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# The Site Report

## Construction Law Insights

**November 30, 2021**

As we wrap up 2021, we hope you have enjoyed the resurgence of *The Site Report* and our thoughts on trending news in the construction industry.

As we look forward to 2022, there may be industry or legal issues with which you are most concerned. Please feel free to reach out to either of us - or anyone in the Construction Practice Group - with thoughts and ideas. Our goal is to bring you the information that matters most to you.

We wish you and yours a wonderful holiday season and a bright new year.

**[Stephanie U. Eaton](#)** - Co-Chair, [Construction Group](#); Vice Chair of Southern Offices, Litigation Department; Editor, *The Site Report*

and

**[Julian E. Neiser](#)** - Co-Chair, [Construction Group](#); Vice Chair of Northern Offices, Litigation Department

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### **[5 Ways to Protect Yourself When Taking Over Someone Else's Project](#)**

*"Many of the risks center around one thing: fixing the previous contractor's mistakes."*

**Why this is important:** Stepping into an existing project is a challenge. Experts suggest snapping photographs and ensuring clarity on payments before getting work started. This is great advice, since taking over a project can become a litigation disaster waiting to happen if the new contractor does not protect itself. Documenting the status of work in progress before the new contractor begins its own work

is very important for many reasons beyond those cited in this article. First, the new contractor needs to understand the exact scope of work it is being asked to complete, to include what the original contractor was paid to do, what the new contractor will be paid to complete, what the timeline is, any changes to original plans and specifications from what the original contractor followed, and any problems with materials procurement or suitability. These understandings must be memorialized in writing to prevent misunderstandings. Photographing, videotaping and/or using drones to document the condition of all physical aspects of the project can prevent conflicts between the new contractor and the owner or party hiring the new contractor about what work remained to be completed and which contractor did what work. Second, the new contractor needs to document all construction materials on site and available for its crews to use, and identify whether additional materials would be needed to complete the job. Sometimes, the original contractor who purchased the materials may take leftover materials with him when he leaves the site. This can lead to disputes between the original and new contractor if the new contractor planned to or is using the on-site materials. If there are disputes with material suppliers, the new contractor needs to document the condition and use of materials on site when it arrives to avoid being held liable for damage or non-payment of materials it did not purchase or procure. Third, the new contractor needs to know whether tools and equipment on site belong to and will be removed by the original contractor, or whether they can be used to complete the project. If tools and equipment must be purchased or rented, it can impact the time and cost to complete the project. These are just some of the reasons for a new contractor to document the project status when taking over. Contact our Construction Practice Group if you or your company want to discuss a particular situation. --- [Stephanie U. \(Roberts\) Eaton](#)

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### [Three Ways Technology Can Ease the Construction Labor Shortage](#)

*"While the infrastructure bill remains in negotiations, the construction industry is experiencing a significant labor shortage that will impact its ability to meet infrastructure targets."*

**Why is this important:** Utilizing technology to be more efficient and/or reduce the labor needed on a project could be the answer to the labor shortage depending on the project needs, the owner's expectations, and the type of project at issue. Obviously, if the owner and/or GC have manpower expectations or if the contract requires manpower minimums, then those expectations/contractual obligations must be met, but when bidding on a project it could be useful to incorporate utilization of technology so that the owner and/or GC could consider those modalities when awarding the contract to your company. The Construction Group of Spilman Thomas & Battle is here to help with that bidding process. Please feel free to contact the Construction Group with any construction related questions/inquires. --- [Matthew W. Georgitis](#)

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### [Workplace Heat Standards Being Considered by OSHA](#)

**By [Mark E. Heath](#)**

**Why this is important:** OSHA is considering rules to address heat injury and stress in the workplace. On October 27, 2021, OSHA filed an Advance Notice of Proposed Rulemaking ("ANPRM") for Heat Injury and Illness Prevention in Outdoor and Indoor Work Settings. The ANPRM includes 114 questions and seeks public input on heat-related issues that should be addressed in any standard, including possible controls or measures that might be considered to address heat-related injury and stress. Interested parties have 60 days (by December 27, 2021) to file comments with OSHA.

Click [here](#) to read the entire article.

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### [Lost Forest Development, L.L.C. and Its Successors, Petitioner, v. Commissioner of Labor of the State of North Carolina](#)

**Why this is important:** In this case, Lost Forest Development attempted to challenge an OSHA citation, but it ultimately failed to have the merits of its challenge heard because it did not timely submit a Notice of Contest in the proper format. The Court of Appeal's reasoning drives home the importance of reading notices and citations carefully and of responding to those notices in writing, not simply over the phone or directly to an inspector or project manager on a jobsite. In particular, the NC Court of Appeals found that Lost Forest "did not give the [c]itation the attention is deserved" and that Lost Forest's owner "was not a prudent business person in the handling of this matter," in part, because he admitted he did

not carefully read the citation, which contributed to his delay in submitting a written Notice of Contest. The Court also specifically noted that Lost Forest not having an attorney at the time its Notice of Contest was due did not excuse Lost Forest's delay or original failure to respond to the citation in writing. Business owners who receive a citation or notice from any government agency - or any other parties involved on a construction project - should take those citations/notices seriously, read them carefully, and contact an attorney if they have any questions about how or when to respond. Otherwise, you could open up your business to risks of heavy fines, backcharges, and claims, or of losing your ability to challenge citations or claim additional time or compensation on the project. --- [Steven C. Hemric](#)

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## [World's Largest 3D-Printed Neighborhood to Break Ground in Texas](#)

*"Scheduled to break ground next year, the project will feature 100 single-story houses 'printed' on-site using advanced robotic construction and a concrete-based building material."*

**Why this is important:** Scheduled to break ground next year, the project will feature 100 single-story houses "printed" on-site using advanced robotic construction and a concrete-based building material. This is important because ICON, the Texas-based company spearheading this first-of-a-kind project, is using technology to address some of the most significant aspects of residential construction. Home ownership is one of the most important ways to build community, since it provides stability, independence and roots for families. As noted in the article, there is approximately a 5 million home deficit in the United States. The barrier to home ownership often has to do with cost – both the cost of a new home to prospective buyers and the cost (and time) to builders to construct homes with traditional means and methods. ICON's brilliant solution, about which I first learned when watching a heart-warming story on the television-series Home about a 3-D printed community in Mexico, uses a 46-foot wide robotic printer to extrude a concrete mix in a pre-set home design. The walls of these smaller 400-500 square foot homes were completed in one day, and windows, doors, roofs and interior finishes were added shortly thereafter. As an added bonus, the construction of homes with 3D-printing reduces construction materials, which in turn reduces CO2 emissions. Hopefully, this innovative technology will become mainstream over time, and makes a positive impact on home ownership in the United States and abroad. --- [Stephanie U. \(Roberts\) Eaton](#)

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## Featured Attorney Profile



[James E. Simon](#)  
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James Simon is a senior attorney in our Charleston office, and his primary area of practice is civil litigation, with particular emphasis on complex business litigation. His experience includes representing companies in commercial litigation including breach of contract, fraud, and construction disputes; representing multinational and regional companies in litigation involving the constitutionality of legislative and executive actions, including substantive due process, procedural due process, equal protection issues, eminent domain disputes, land use regulations, vested rights defenses, and property tax incentives; defending clients in insurance and bad faith litigation; and defending clients in deliberate intent, premises, and product liability lawsuits. James also recently successfully argued an interlocutory appeal on four certified questions involving matters of first impression before the West Virginia Supreme Court of Appeals. James is a member of the American Bar Association and Kanawha County Bar Association. He is admitted to the West Virginia State Bar, the United States Court of Appeals for the Fourth Circuit, and the United States District Courts for the Northern and Southern Districts of West Virginia. He received his B.A. from Pensacola Christian College and his J.D. *magna cum laude* from Washington and Lee University School of Law.



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