March 2008

The newsletter of the ABA Forum on the Construction Industry

UNDER CONSTRUCTION

Nondischargeability of Personal Debts for Violations of Construction Trust Fund Statutes

By Stephen A. Hess
Sparks Willson Borges Brandt & Johnson, PC

Shareholders form corporations in large part to shield themselves from liability for company debts. When a closely-held construction company craters financially, the company's officers (who usually overlap with its shareholders) direct the company to pay debts for which the officers might personally be liable. Those debts include certain statutory debts such as employment "trust fund" withholdings, as well as any debts the owners may have guaranteed personally, such as bank loans or vendor credit lines. When cash flow is restricted in the final days, the company may be tempted to channel construction contract income to pay these debts. For example, a contractor may cash a progress payment on a construction project, then use the money to pay accrued employment taxes, pay down a bank loan, and retire an old account with a former vendor, on which account the officers had given personal guarantees.

In many states, legislatures have imposed express statutory trusts on contract income for the benefit of subcontractors and materialmen (hereinafter I will refer to "subcontractors" to include materialmen). In these states, the appropriation of contract income by a troubled construction company to pay other debts, as in the example above, comes at a stiff price: first, the person responsible for the breach of trust is likely to be personally liable to the subcontractors who remain unpaid; second, this debt is likely nondischargeable in bankruptcy; and third, in some states the violation constitutes criminal theft. *See, e.g.*, Colo.Rev.Stat. §38-22-127(5)(trust fund violation constitutes criminal theft).

This article summarizes the chain of legal rules under which a nondischargeable, personal debt is created through a trust fund violation, and sets out some of the defenses and special rules that creditors and debtors alike should understand.

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Report of the Nominating Committee

The Nominating Committee of the Forum on the Construction Industry convened at the Forum's Mid Winter Meeting in San Antonio, Texas in February 2008, and selected nominees for Chair-Elect and Governing Committee Members-at-Large. The Nominees are:

For Chair-Elect:
- Adrian L. Bastianelli, Washington, D.C.

For Governing Committee Members-at-Large:
- Gregory L. Cashion, Nashville, TN
- Carol J. Patterson, New York, NY
- Joseph D. West, Washington, DC
- Terrence L. Brookie, Indianapolis, IN

In accordance with the Forum's by-laws, the nominations will be presented to the Forum membership for a public vote on April 24, 2008, as part of the Forum's Business Meeting which will be held in conjunction with its Annual Conference in La Quinta, California.

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MESSAGE FROM THE CHAIR

Robbie MacPherson, Chair-Elect

A Forum Member, Remembered

By Robert J. MacPherson
Thelen Reid Brown Raysman & Steiner LLP

My friend, mentor and partner for over 20 years, Bill Postner passed away on December 27, 2007. Bill started his law practice in 1964 with the Max E. Greenberg firm in New York City. The Greenberg firm was one of the first to practice exclusively in the field of construction law and many construction law firms in the New York area can trace their roots back to that firm. Bill left Greenberg in 1980 to form Postner & Rubin with Bob Rubin. Owing more to good fortune and being in the right place at the right time than anything on my resume, I was hired as Postner & Rubin's second associate in 1981.

Postner & Rubin was a wonderful place to practice construction law. While the firm was in many ways shaped by Bob Rubin, the Forum's 2007 Cornerstone Award Recipient, Bob will tell you that the bedrock of our firm was Bill's understated strength of character and, as Bob recently wrote about Bill, "his intensity, integrity, humility, decency and loyalty." All of us who practiced with Bill benefited from his counsel. I can't tell you how many times in the 23 years I spent at P&R I walked into Bill's office and asked, "do you have a few minutes ?" And while I was there to ask Bill for his thoughts, he was there to listen. It took me a couple of years before I understood that Bill was teaching me to ask myself the same questions I was asking him. If I was heading down a wrong path Bill would nudge me back by asking a question or offering guidance on where to look. In law school you are supposed to learn how to think like a lawyer. I learned the principles of law in school. Bill taught me how to think like a lawyer.

Bill was special in many other ways. He practiced law for over 40 years, mainly in New York City. New York has a reputation as a rough place to practice and New York lawyers are not generally known for their genteel ways. Bill never got caught up in that. He was always the gentleman and treated everyone, from cantankerous adversaries to domineering and impatient judges with respect. No big surprise, that was what he got in return. After Bill passed away, many of his friends and colleagues remembered him as "one of the good guys."

Bill was a big believer in giving back to the profession. For as long as I can remember, he was a *pro bono* Special Discovery Master for the New York Supreme Court. It could be a thankless task, more often than not trying to untangle disputes between lawyers, who could barely talk to one another, about interrogatories or who would take whose deposition when and where. Bill thought these arguments were mostly frivolous, but thought it better that he, not an already overworked judge, deal with them. And so he devoted his time so the court could devote its limited resources to those who most needed them.

The Forum was an important part of Bill's professional life. I suspect he attended almost every Forum program. Bill always said he considered a program worthwhile if he learned one

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A Forum Member, Remembered

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new thing. He never came away disappointed. And I know for a fact that he read and highlighted with a yellow marker every article published by the Forum. What Bill valued most about the Forum was the people he met at Forum events. Like Bill, they are devoted to the practice of law and the construction industry. And like Bill, they like nothing more than sharing their knowledge and experience with others.

There is a story about Bill that, I think, tells the essence of who he was. On 9/11 Bill was on the subway on his way to P&R's office in lower Manhattan when those two planes flew into the World Trade Center. When the subway system shut down Bill was several stops short of the office. That put him very close to the World Trade Center. Not long after Bill got out of the subway and up to street level the first of the Towers collapsed, showering lower Manhattan in thick dust, smoke and debris from the 110 story building. Bill was caught in that shower. Bill was not one to bring attention to himself, and while he told us about his experience that day, it was in an almost matter of fact way.

It was not until several years later that I heard the whole story. Bill and I had been asked to be on a panel discussing how law firms handled disasters like 9/11 and Katrina. All of the stories and experiences shared that day were compelling and moving. Bill's story was especially so. Bill did not talk so much about himself as he did the kindness of others that horrible day. There was the strong and steady hand that pulled him off the street and into a building lobby, dazed and injured, his suit shredded. Once inside other strangers surrounded him, got him cleaned up and bandaged and gave him something to drink. When he was able to leave and make his way home, as he walked he met more and more strangers who, seeing his tattered clothes and knowing where he was coming from, offered him food, water and a place to rest. Bill said the kindness and genuine concern from people he did not know and most likely would never see again gave him the strength to continue on. As I sat next to him on the dais and listened to his story I was surprised by the impact the kindness of others had on Bill. After all, Bill would have done exactly the same thing. Bill Postner naturally and consistently did the right thing for other people and, to him, that was its own reward. He expected nothing in return.

I think the Forum was fortunate to have had Bill as a member. Bill would say we are all fortunate to be part of this wonderful group.

Thank you for letting me share my memories of a Forum member. ♦

The 2007 A201 Deskbook

Charles M. Sink, A. Holt Gwyn, James Duffy O'Connor and Dean B. Thomson

The American Institute of Architects (AIA) has completely reexamined its core contracts and in 2007 issued a new form A201, the most frequently used document of all construction agreements. To help construction lawyers understand and work with the sweeping changes of these widely used general conditions, *The 2007 A201 Deskbook* identifies and analyzes every significant change made to the A201.

As with the earlier edition, there is a paragraph-by-paragraph explanation of each revision. Redlined type points out the deleted text, while new wording is illustrated in blue, and unchanged language remains in black. Each changed section includes analysis from the authors.

In addition to presenting and analyzing the AIA's changes, the authors of *The 2007 A201 Deskbook* also provide insights for the practicing construction lawyer about how the document's changes can be improved when representing any of the parties involved in an agreement.

2008, 205 pages, 8 ½ x 11, paper
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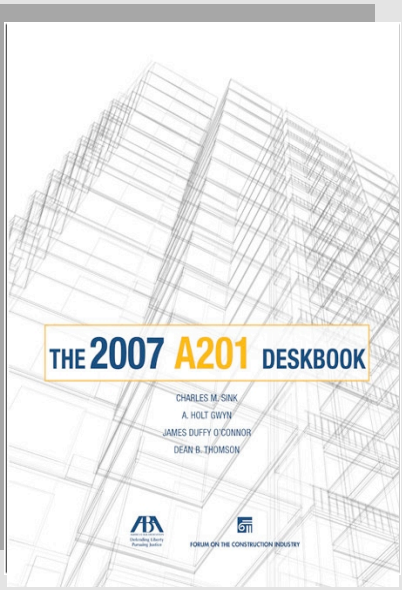

Dischargeability of Debts

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A. Trust Fund Statues

Many states have enacted "trust fund" statutes that impose express trusts on the funds that a contractor receives for the benefit of subcontractors. A typical statute provides:

In the building construction industry, the building contract fund paid by any person to a contractor, or by such person or contractor to a subcontractor, shall be considered by this act to be a trust fund, for the benefit of the person making the payment, contractors, laborers, subcontractors or materialmen, and the contractor or subcontractor shall be considered the trustee of all funds so paid to him for building construction purposes.

Mich.Civ.Laws.Ann. §570.151, sec. 1.

The statutes do not require that all subcontractors be paid *per se*; rather, they only require that the contractor not pay itself before it pays subcontractors. Thus if a contactor is going out of business and uses all of its contract income to pay potential lien claimants, it has not violated the trust fund statute merely because an additional $300,000 in claimants go unpaid. On the other hand, if the contractor skims $50,000 off its contract payments and uses it for rent (thereby leaving $350,000 in lien claimants unpaid), it has violated the trust fund statute with respect to that $50,000.

B. The Trust Fund Statutes Create Personal Liabilities

Most trust fund statutes couch their obligations in terms of what the business must do with trust funds received. However, businesses act only through individuals, and a breach of a trust fund statute is usually traceable to one or two individuals who made a conscious decision to channel money away from subcontractors. In accordance with the general rule that every individual is personally liable for his or her own tortious acts (or breaches of fiduciary duty) in addition to creating a corporate liability, an individual who is responsible for a breach of these trust fund statutes is personally liable for that breach. The same result often follows from the language of the trust fund statute prohibiting a "person" from misspending trust funds. *See, e.g.*, *In re Valerino Construction, Inc.*, 250 B.R. 39, 44 (Bankr. W.D.N.Y. 2000).

C. The Personal Liability is Usually Nondischargeable in Bankrupcty

The general rule that the Bankruptcy Code is intended to give only "honest debtors" a fresh start is reflected in the Code's provisions concerning the dismissal of a case due to misconduct related to the bankruptcy itself, as well as the provisions holding that certain debts are nondischargeable even if the debtor is granted a discharge. Thus, a debtor may obtain relief from most of his or her debts, but will not obtain relief for a debt that falls within those enumerated as nondischargeable, including "any debt... for fraud or defalcation while acting in a fiduciary capacity…." 11 U.S.C. §523(a)(4).

When a contractor fails to dedicate contract income to the payment of subcontractors, how has it committed "fraud or defalcation while acting in a fiduciary capacity"? Bankruptcy courts have interpreted the phrase "defalcation while acting in a fiduciary capacity" to include misappropriation of money in violation of an *express trust*. The trustee of an express trust has an implied fiduciary obligation to utilize the trust's assets in accordance with the terms of the trust, and the misappropriation of money constitutes a "defalcation" while the trustee is acting in this fiduciary capacity. Under this line of reasoning, when a business owner invades the *corpus* of the express trust created by the trust fund statute (the *corpus* being the payments to the contractor) and misapplies the payments to uses not permitted by the statute, such as the payment of a lease obligation instead of a subcontractor or materialman, the owner commits a breach of fiduciary duty to the beneficiaries of the express trust and is personally liable for the defalcation. *In re Bulgholzer*, 370 B.R. 58 (Bankr. W.D.N.Y. 2007); *In re Bolger*, 351 B.R. 165 (Bankr. N.D. Okla. 2006). This is true even if the trust fund statue at issue permits commingling of contract payments in a manner that might make the tracing of specific trust fund assets difficult. *In re Barnes*, 377 B.R. 289 (Bankr. D.Colo. 2007).

D. Defenses; Other Considerations

The issue of nondischargeability arises once a debtor has filed for bankruptcy protection. A creditor must commence an adversary proceeding to have the debt held nondischargeable, and in such a proceeding the creditor bears the burden of proving that a debt is nondischargeable. Of course, the debtor's first defense (if appropriate) will be to challenge the validity of the debt at issue. If the subcontractor cannot establish a valid debt, it is not entitled to the protection of the trust fund statute and the claim for nondischargeability will fail. There are other defenses and considerations to nondischargeability actions that should be noted. At the outset, the creditor should realize that it bears the burden of proving nondischargeability by a preponderance of the evidence. *In re Collins*, 266 B.R. 123 (Bankr. N.D.Ohio 2007).

1. Statute Does Not Create Express Trust

For purposes of the Bankruptcy Code, "defalcation while acting in a fiduciary capacity" includes a breach of trust only if the trust is an *express* trust. Breach of an *implied* trust will not support an action for defalcation

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Downstream Allocation of Concurrent Delay Damages, Part 2

By Michael F. Drewry and Daniel M. Drewry
Drewry Simmons Vornehm, LLP

In the last issue of *Under Construction*, we defined the problem of concurrent delay and discussed some relevant issues. In this second part of a three-part series, we explore the potential defenses to apportionment. In part three, we will address ways to control or manage outcomes through contract documents.

Segregate Delay Impacts and Costs - To flow concurrent delays downstream, counsel must parse project records to identify discrete acts of delay amongst the trade contractors, and identify whether each event of delay is excusable. If the delay excusable, counsel must then determine whether the delay is compensable. Compensable damages must be identified and isolated by each critical path delay by trade. Hand in hand with this factual analysis is the contractual one - identifying the particular terms of the applicable subcontracts that permit the flow-down of unexcused delay damages. Finally, the concurrent delays are apportioned and flowed-down to the responsible subcontractor. In doing so, absolute certainty regarding the exact apportionment of damages is generally not required. *See Alcan Electrical & Eng'g Co., Inc. v. Samaritan Hospital*, 109 Wash. App. 1072 (Wash. App. Div. 3 2002); *Pathman Constr. Co. v. Hi-Way Elec. Co.*, 382 N.E.2d 453, 460 (Ill. Ct. App. 1978). The general contractor may be able to allocate the entire concurrent delay to one subcontractor, making the subcontractor liable for the entire delay, if that subcontractor is shown to be responsible for a substantial portion of the delay. *See e.g., Williams Entpr., Inc. v. Strait Mfg. & Welding, Inc.*, 728 F. Supp. 12 (D.D.C. 1990); *Tuttle/White Constr., Inc. v. Montgomery Elev. Co.*, 385 So.2d 90 (Fla. 1980).

Ultimately, the apportionment is an issue for the trier of fact. *See id.*

While straight-forward in theory, concurrent delay analysis is fact-sensitive and inherently complex. Proving or refuting concurrent delay often requires an accurate and updated network or CPM schedule. Solid contemporaneous project documentation is crucial. Apportionment of concurrent delay may also require the construction of a detailed as-built schedule, a task most often performed by a construction claims expert.

Defenses to Apportionment:

The claimant must overcome a number of hurdles in apportioning the concurrent delay to recoup damages. In addition to those hurdles, however, the claimant may still encounter the following defenses:

Complicate the Apportionment – Concurrent delays hold intrinsic strategic value. The mere existence of concurrent delay can act as a defense to liability as to a contractor's or subcontractor's delay claim. Even in jurisdictions that follow the modern rule of apportionment of the concurrent delay damages among responsible subcontractors, the apportionment itself may be difficult or impossible to prove. Where responsibility for concurrent delays cannot be apportioned between the parties, the best case relief afforded is often a non-compensable time extension. Even if the claimant is able to establish proper apportionment, it must also be able to convincingly allocate specific damages to the delays apportioned to the contractor-caused or subcontractor-caused delays. As such, the claimant's apportionment of fault and allocation of specific damages often provides the primary battlefield of delay liability.

Pacing – Where contractors are performing successive or multiple activities on the critical path and the predecessor activity of the first contractor is delaying the second contractor, the issue of concurrent delay arises if the second contractor independently was delaying completion of its work. The second contractor defends by claiming that it was timing, or pacing, its work in the face of the predecessor activity delay. The second contractor argues that it is better to not accelerate its work and incur the additional cost of schedule make-up by simply pacing its on-site work with the delays attributable to the predecessor contractor, maintaining its original activity duration and thereby keeping its work force occupied, but without incurring the labor inefficiencies inherent to an acceleration. In short, the argument is "why hurry up and wait?" *See, e.g.*, *Appeal of MCI Constructors, Inc.*, D.C.C.A.B. No. D-924, 1996 WL 331212 (D.C. C.A.B. 1996); *see also*, Bruner & O'Connor on Construction Law § 15:69 (2002).

The risk to the successor or second contractor in raising the pacing of his or her work as justification for not accelerating and completing his or her own work by the schedule milestones is that an as-built scheduling analysis may not support the second contractor's failure to accelerate. Should it turn out that the delay to the schedule by the predecessor activity could have been recovered by the second contractor making reasonable efforts to accelerate its work to reach its own schedule milestones on time, that contractor may be subject to a valid argument that it concurrently delayed the overall project at least through completion of its work. In essence, a successor or second contractor faced with the issue of

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Nondischargeability of Debts

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while acting in a fiduciary capacity. Whether a trust is an express trust or an implied trust (for purposes of the Bankruptcy Code) is determined under federal law. As a consequence, a Bankruptcy Court may decide that a statutory trust created under state law does not constitute an *express* trust. *See, e.g.*, *In re Faulkner*, 213 B.R. 660 (Bankr. W.D.Tex. 1997)(statute may, but does not necessarily, create trust fund); *In re Barker*, 14 B.R. 852 (Bankr. E.D.Tenn. 1981)(no trust arises until actual misappropriation, thus trust relationship does not exist at time of misappropriation). The litigant who takes this approach faces an uphill battle, as most courts addressing the issue have had little trouble finding an express trust. In jurisdictions in which the issue has not been decided, however, a defendant has at least a sliver of hope.

2. Defendant Not in Control of Payments

Personal liability is generally visited only on those officers or owners who have sufficient power to cause the misdirection of payments out of the trust. Mere clerical workers who do not participate in the decision-making process will not be held responsible, and thus one potential defense (as in many other contexts) is to disclaim responsibility at the expense of some other person within the organization. Indeed, it is not unknown for corporate officers in separate bankruptcy proceedings to try to establish that the other is the responsible party. *In re McGee*, 258 B.R. 139 (Bankr. D. Md. 001)(husband-controller liable, wife not liable based on control over operations of company).

3. Claimant Failed to Perfect Lien Rights

Most statutes are couched in terms of imposing a trust on funds for the benefit of lien claimants or potential lien claimants. What happens if the creditor was an entity that might have been able to claim a lien, but failed to perfect its lien rights? Some courts have held that the failure to perfect lien rights undercuts any trust fund claim, as the trust fund statute at issue only protects those creditors who actually have lien rights (or could have lien rights at the time of the defalcation). *See, e.g.*, *In re Tefertiller*, 772 P.2d 396 (Okla. 1989)(statute protected those with "lienable claims").

Other states read their statutes more broadly, and allow trust fund statute claims to be brought even by those erstwhile potential lien claimants who have let their lien rights lapse. *See, e.g., In re Regan*, 151 P.3d 1281 (Colo. 2007)(statute protects those who "have or might have" a lien, which court construed as not requiring perfection of lien rights). Under this interpretation, a creditor's failure to perfect its lien rights may not sound the end of its ability to collect the debt, even from a bankrupt company, as it may be able to pursue claims against the company's principals if the principals misappropriated trust funds.

4. Res Judicata/Collateral Estoppel

Not all nondischargeability actions are litigated in the first instance in federal Bankruptcy Court. Instead, they may begin in state court and the defendants file for bankruptcy only after an adverse verdict is handed down in state court. What is the effect of a state court judgment? With only limited exceptions, a state court judgment imposing liability for breach of trust can be given preclusive effect in Bankruptcy Court. That rule provides both an opportunity and a pitfall for a creditor (and conversely for the debtor). If the creditor obtains a judgment against an individual officer in state court, its work is essentially complete and obtaining a nondischargeability judgment is a relatively simple matter. *McGee*, *supra*.

On the other hand, the creditor may choose to sue the corporate officer under a personal guarantee, for example, rather than under the trust fund statute in state court. A judgment for breach of contract will not establish a nondischargeable debt for defalcation in a fiduciary capacity. Just as important, the doctrine of merger and bar comes into play. Under this doctrine, the creditor's claims against the officer are merged in the state court judgment and bar any further action arising from the same transaction or occurrence. Thus an action for nondischargeability of the debt based on a legal theory that the creditor could have pursued (but chose not to) might be prohibited.

5. Ignorance

As a rule, neither ignorance of the lien laws, good faith, nor ignorance of the specific misappropriation is a defense where the person charged should have known the circumstances and appreciated the effects of the misappropriation. *Bulgholzer*, *supra*. At the same time, most courts require at least a showing of negligence in order to satisfy the requirement of a nondischargeable defalcation. *Barnes*, *supra*.

Conclusion

A state's trust fund statute can convert a corporate debt into a personal debt that is nondischargeable in bankruptcy. A debtor's attorney needs to be mindful of this potential nondischargeble liability to counsel the debtor when the debtor is an officer of a contractor that is liquidating or reorganizing and is trying to prevent the imposition of personal liability on the members of its control group. For precisely the same reason, a creditor who is faced with collecting a shaky debt from a contractor should understand whether the state has passed a trust fund statute whose violation will give rise to a personal, nondischargeable debt.

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whether float has been created by the prior delay must decide whether to maintain or even slow down its work activities or, under the general contractual obligation to mitigate damages, re-sequence or accelerate its work and make a related impact claim for the cost of doing so, thereby avoiding the concurrent delay claim.

Ownership of the Float – Did the contractor's activities truly delay the critical path or just use up schedule float? Under the contract documents, which party owns the float? Float is the difference in the earliest and latest expected times for a particular activity, and thus it allows latitude in the scheduling of non-critical activities that start or end at that event. The question deals with who benefits from float. The traditional rule is the float belongs to the contractor, thereby providing a cushion of extra time built into the project schedule. *See*, *e.g.*, *Natkin & Co. v. George A. Fuller Co.*, 347 F. Supp. 17 (W.D. Mo. 1972).

The modern theory, in contrast, holds that float belongs to the project and either party may consume that float without liability to the other. *See*, *e.g.*, *In re Dawson Constr., Inc.*, GSBCA No. 3998, 75-2 BCA ¶ 11563; *In re Blackhawk Heating & Plumbing Inc.*, GSBCA No. 2432, 76-1 BCA ¶ 11261, *aff'd on recons.*, 76-1 BCA ¶ 11649. The idea is that once float is gone for one, it is gone for all. Thus, while a contractor that had float available and consumed it has taken away future ability to utilize float in the schedule if needed later, it may not be liable for the initial delays that occurred while this float was being consumed. This issue can be resolved contractually through a negotiated allocation of float ownership. For a more detailed discussion of the concept of schedule float, see J. Lifschitz & M. Scott, *Who Owns the Float?*, Construction Briefings No. 2005-2 (2005).

Notice – The claim notice requirements set forth in many standard industry forms may preclude the recoverability of delay damages. Some jurisdictions are extending the reach of standard claim notice requirements, such as those under § 4.3 of the AIA A201 General Conditions and its 21 day notice provisions, to delay and impact claims, which would require a claimant to submit or give notice of its delay and impact claim within 21 days of incurring the cost or recognition of the condition giving rise to the claim. *See*, *e.g.*, *Starks Mech., Inc. v. New Albany-Floyd County Consol. Sch. Corp.*, 854 N.E. 2d 936 (Ind. Ct. App. 2006); *Stelko Electric, Inc. v. Taylor Cmty. Sch. Bldg.Corp.*, 826 N.E.2d 152 (Ind. Ct. App. 2005). Such cases may signal a fundamental change in the courts' position towards a stricter contract constructionist view on the adequacy and timeliness of claim notices. *But see* *Associated Mech. Contractors v. Martin K. Eby Constr. Co.*, 271 F.3d 1309 (11th Cir. 2001).

This article concludes in the August 2008 issue. ♦

JAMS Presents Program on Construction ADR

At the Construction Superconference in December 2007, JAMS assembled a panel with several prominent Forum members to discuss the current use of Alternative Dispute Resolution on complex construction projects. Highlights from the panel's presentation are available at: http://www.jamsadr.com/images/PDF/_2007-12-Construction-Super-Conference.pdf. ♦

Editor's Message

Many thanks to Robbie MacPherson for his remembrance of William J. Postner in his Message on page 2. I was also very fortunate to call Bill a friend, mentor and partner.

As an undergraduate, Bill was a Classics major. His study and translation of Latin and Greek literature prepared him well for a life of speaking and writing with precision, clarity and wit. It is only by our size and status that we are designated a "forum" in the ABA (as opposed to a section, division or committee), but I think Bill appreciated the elegance of that word as it so aptly describes our group; it captures the free and open communication among our members, the spirited discussion at our programs, and the fellowship of our gatherings.

When I joined Postner & Rubin as a summer associate in 1987, little did I know that Bill Postner, Bob Rubin and Robbie MacPherson would eventually become not only my partners but also my mentors and dear friends, exerting a profound influence over my development as a lawyer, my perspectives of the law and the profession, and my life outside the law. Gathering with friends and colleagues at the Forum meetings continually reminds me that at every stage of our careers we can be enriched by our associations with each other. In the Forum, we are fortunate indeed to have the chance to connect with so many great lawyers willing to share their experience and knowledge.

The next several issues will feature interviews of long-time members of the Forum, conducted by members of the Young Lawyers Committee. Although this idea has been in the works for a while, I would like to view it now as a tribute to Bill Postner and all the other Forum members who have gone out of their way to help younger lawyers find theirs.

Join Us in La Quinta, California for the Forum's 2008 Annual Meeting

WHAT: In a best case scenario, clients are prepared through good contracts, appropriate insurance, risk management and other preventive measures to avoid or manage problems before they develop. Managing risk and adversity through careful contract drafting and management has been the subject of prior programs. The 2008 Annual Meeting Program will take a different path and explore advanced strategies and responses for dealing with unanticipated problems arising during the construction process and beyond. Experienced and knowledgeable speakers from across the country will discuss practical tips and strategies, drawn from personal experience, for dealing with a variety of challenges.

WHEN: **April 24, 25 and 26, 2008**

WHERE: **La Quinta Resort and Club,** 49-499 Eisenhower Drive, La Quinta, California 92253. Reservations: (760) 564-4111, www.laquintaresort.com

TELL ME MORE: The Forum has chosen a spectacular setting for this program, the La Quinta Resort & Club near Palm Springs, California. The Resort boasts 41 pools and 52 hot spas, and is home to five championship golf courses, including PGA WEST. The Resort is convenient to the dining and shopping venues of Palm Springs, and is a short drive to Joshua Tree National Park, Disneyland and Legoland. The program is scheduled with two half-day sessions (Days 2 and 3) to allow participants the opportunity to enjoy the many available attractions.

Due to strong interest in this meeting the La Quinta Resort is sold out April 25th and 26th. The Forum is providing an alternate room block at the Embassy Suites La Quinta Hotel and Spa. For more information, see www.imageserve.com/laquinta2008/hotel.html.

Please register by April 2, 2008 to receive the discounted conference rate. For more information about registration, hotel and transportation arrangements, CLE credit and activities at the Resort, the conference brochure is available at:

www.abanet.org/forums/construction/featured_program/laquinta08.pdf

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