

## NEWSLETTERS

### Barnes & Thornburg LLP Construction Update - April 2014

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Welcome to the April 2014 edition of the *Construction Update*, an e-publication that features articles authored by the attorneys in Barnes & Thornburg LLP's Construction practice group

#### NEWS ALERT: Alabama Supreme Court Withdraws and Re-Issues Decision to Find "Occurrence" for Construction Defect Claim

By Clifford J. Shapiro

The Alabama Supreme Court reversed course to find that inadvertent construction defects are an accidental "occurrence" that can cause covered "property damage" even when the resulting damage is to part of the policyholder's own scope of work. In addition, the court held that the your work exclusion does not apply to "completed operations" coverage. [Read more](#) about how the court changed its mind.

#### Federal Circuit Limits Application of Demanding "Specifically Targeted" Standard for Breaches of Implied Duty of Good Faith and Fair Dealing

In a welcome decision for federal contractors, the U.S. Court of Appeals for the Federal Circuit recently narrowed the application of the rigorous standard it had adopted for demonstrating breaches of the implied duty of good faith and fair dealing. Read more about [Metcalf Construction Company v. United States](#) and how the court ruled.

#### General Contractor Held Not to Have Coverage as Additional Insured for Damage Arising Out of its Subcontractor's "Completed Operations"

By Clifford J. Shapiro and Scott R. Murphy

The language contained in policy endorsements dramatically impacts the scope of coverage for additional insureds. [Learn more about a recent Fifth Circuit Court of Appeals decision](#) and what it means for owners and contractors who seek completed operations coverage for additional insureds.

#### Ohio Senate Votes to Pass LEED Certification Ban

Businesses that bid on public construction projects in Ohio will want to keep an eye on Ohio Senate resolution that seeks to prevent Ohio's state agencies and government entities from using the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design "LEED v4" green building system in public construction. [Learn more about the legislation](#) and reasoning behind it.

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## **Indiana Courts Wrestle with “Work” v. “No Work” Distinction in Waiver of Subrogation Cases**

By Alice J. Springer

When confronted with the argument that a party has waived its claims under an AIA standard waiver of subrogation provision, Indiana has traditionally applied a “Work” v. “non-Work” distinction when evaluating whether a project owner has waived its claims. [Read more about a recent Indiana Court of Appeals case](#) that changes the game.

## **Plaintiff Entitled to Judicial Enforcement of Arbitrator Qualifications Requirement of Construction Contract**

By Timothy J. Abeska

Arbitration is a matter of contract, and parties are free to structure arbitration provisions in anticipation of disputes. Parties may specifically agree on the qualifications of the arbitrator who will be appointed to resolve disputes. [A recent Michigan case](#) of first impression shows that courts will enforce such provisions when the arbitral forum does not act in accordance with the parties’ contract.

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