

# **2014 CONSTRUCTION LAW UPDATE**

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**Neal J. Sweeney**

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Editor

**Neal J. Sweeney**



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## 2014 PREFACE

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Construction is a dynamic process and a dynamic industry. The *2014 Construction Law Update* seeks to keep pace with that dynamism with its current coverage of legal issues which have a very practical impact on the day-to-day functioning of the industry. The *2014 Update* is the 24th book in this Update series. Through the efforts and experience of the contributing authors, the *2014 Update* maintains and builds upon the tradition of excellence established by past contributors.

Time means money in construction and **Chapter 1** looks at recent developments with the enforcement of “no-damage-for-delay” clauses. Despite the federal contracts and many standard form construction contracts that do not incorporate such owner protection, no-damage-for-delay clauses remain a common occurrence in the construction industry and they are frequently enforced.

Within the context of both private and public construction are the important legal consequences of payment and performance bonds and the role of surety law. **Chapter 2** examines the important impacts surety law has on the construction industry and on those prosecuting or defending claims on construction surety bonds.

**Chapter 3** undertakes a review into recent developments in the area of arbitration, including a recent U.S. Supreme Court decision that appears to further reinforce the power and authority of arbitrators to decide the disputes submitted to them and the substantial limitations on a judge’s ability to second-guess those decisions. Arbitration as an alternative to litigation is not perfect, but it remains an integral part of the construction industry’s efforts to pursue more efficient means of dispute resolution.

Insurance coverage is critical for most modern construction projects. Members of the construction and design industries do not expect something that has been or is being built to collapse. However, the potential for something to collapse is a reality in the industries and carries extensive insurance coverage ramifications. **Chapter 4** examines some principal categories of collapses that can and do occur and the typical coverage issues and disputes that result from such collapses.

Labor remains a key component in the construction industry despite much technological advancement. As a result, those within the construction industry should remain knowledgeable about developments in labor and employment law. **Chapter 5** provides a labor and employment law update on trends that have occurred and that may occur in the future.

**Chapter 6** keeps track of the developments in environmental requirements, including providing a focus on existing environmental requirements and several new or anticipated environmental requirements relevant to construction activity.

As in the past, this year's *Update* addresses developments in federal contracting and in the six geographic regions of the nation in depth in separate chapters. These seven chapters and the contributing authors who craft them each year provide the foundation on which the success of the *Update* rests.

The efforts, skill, and dedication of our contributing authors are demonstrated throughout the chapters of this book.<sup>1</sup> I thank and congratulate them for their efforts. The important assistance of Pj Iraca and Barbara Detkin at Wolters Kluwer Law & Business is also much appreciated. Finally, my thanks go to Marion Billingsley for the critical role she plays in the *Update* this year and every year.

Atlanta, Georgia  
January 2014

NEAL J. SWEENEY

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<sup>1</sup> The views and opinions expressed by the contributing authors are not necessarily those of the editor.

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**Neal J. Sweeney** is a partner in the Construction and Infrastructure Projects Team of Kilpatrick Townsend & Stockton LLP. For over 30 years, he has practiced exclusively in the area of construction law and public contracts, with further concentrations in large infrastructure and industrial projects, federal procurement, and health care construction projects. Mr. Sweeney has been involved with some of the largest public private partnerships projects in the United States. His experience spans the full range of the design and construction process, starting at procurement and bid protests, contract review and drafting. Much of Mr. Sweeney's time is spent counseling clients during project performance in an effort to mitigate and promptly resolve disputes. He has extensive experience in various forms of construction Alternative Dispute Resolution ("ADR") techniques, including dispute review boards, mediation and structured negotiation, as well as extensive work in trial, arbitration, and before the federal boards of contract appeal. Mr. Sweeney has written extensively on construction law, government contracts, and related topics. Mr. Sweeney has edited 13 books on construction law, including the annual *Construction Law Update* (Wolters Kluwer Law & Business) since 1992, and *Common Sense Contracting* (Wiley 1997). He has also contributed as a co-author to numerous books, including *Design-Build Contracting Handbook* (Aspen, 2d ed. 2001) and *Proving and Pricing Construction Claims* (Wiley, 2d ed. 1996). He also regularly contributes articles to periodicals including *Development*, *Constructor*, the *ASCE Management Journal* and *Water Environment and Technology* magazines. Mr. Sweeney lectures regularly on construction law for a variety of trade and bar organizations and educational institutions including American Road and Transportation Builders, Water Environment Federation, the Design-Build Institute of America, American Society of Professional Engineers, Risk and Insurance Management Society, Stanford University, and Georgia Tech. Mr. Sweeney graduated from Rutgers University, *with high honors*, 1979, Rutgers Scholar and received his J.D. from George Washington University, *with honors*, 1982.



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Admitted to practice in Washington and Idaho, Mr. Henry is a frequent lecturer to construction industry groups, and is a faculty member of the National Institute of Trial Advocacy. In addition to having published many articles on construction law topics in both national and local publications, he was a contributing author to *FEDERAL GOVERNMENT CONSTRUCTION CONTRACTS* (ABA Publishing 2003, 2009). Mr. Henry has been a contributing author and editor to the *CONSTRUCTION LAW UPDATE* since 2003.

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Mr. Nagle's writing on government contracting and construction law is prolific. He has recently co-authored the preeminent text on government procurement law, *Nash, Cibinic & Nagle, Administration of Government Contracts* (4th ed.) He has written four other books on federal contracting, *Federal Procurement Regulations: Policy, Practice and Procedures*, (American Bar Association Press [ABA] 1987); *How to Review a Federal Contract and Research Federal Contract Law, Second Edition*, (ABA Press 2000); *Federal Construction Contracting*, (Wiley Law Publications 1992); *Federal Government Construction Contracts* (ABA Publishing 2003, 2009); *The History of Government Contracting, Second Edition*, written under a grant from the National Contract Management Association (NCMA), (George Washington University Press 1999). In addition, Mr. Nagle is a co-author of *Federal Government Contracts* (2d ed. Foundation Press 2002), a law school casebook in use throughout the country. Mr. Nagle was a co-author and co-editor of *Washington Building Contracts and Construction Law*, (Butterworth (now Aspen) Publishers 1994). Besides being a contributing author to seven other books, his over 75 articles on subjects as diverse as protests, changes, terminations, claims, and the Federal Acquisition Regulation, have appeared in such publications as the *Public Contract Law Journal*, *Military Law Review*, *NCMA Journal*, and *Contract Management*.

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# CONTENTS

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*A complete table of contents for each chapter is included in the beginning of the chapter.*

## **Chapter 1**

### **UPDATE ON NO-DAMAGE-FOR-DELAY CLAUSES**

*Richard J. Storrs*

- § 1.01 Introduction to No-Damage-for-Delay Clauses
- § 1.02 The New York Framework
- § 1.03 Courts Which Have Strongly Enforced No-Damage-For-Delay Clauses
- § 1.04 Courts Which Have Refused to Strictly Enforce No-Damage-for-Delay Clauses
- § 1.05 Conclusion

## **Chapter 2**

### **SURETY LAW UPDATE**

*P. Keith Lichtman, Julia C. Glasgow*

- § 2.01 Introduction
- § 2.02 Performance Bonds
- § 2.03 Payment Bonds
- § 2.04 Surety's Indemnity Rights
- § 2.05 Bankruptcy Issues

## **Chapter 3**

### **RECENT DEVELOPMENTS IN ARBITRATION**

*Chad V. Theriot*

- § 3.01 Introduction
- § 3.02 The Enforceability of Agreements to Arbitrate
- § 3.03 The Power of Arbitrators to Authorize Class Arbitration
- § 3.04 Applying State Statutes to State Arbitration Proceedings
- § 3.05 Equitable Estoppel and the Enforcement of Arbitration Agreements
- § 3.06 The Pro-Arbitration FAA Presumption Versus *Chevron* Deference
- § 3.07 The Disputed Validity of the "Manifest Disregard of the Law" Standard
- § 3.08 Waiver of Statutory Grounds for Vacatur of Arbitration Award by Contract