article with citations will be circulated
contemporaneously with this Newsletter*

Artificial Intelligence (“AI”) is infiltrating all facets of the legal system and arbitrations are no exception. When used properly, AI can be an effective tool to increase efficiency and enhance presentations. However, if applied without proper guidelines, it can undermine the credibility of its users and even improperly influence the outcome of a proceeding.

AAA AI Standards

In an attempt to address these concerns, the American Arbitration Association International Centre for Dispute Resolution® (“AAA-ICDR”) recently published its AAAi Standards for AI in Alternative Dispute Resolution (“AAA AI Standards”) to provide a framework to address six core standards when using AI in Alternative Dispute Resolution (“ADR”).

Standard 1: Ethical & Human-Centered Values

Standard 2: Privacy & Security

Standard 3: Accuracy & Reliability

Standard 4: Explainability & Transparency

Standard 5: Accountability

Standard 6: Adaptability

Each standard is broken down into three subcategories to address how they apply to the key parties in the ADR process:

ADR Administrators – the AAA and its case managers.

Neutrals – the arbitrators and mediators that preside over the alternative dispute resolution proceedings.

Although the new standards provide valuable guidance regarding the acceptable use and limits of AI in ADR, they do not provide any insight regarding the repercussions if the standards are not followed. Most of the AAA Rules, such as those for Commercial, Consumer, and Construction Industry Arbitrations, provide authority for arbitrators to issue sanctions against advocates and parties when appropriate. However, the ability to issue sanctions is conspicuously absent from the AAA Rules for International, Labor, and Home Construction disputes. Even when the ability to impose sanctions is provided by the arbitration rules, it is limited to the arbitrators imposing them against the parties, but what happens if an arbitrator violates the AI standards? If it happens before the award is entered, the Commercial, Consumer, Construction Industry, and Home Construction Arbitration Rules provide an avenue for the disqualification of an Arbitrator for, among other things, “a lack of independence,” “inability or refusal to perform his or duties with diligence and good faith,” and “any grounds for disqualification provided by applicable law.” However, they do not provide any real mechanism for the parties to challenge an arbitrator’s potential misuse of AI when drafting an award.

Indeed, the AAA rules only provide for the modification of an award to “clarify the award or correct any clerical, typographical, technical, or computational errors in the award.” The rules go on to specifically state that in clarifying or correcting errors, “the arbitrator is not empowered to re-determine the merits of any claim already decided.” Consequently, even if it can be established that an Arbitrator improperly relied upon AI to determine a claim and the determination was erroneous, the parties are essentially powerless to correct it.

It would appear then that a party that is the subject of an arbitrator’s improper use of AI in the preparation of an award would be limited to trying to vacate the award under the Federal Arbitration Act, 9 § USC 1-16 (“FAA”), or the Florida Arbitration Code, Chapter 682, Florida Statutes (“FAC”). However, the grounds for vacating an award under either law is limited to situations where the award was procured by corruption, fraud, or undue means; there was evident partiality or corruption of the Arbitrators; there was Arbitrator misconduct; or where the Arbitrators exceeded their powers.

Test Case for Potential Misuse of AI in Arbitration

In a recent case filed in the United States District Court for the Southern District of California (the “District Court”), *LaPaglia v. Valve Corp.*, a claimant in an arbitration administered by the AAA, John LaPaglia (the “Claimant”), petitioned to vacate an arbitration award that was entered in favor of the respondent, Valve Corp. (the “Respondent”). Among the grounds asserted to vacate the award under the FAA, was a claim that the arbitrator relied on AI to such an extent that he “outsourced his adjudicative role.” While the outcome of the case remains uncertain, and the entry of the Award at issue predated the publication of the AAA AI Standards, it presents an interesting test case for determining the limits of an Arbitrator’s reliance on AI when issuing an award.

In his Petition to Vacate the Award (the “Petition”), the Claimant asserted, among other things, that (1) the underlying arbitration hearing was held over the course of 10 days before a single arbitrator (the “Arbitrator”) in December 2024; the Arbitrator told the parties that he wanted to issue a decision quickly because he had an upcoming trip scheduled to the Galapagos; and the 29-page Final Award (the “Award”) was issued on January 7, 2025, which was a little over two weeks later after the final post-hearing brief was submitted, and the same time the Arbitrator was allegedly scheduled to leave on his trip.

In support of his contention that the Arbitrator used AI to draft his award, the Claimant provided the following key facts and allegations:

- The Arbitrator admitted that he used ChatGPT to write articles and during a break, “he told a story about how he had been assigned to write a short article on an aviation club he was part of, and that he had used ChatGPT to write it to save time.”
- The Arbitrator told the parties, “he was leaving for a trip to the Galapagos soon and wanted to get the case done before then.”
- The Award allegedly contains “telltale signs of AI generation” and purportedly cites facts that “are both untrue and not presented at trial or present in the record” without any relevant citations.

- When ChatGPT was asked whether it believed a certain paragraph of the Award was written by humans or AI, ChatGPT stated that “*the paragraph’s awkward phrasing, redundancy, incoherence, and over-generalization ‘suggest that the passage was generated by AI rather than written by a human.’*”

The Claimant argued that the Award must be vacated because, “*by relying on AI to reach his ruling, [the Arbitrator] exceeded his authority bound by the scope of the parties’ arbitration agreement,*” which “*empowers a ‘neutral arbitrator’ to resolve disputes between them*” and binds the Arbitrator to “*provide ‘a written decision’ and a ‘statement of reasons’ for their holding.*” The Claimant then asserted that cases in which an arbitrator relies on AI, “*betrays the parties’ expectations of a well-reasoned decision rendered by a human arbitrator.*”

In response, the Respondent moved to dismiss the Petition on jurisdictional grounds. More specifically, the Respondent asserted that because there was no federal question or diversity jurisdiction in the underlying arbitration claims, the FAA would not apply. On December 9, 2025, the Court agreed with the Respondent’s position and granted the motion to dismiss on the with addressing the merits of the claims asserted in the Petition grounds that the Court lacked subject matter jurisdiction. Consequently, the Court was never faced with addressing the merits of the claims asserted in the Petition.

How Would the AAA AI Standards Apply in *LaPaglia*?

If the AAA AI Standards were in effect when the Arbitrator in *LaPaglia* rendered his decision and all the Claimant’s allegations regarding the Arbitrator’s reliance on AI to render the Award were determined to be true, the Award could be considered to have been entered in violation of multiple standards for neutrals. For example, AAA AI Standard 1 includes the requirement that neutrals “[p]reserve human perspective and judgment when using AI” and “rely on direct review of evidence and reasoned deliberation in reaching conclusions.” Standard 3 states that “[o]utputs from AI tools should be reviewed to verify accuracy against trusted source materials, including evidence, party filings, and legal authorities.” Standard 5 provides that neutrals must “[m]aintain a working knowledge of AI capabilities, avoid shortcuts that could compromise quality, and understand risks, benefits, and ethical considerations for AI tools.”

Finally, Standard 6 requires Neutrals to “[c]ontinually update knowledge about AI technologies,” incorporate AI-assisted tools, “but evaluate every dispute according to its unique context.” If it were found that some or all these standards were violated, it could arguably open the door to vacating the Award under the FAA based on “misbehavior by which the rights of any party have been prejudiced” or under the FAC for “misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding.”

Analysis

Based on the high burden required to overturn an arbitration award under both the FAA and the FAC, determining whether an AI assisted award is subject to being vacated would likely boil down to how much the arbitrator relied upon AI to make the decision. For example, if an arbitrator prompted AI to examine all the evidence and submissions and generate a ruling on its own without any further input from the Arbitrator, it would likely be considered an improper outsourcing of the decision to someone or, as the case may be, something else. If, however, the Arbitrator were to simply prompt AI to draft an award based on his or her predetermined findings of fact and conclusions of law, then it would likely fall into the category of a typical award, which would be enforceable even if it contained errors or flawed reasoning.

Conclusion

The issues raised in the *LaPaglia* case highlight potential concerns with the use of AI in the arbitration decision-making process. Even with the additional guidance provided by the AAA AI Standards, questions remain as to what happens if an arbitrator violates one or more of the standards? How can a party prove an arbitrator violated the standards or otherwise misused AI? If there is a suspected violation, will the parties be provided access to the arbitrator’s AI prompts and search histories? At what point will an arbitrator’s improper use of AI rise to the level of disqualifying the arbitrator or vacating his or her award? As the use of AI becomes more prevalent and pervasive in ADR, these questions will become even more important to answer. It would appear then that the next logical step for the AAA, legislators, and courts will be to provide more guidance as to how these critical questions should be addressed when a misuse of AI is suspected in the decision-making process.

In-House Corner



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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 55 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.

Since the last publication, the Subcommittee continued its bi-monthly meeting schedule in November 2025, at which one of its own, Michael Meyer (Sims Crane, Tampa, FL) presented on *Sleeping Giants: Practical Tips for Claim Preparation*. Michael's presentation focused on identifying and developing claims that may not be immediately apparent but can have significant downstream impacts if properly preserved and presented. Attendees gained practical insight into early documentation strategies, internal coordination, and leveraging project data to strengthen claim narratives. The discussion also emphasized proactive issue spotting to avoid missed opportunities as projects progress. The Subcommittee met again in January 2026, at which we did our very first *Around the Horn* session. This interactive session allowed members to share recent experiences, challenges, and ideas for future Subcommittee programming. In particular, the group discussed and proposed potential presentation topics for the coming year, reflecting common interests and emerging issues facing in-house construction counsel. The format encouraged candid dialogue and reinforced the value of the Subcommittee as a collaborative forum for shaping relevant and practical content. The Subcommittee then met in March 2026, at which Rebecca Ross (Norlee Group, Jacksonville, FL) opened a roundtable discussion on *Trending AI Tools*. Rebecca facilitated a forward-looking discussion on how in-house counsel are beginning to evaluate and implement AI-driven tools in their daily practice. The group explored both the opportunities for efficiency—such as contract review and data analysis—and the potential risks, including confidentiality and reliability concerns. The session underscored the importance of thoughtful adoption and internal governance as these technologies continue to evolve. Finally, the Subcommittee enjoyed gathering in-person for the second time (but certainly not the last) for an exclusive happy hour on March 6, 2026, at CLI. It was great seeing our in-house counsel colleagues in-person and further developing those relationships spurred by the Subcommittee.

The Subcommittee continues to accept new members. If personally interested or you know an in-house colleague who may be, please email Joe Darr or David Ehrlich.

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:

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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://joneswalker.zoom.us/j/91825548590?pwd=qkeJLaxkcgRMzPnaodt6EpV4l1QTyA.1>

Meeting ID: 918 2554 8590

Passcode: 305990

One tap mobile US: [+16469313860](tel:+16469313860) or [+19292056099](tel:+19292056099)

Subcommittee News

Get On Board!

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 Bruce Partington, Brett Henson, or Jason Quintero bpartington@joneswalker.com, bhen-son@carltonfields.com, or jquintero@carltonfields.com, advising that you would like to join the CLC and providing your contact information.

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

ABA Forum on Construction Law

Tony Lehman
alehman@hlpwlaw.com

ADR

Reese Henderson, Bryan Rendzio
reese.henderson@gray-robinson.com, brendzio@milesadr.com

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 Certification Committee advanced efforts to strengthen the 2026 exam's quality and integrity. This year, it completed a comprehensive review of the test bank, removing outdated items and ensuring alignment with current guidelines. Questions that proved especially challenging for examinees were analyzed and revised or replaced to improve clarity and fairness.

*(Continued from page 10)***Certification Review Course***Scott Pence, Greg Hutt**spence@carltonfields.com, ghutt@trenam.com***Construction Law Institute***Brad Weiss, Trevor Arnold, Haley Maple, Nikki Bhavsar**brad@bmwlawyers.net, trevor.arnold@gray-robinson.com, hmaple@ksmlawyers.com, nikki.bhavsar@udx.com***Construction Litigation***Jason Lambert, Michael Feinberg**Jason.Lambert@hwhlaw.com, michael.feinberg@ansbacher.net*

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, Clark S. Girges**pkapsales@milnelawgroup.com, hmorgan@taftlaw.com, cgirges@carltonfields.com*

The Newsletter Subcommittee is seeking submissions for the CONSTRUCTive Talk Newsletter for 2026. Please submit shorter form articles for inclusion in an upcoming edition to Peter, Hilary, and Clark 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.

Publications*Andrew Foti, Michael Rothfeldt**afoti@stearnsweaver.com, mrothfeldt@carltonfields.com*

The Publications Subcommittee is seeking submissions for ActionLine for the 2026 bar year. Articles should be 1000-3000 words in length. 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 and Michael if you are interested.

(Continued from page 11)

Construction Regulation

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Construction Transactions

Claramargaret Groover, Alex Leon

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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

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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.

Construction Legislation

Nicholas Elder, Ryan Sullivan

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While there was much discussion regarding potential bills impacting the construction industry during the 2026 legislative session, the one significant piece of legislation making it through both chambers was House Bill 803. This bill provided a wide array of various statutory amendments with a focus on streamlining the permitting process for homeowners and de-regulating smaller home improvement projects. For example, the bill exempts building permit requirements for single-family home projects under \$7,500, as well as projects related to the installation of temporary residential hurricane and flood protection walls and barriers. The bill also expanded the role of private provider inspection services, limiting the permit fees local officials can charge when a homeowner uses a private provider and further limiting the oversight of those building inspectors when a homeowner chooses to use the services of a private provider. The bill streamlined the timeframe for a local government to approve or deny a building permit application for an existing single-family residential dwelling if the value of the work is less than \$15,000, requiring such permit applications be approved within 5 business days after the application is deemed complete and sufficient. Finally, the legislation prohibits homeowners' associations from requiring a building permit as a prerequisite of its review of the construction of structures or improvements. Overall, the legislation aims to cut regulatory red-tape for smaller resi-

(Continued from page 12)

dential projects and provides additional leeway for homeowners to utilize private providers to review and approve permits and plans

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. See the *In-House Corner* column for further updates and how to join .

Membership

David Zulian, Mark Smith

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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

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The CLE Subcommittee hosts a monthly free CLE for Construction Law Certification credit on the second Monday of every month. Please contact Sean, Jill, or Anya if you would like to present a topic in 2026.

Young Lawyers

Samantha Encalada, Richard Harrylal, Sean Mickley
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The Young Lawyers is a newly formed subcommittee under the Construction Law Committee formed to engage young lawyers in discussions on new/upcoming case law, tips to get through the first years of practice, and practicums from established construction professionals. Look out for an upcoming article on the history of Florida's lien law with Larry Leiby and Fred Dudley and information about upcoming meetups and events. Please reach out to Samantha Encalada samantha.encalada@daviesduke.com or Richard Harrylal richard.harrylal@hwhlaw.com if you are interested in joining.