Construction Law Newsletter

Published by the Section on Construction Law of the Oregon State Bar

ISSUE No. 56 June 2017

COURT DETERMINES THAT A "RECOVERY" SUFFICIENT FOR AN ORS 742.061 ATTORNEY FEE AWARD IS SOMETHING LESS THAN "PREVAILING PARTY"

Daniel L. Duyck
Whipple & Duyck, P.C.

Construction attorneys are familiar with ORS 742.061 when making bond claims on public projects. This statute allows for an award of attorney fees when a "recovery" is obtained in certain insurance actions, including claims against a contractor's bond. In *Long v Farmers Ins. Co.*, 360 Or 791 (2017), the court ruled that a "recovery" is something less than the "prevailing party" found in similar statutes. The fact scenario in *Long* involves a first party claim on a homeowner's policy, but the statutory interpretation is insightful for construction attorneys.

The statute, as applicable, reads:

> **742.061 Recovery of attorney fees in action on policy or contractor's bond.** (1) Except as otherwise provided in subsections (2) and (3) of this section, if settlement is not made within six months from the date proof of loss is filed with an insurer and an action is brought in any court of this state upon any policy of insurance of any kind or nature, and the plaintiff's ***recovery*** exceeds the amount of any tender made by the defendant in such action, a reasonable amount to be fixed by the court as attorney fees shall be taxed as part of the costs of the action and any appeal thereon. If the action is brought upon the bond of a contractor or subcontractor executed and delivered as provided in ORS 279B.055, 279B.060, 279C.380 or 701.430 and the plaintiff's recovery does not exceed the amount of any tender made by the defendant in such action, a reasonable amount to be fixed by the court as attorney fees shall be taxed and allowed to the defendant as part of the costs of the action and any appeal thereon. If in an action brought upon such a bond the surety is allowed attorney fees and costs and the contractor or subcontractor has incurred expenses for attorney fees and costs in defending the action, the attorney fees and costs allowed the surety shall be applied first to reimbursing the contractor or subcontractor for such expenses.

(Emphasis added.)

Long involved a leak under the kitchen sink causing physical damage and other damage. The timeline is as follows:

- December 20, 2011 - leak discovered;
- January 17, 2011 - insurer makes first payment to plaintiff;
- January 17 and 31, 2011 - plaintiff submits proof of loss for actual cash value, but no proof of loss for replacement value (and would at some point demand a policy defined appraisal process);

- January 2013 - unpaid plaintiff initiates action, and court orders policy appraisal process;
- July 11 and August 14, 2013 - insurer makes second and third additional payments based on determinations made pursuant to the policy appraisal process;
- February 2014 - plaintiff submits proof of loss for replacement value, and insurer makes fourth payment in full amount of proof of loss; and
- February 2014, trial, and plaintiff fails to prove any additional damages beyond what the insurer had already paid.

Despite being an arguable loser at trial, plaintiff filed a petition for attorney fees pursuant to ORS 742.061. Plaintiff's theory was that at the time the action was initiated, six months had elapsed since the proof of loss and the amount of insurer's tender had been established by its first payment. Therefore, when the insurer made its second, third, and fourth payments, plaintiff had made a "recovery" more than the tender even though it had not been awarded further sums at trial. Insurer's theory was that the statute should be read so that a party must be a prevailing party at trial in order to have a "recovery" that would allow for an award of attorney fees. Insurer cited a number of statutes to support this theory.

The court's lengthy opinion traces the statute and its various forms over the years and analyzes a number of key insurance opinions. Ultimately, the court found that the legislative purpose of the statute was to require insurers to make a timely evaluation of insurance claims and, if warranted, pay them. Failure to promptly investigate and make payment would result in an award of attorney fees to a claimant forced to initiate an action in order to get relief. Accordingly, for a number of reasons, the court found that a "recovery" can be had short of being a prevailing party at trial. In this case, plaintiff satisfied the requirement of a "recovery" once the insurer made the second and third payments (but not the fourth payment). Plaintiff was awarded attorney fees (but only for recovery of the second and third payments and not the fourth payment).

A first party insurance claim was at issue in *Long*. For first party insurance claims, ORS 742.061 acts as a one-way attorney fee clause. Accordingly, it would seem prudent to initiate an action as soon as possible in a first party action in order to get attorney fees. As for a bond claim, ORS 742.061 acts as a two-way attorney fee clause, which necessarily requires more caution before initiating an action. However, *Long* would seem to reduce the risk associated with a surety bond claimant initiating an action sooner rather than later. This especially could be true in a case where some kind of smallish future payment is certain though delayed.

TWO READS OF *HUNTERS RIDGE CONDO. ASSN. V. SHERWOOD CROSSING*:

WILLIAMS KASTNER GREENE & MARKLEY AND MILLER NASH GRAHAM & DUNN LLP ANALYZE A SIGNIFICANT DECISION IN CONSTRUCTION INSURANCE COVERAGE

THE NEXT BATTLE IN THE GARNISHMENT WARS

COURT OF APPEALS CONTINUES TO BROADEN COVERAGE FOR CONSTRUCTION DEFECT CLAIMS BUT TOSSES INSURERS A PROCEDURAL BONE

Steven F. Cade
Williams Kastner Greene & Markley

The Court of Appeals recently issued an opinion that picks up where the Supreme Court left off in *FountainCourt*. There, the Oregon Supreme Court held that the insurer could not contest the character of the damages awarded, as that character was determined by the fact finder in the underlying suit, effectively precluding the insurer from subsequently litigating threshold coverage issues and binding it to the facts found in the underlying suit. *FountainCourt HOA v. FountainCourt Develop.*, 360 Or 341 (2016). Because this decision could undermine the ability

of insurers to defend under a reservation of rights, some observers were concerned that the court was effectively overruling its seminal 1969 decision on the issue, *Ferguson v. Birmingham Fire Ins. Co.*, 254 Or 496 (1969).

The *FountainCourt* opinion expressly left open, however, two key questions: whether the insurer could present new evidence on the application of exclusions, and whether the insurer has a right to a jury trial on contested factual issues even in a garnishment action. 360 Or at 352. The Court of Appeals, in *Hunters Ridge COA v. Sherwood Crossing LLC* has answered both of these questions and two more. 285 Or App 416 (2017). The decision at least partially resolves the tension between *FountainCourt* and *Birmingham Fire* by recognizing insurers' full rights to litigate the facts supporting coverage exclusions.

In this Washington County construction defect lawsuit, the plaintiff Condominium Association obtained the rights to two default judgments against a non-appearing third-party defendant subcontractor via settlements with the general contractor and developer. The Association then issued writs of garnishment to the subcontractor's insurer. On cross-motions for summary judgment, the trial judge granted summary judgment to the insurer. On appeal, the Court of Appeals reversed, holding:

1. That the insurer was not entitled to summary judgment under an exclusion for multi-unit residential buildings;
2. That the Association was not entitled to summary judgment either, because of fact questions raised by the insurer regarding the application of other coverage exclusions;
3. That the attorney fees and other costs awarded in the judgment were properly included in the garnishment, because those were either "damages" or "costs taxed against the insured"; and
4. That the insurer was entitled to a jury trial, pursuant to Art. 1 Sec. 17 of the Oregon Constitution, notwithstanding the directive in ORS 18.782 to have the court resolve all issues summarily.

1. Multi-Unit Exclusion

Hunters Ridge was a mixed-use development of three buildings, each with a few commercial units on the ground floor and 20-25 residential units above. The multi-unit exclusion in the subcontractor's policy provided that there was no coverage in connection with any "multi-unit residential building" which it further defined as:

> "a condominium, townhouse, apartment or similar structure, each of which has greater than eight units built or used for the purpose of residential occupancy."

The Court of Appeals concluded that a reasonable purchaser of insurance could plausibly interpret the definition's reference to "condominium" to mean only exclusively residential condominiums, *i.e.*, those that are similar to apartments and townhouses. Thus, the court held that the policy exclusion was ambiguous, construed the exclusion in favor of coverage, held that the buildings containing multiple residential units were not "multi-unit residential buildings," and reversed the grant of summary judgment to insurer on that basis.

2. Application of Other Exclusions

The Association, however, was not entitled to summary judgment either. Although the insurer could not contest the nature of the damages awarded in the underlying suit, given the holding in *FountainCourt*, the insurer did submit an affidavit under ORCP 47E that its expert would create a genuine issue of fact as to the application of various exclusions. The Court of Appeals held that such an affidavit precluded summary judgment for the Association because the cost to repair presented in the underlying action did include some damages which could potentially be covered by the exclusions (for example, damages to "your work"). Therefore, there was a genuine dispute of material fact as to the application of

those exclusions which precluded summary judgment.

3. Attorney Fees

Next, the Court of Appeals affirmed the trial court's decision denying partial summary judgment to the insurer with regard to that portion of the judgments which included attorney fees and costs. Those fees and costs were of two types. The first type was for a portion of the defense fees and costs which the general contractor and developer incurred defending the plaintiff's lawsuit, in proportion to the subcontractor's share of the total fault. The second type included the fees incurred in prosecuting the claims against the subcontractor. Both types arose out of the construction subcontract's indemnity provisions.

The first type, defense costs, did constitute "damages . . . because of property damage," held the court, and therefore were covered. The court noted that liability for such defense costs can be imposed even absent an indemnity provision, for example as consequential damages for a breach of contract. And, as such, they constitute "damages" within the meaning of the policy.

The court then held that the second type, offensive fees, qualified as "costs taxed against the insured." The word "costs" can mean just those expenses which a court means when it says "costs" but it also can have a broader meaning which includes all expenses of litigation allowed in favor of one party against another. Construing this ambiguous phrase against the insurer, the appellate court held that the offensive fees awarded to the prevailing party were also covered by the policy.

4. Jury Trial Right

Finally, the insurer was entitled to a jury trial on the disputed issues of fact because the Association's garnishment action was not meaningfully distinct (from the insurer's point of view) from an action for damages arising from breach of the insurance contract. The court affirmed that garnishment is an appropriate way to litigate the claim, but disavowed the legislature's power to take away the insurer's right to have a jury determine whether it breached its contract.

Conclusion

This case does not fully resolve the tension between the traditional procedural framework established by *Birmingham Fire* and the more recent one created in *FountainCourt*, but it does clarify that insurers, even in the garnishment context, will have the right to litigate facts related to coverage exclusions, and to ask for a jury to determine those facts.

THE *HUNTERS RIDGE CONDO. ASSN. V. SHERWOOD CROSSING* CASE: HOW THE COURT OF APPEALS OPINION IMPACTS FUTURE CONSTRUCTION CASES RELATED TO INSURANCE COVERAGE AND GARNISHMENTS

Stacey A. Martinson and Frank Langfitt
Miller Nash Graham & Dunn LLP

In May 2017, the Oregon Court of Appeals in *Hunters Ridge Condo. Assn. v. Sherwood Crossing*, 285 Or App 416, __ P3d __ (May 10, 2017), issued a noteworthy insurance opinion arising from a garnishment proceeding in a construction-defect case. Here is what you need to know:

- Insurance Exclusions for Mixed-Use Buildings. The Court of Appeals held that a multi-unit residential exclusion was ambiguous and did not preclude insurance coverage for property damage of mixed-use (*i.e.*, commercial and residential) buildings.
- Attorney Fees and Costs Can Be Covered Under a Liability Policy. Attorney fees and costs may be covered under a commercial general liability policy as "consequential damages" if an insured's tortious conduct caused the suit to be brought against the claimant. The *Hunters Ridge* decision specifically dealt with the attorney fees and costs (incurred under an indemnity agreement) by a developer and

general contractor in defending the allegedly defective work of a subcontractor.

- Garnishment Proceedings against the Debtor's Insurance Carrier. Parties now have a right to a jury trial related to factual questions whether a judgment is covered under their insurance policies.

A. Background.

Hunters Ridge is an appeal from a garnishment proceeding arising out of a construction-defect dispute of a condominium project (the "Project"). The Project consisted of three mixed-use buildings, all with commercial office and retail space on the ground floor and approximately 20 to 25 residential units on the upper floors. The plaintiff, the condominium association, brought suit against the developer and the general contractor. The developer filed a third-party complaint against various subcontractors, including Walter George Construction ("WGC"), the subcontractor that installed the siding and weatherproofing of two out of the three buildings at the Project.

WGC tendered the defense to its insurance carrier, American Family Mutual Insurance Company. American Family denied coverage, citing a multi-unit residential exclusion—excluding insurance coverage for any residential structure with more than eight units. Thereafter, WGC failed to answer or otherwise appear, and the trial court entered an order of default against it. As part of a settlement, the developer (which filed suit against WGC) agreed to reduce its claim against WGC to judgment and assign that judgment to the plaintiff. In addition, the general contractor (which did not assert claims against WGC) also assigned its rights against WGC in a settlement. Based on the general contractor's assignment, the plaintiff filed a complaint against WGC and obtained another default judgment against WGC. Thereafter, two hearings were held to determine the amount of physical damage caused by WGC to reduce the judgments to money awards.

The Plaintiff, in accordance with ORS 18.352, issued writs of garnishment against American Family to collect the judgments. American Family continued to deny coverage based on its multi-unit residential exclusion. Cross-motions for summary judgment were filed, and the appeal relates to those summary judgment rulings.

B. The Holdings.

The *Hunters Ridge* decision examined the interpretation of insurance exclusions, whether attorney fees and costs incurred by an indemnitee were covered as "damages" under a subcontractor's insurance policy, and the right to a jury trial under certain garnishment proceedings. Below are the specific holdings.

1. The Multi-Unit Residential Exclusion.

As stated above, American Family denied that it had any duty to defend or indemnify its insured, WGC, based on a multi-unit residential exclusion in its policy (the "Exclusion"). The Exclusion stated:

> "Exclusion – Multi-Unit New Residential Construction (Greater Than Eight Units)
>
> * * * * *
>
> "This insurance does not apply to 'bodily injury' or 'property damage' arising out of:
>
> 1. 'Your work' in connection with pre-construction, construction, post-construction of any 'multi-unit residential building'; or
>
> 2. Any of 'your products' which will or have become a part of the real property of any 'multi-unit residential building.'
>
> * * * * *
>
> The following is added to Section V. Definitions, 'Multi-Unit Residential Building' means a condominium, townhouse, apartment or similar structure, each of which has greater than eight units built or used for the purpose of residential occupancy."

In the garnishment action, American Family filed a summary judgment motion-arguing that it was not liable for any damages because the Exclusion was unambiguous. The trial court agreed, and the plaintiff appealed.

The general rule in Oregon is that an insured has the burden of proving coverage, while the insurance carrier has the burden to prove any exclusion to coverage. *FountainCourt Homeowners v. FountainCourt Devlop.*, 360 Or 341, 360, 380 P3d 916 (2016). "The interpretation of an insurance policy is an issue of law." *Hunters Ridge*, 285 Or App at 422. If an insurance policy provides a definition, such as in Hunters Ridge, the court must apply that definition. If the defined term has one or more plausible interpretations, however, then the court must view the term in the broader context of the policy as a whole. 285 Or App at 422-23. Then, after viewing the term in context, if the term is susceptible of multiple plausible interpretations, then it must be construed against the drafter. *Id*.

In *Hunters Ridge*, the American Family policy did not specifically address mixed-use buildings (*i.e.*, commercial and residential projects). American Family contended that the definition of "Multi-Unit Residential Building" included any condominium structure with more than eight residential units, even if the structure also contained nonresidential units and thus clearly excluded coverage. The plaintiff argued that the term meant an exclusively residential structure with more than eight units built or used for residential occupancy, and that because the definition failed to address the commercial aspect of the building, then it was ambiguous. The Court of Appeals agreed with the plaintiff. After applying dictionary definitions to the words used in the policy's definition of "Multi-Unit Residential Building," the court determined that because both interpretations were plausible, the definition was ambiguous. As a result, the Exclusion was construed against American Family and in favor of coverage.

2. Insurance Coverage for Attorney Fees and Costs.

Next, the court looked at whether the attorney fees and costs included in the judgment against WGC were covered under the American Family policy. The policy provided that American Family "'will pay those sums that the insured becomes legally obligated to pay as damages because of * * * 'property damage' to which this insurance applies.'" *Hunters Ridge*, 285 Or App at 436. The policy also provided, in the "Supplementary Payments" portion, as follows:

> "We [American Family] will pay, with respect to any claim we investigate or settle, or any 'suit' against an insured we defend:
>
> * * * * *
>
> "e. All costs taxed against the insured in the 'suit.'" *Id*.

The trial court determined that the phrase "costs taxed against the insured" was ambiguous.[1] On appeal, American Family asserted two main arguments: (a) attorney fees and costs are not "damages" because that term refers to compensation for injuries and an award of fees and costs does not compensate for the injury; and (b) attorney fees and costs are not "taxed against the insured" because the term "costs," does not include expenses for legal services. The court rejected both arguments. Specifically, the attorney fees and costs could be claimed as consequential damages if a third party's tortious conduct (*e.g.*, a subcontractor's defective work) resulted in claims by third persons against an injured party. 285 Or App at 437-38. In other words, a general contractor defendant could not recover its attorney fees and costs for litigating the claims *directly* against it, but the attorney fees and costs incurred in defending the claims that arose out of a subcontractor's deficient work could qualify as consequential damages covered under an insurance policy. The Court of Appeals also agreed with the trial court in that the term "costs"

[1] It is important to note that the current commercial general liability form published by ISO Properties, Inc., specifically excludes attorney fees from the Supplementary Payments section.

in the "Supplementary Payments" provision was ambiguous, since it could be interpreted to include attorney fees and expert expenses incurred to defend the claims.

3. The Writ of Garnishments.

In Oregon, if a debtor (*e.g.*, WRC) has an insurance policy "covering liability, or indemnity for any injury or damage to person or property, which injury or damage constituted the cause of action in which the judgment was rendered," then the amount covered by the insurance policy can be subject to garnishment. ORS 18.352. An insurance carrier's challenge to any such garnishment is specifically addressed in the statutes. ORS 18.782 specifically provides that the hearing "shall be *tried by the court* as upon the trial of an issue of law between a plaintiff and defendant." (Emphasis added.)

The Court of Appeals examined two main issues specific to the garnishment proceedings: (a) whether the trial court had properly denied the plaintiff's summary judgment motion that the judgments were sufficient as a matter of law to establish American Family's liability; and (b) whether, contrary to the garnishment statutes that provide the hearing before the court, American Family was entitled to a jury trial as opposed to a hearing tried to the court.

First, the Court of Appeals affirmed the trial court's order denying the plaintiff's motion for summary judgment. Specifically, it held that although the judgments established WGC's liability, there was still a question of fact whether certain exclusions in the American Family insurance policy excluded coverage, which could result in American Family being liable for less than the full judgment amount.

Second, the Court of Appeals addressed American Family's argument that the garnishment statute (ORS 18.782) violated its right to a jury trial in Article I, Section 17, of the Oregon Constitution, on disputed questions of fact in the coverage dispute because the garnishment proceeding was, in essence, a breach-of-contract action. The Court of Appeals agreed with American Family and held, "[T]o the extent that ORS 18.782 forces parties in a garnishment proceeding to litigate factual questions underlying an insurance-coverage dispute to the court, the statute is unconstitutional * * *." *Hunters Ridge*, 285 Or App 446-47.

C. Conclusion.

The Oregon Court of Appeals made several significant holdings related to insurance coverage and the garnishments that will affect how construction cases will be litigated. The practical takeaway is that if a mixed-use building is the subject of the alleged property damage, then the parties need to look carefully at the exclusion language to determine whether it is ambiguous. This means that any party involved in a mixed-use project whose claim was denied because of a similar exclusion should revisit whether coverage is afforded. This holding may also be short-lived given that insurance policies will likely be rewritten to be more specific.

If a party wants to claim attorney fees and costs as "consequential damages," then careful thought needs to be given to drafting indemnity provisions[2] and the attorney fees must be clearly recorded (*i.e.*, task time) so that the attorney fees and costs can be apportioned.

With respect to garnishment proceedings, the *Hunters Ridge* decision makes it much more difficult to utilize ORS 18.352 in any settlement proceedings because plaintiffs may need to proceed to a jury trial in order to garnish the insurance proceeds. Parties will need to carefully consider how to present evidence at the underlying stage, in settlements, and drafting judgments to eliminate many questions of fact (*e.g.*, carefully drafting jury instructions re "property damage" and establishing a specific amount for "resulting damage" versus repair to the insured's work).

In sum, it is always important to look at the specific language of the insurance policy when insurance coverage is an issue, and remember to

[2] Although the Court of Appeals indicated that a contractual indemnity provision is not required, specifying the type of damages in the indemnity provisions would support classifying the damages as "consequential damages" and could also avoid any potential issues related to any provisions governing waiver of consequential damage that are commonly found in many form documents.

address the *Hunters Ridge* holding in settlements and judgments.

WE SHOULD HONOR THE TRADES

Thomas A. Ped
Williams Kastner Greene & Markley

For three summers during college, I was a carpenter's assistant at the Weyerhaeuser paper mill in Springfield, Oregon. My dad was the mill manager, but I was a card carrying union member. I wore a hard hat and steel-toed boots. Our crew performed maintenance work at the mill.

I had no appreciable skills at first. Sometimes the guys razzed me for being a college boy, but not too much because I was the boss's son.

Eventually I obtained some basic proficiency with the table saw, rip saw, band saw, nail gun and router. Even hammering a nail took a lot of practice.

One summer, I stayed late for a couple of weeks to build some bookshelves out of scrap wood in the shop. When they realized my interest was genuine, some of the guys offered to stay late too, to help out. I politely declined their offers because I wanted to do it myself. One of the carpenters helped with the table saw just the same.

I'm proud of those shelves. They are constructed of three-quarter inch plywood, assembled with glue, staples and nails. The shelves could withstand a tornado, I think.

Carpentry is an honorable profession. So are the other trades. Those carpenters at the mill had real skills. The mill could not run safely and efficiently without them.

We don't teach shop in schools nowadays. After 2008, there was a bailout for the big banks but not the contractors. The industry struggles now to find skilled workers.

We need safe, well-constructed schools, office buildings, bridges and homes. To have these things, we need people with the requisite knowledge, training and experience. Developing these people requires the focus of our leaders and investment of our resources.

I agree college should be affordable for those who want it, but we should also help those who can help society just as much.

WOMEN IN CONSTRUCTION: A CONFERENCE TO EDUCATE & EMPOWER

Molly Washington
Portland Office of City Attorney

The inaugural Women in Construction Conference was held on Thursday, April 28, 2017. The sold-out event featured panels of experts who spoke on topics that are key to our success as construction law practitioners. The topics included *Hot Topics in Construction Law, What to Do When your Construction Project Goes Off the Rails, The Construction Workforce Pipeline, Equity and Addressing Intersectionality, Building Your Network, and The Next Generation of Bosses*. The content ranged from educational to anecdotal to personal, but the real impact did not just come from the content in each panel. The real impact came from the people who presented it.

The goal of the conference was always clear: "To Educate and Empower." Education comes in many forms. On the surface, the conference provided substantive information on lien claims, indemnity provisions, statutes of limitation and repose, and various ways to handle disputes on a construction project. Information was also presented on issues faced in supplying a qualified workforce, the challenges that arise when addressing intersectionality on the jobsite, and how to keep the next generation motivated. Interwoven throughout these topics was education on how the experiences of women and people of color in the construction industry have differed from their white, male counterparts. *What are the challenges of being a black woman apprentice on a job site? How do you gain respect as a woman in charge? What can be done to diversify the workforce? What is it like to be the minority in the room? What tools can an employer use to create an environment of inclusion?*

These topics took on a special significance when considering the diversity of the experts who presented, whose roles and experiences within the construction industry varied widely. They included attorneys, contractors, architects, engineers, developers, owners, project managers, consultants, tradeswomen, and public agency representatives. The panel presenters were almost all women (with the exception of four exceptional men) and approximately one third of the presenters were people of color. Beneath the surface of the education provided was a subconscious lesson in our assumptions about the people who have the expertise to educate on these topics.

Construction Law CLEs have been dominated by white male presenters in much the same way that the construction industry is dominated by white males. To be educated by women and people of color on topics relevant to anyone in the construction industry and to be reminded of their existence as experts in the construction industry was, in itself, educational. These experts were women. These experts were people of color. They faced and overcame challenges that few of their white male counterparts have ever faced in order to stand shoulder to shoulder at the top of their professions. They earned the title of "Expert." Their recognition and our education on their experiences was long overdue.

In providing this type of education, the Conference was able provide much needed content while also achieving validation and empowerment for women and people of color who lead in their fields, which has been sorely lacking in the construction industry. That is not to say that the conversation was complete or final. There is still much work to be done and the Conference only scratched the surface. However, as lawyers, our primary, most rudimentary skill is to spot the issue. For many, this Conference cast light on many issues that far too many of us are privileged not to know or to acknowledge exists.

As construction law practitioners, we must be mindful of our influence and our responsibility to accurately reflect the changing construction industry. As the industry progresses, undoubtedly we will have more women clients and more clients of color. We need to be educated on their experiences in order to represent their interests to the best of our abilities. We will also have clients who come to us for guidance on how to meet equity requirements on construction projects or how to recruit and retain employees in a tight job market. We must be educated on the experiences of women and people of color in order to advise our clients on how to stay competitive in this changing construction industry. At our best, we need to do much, much more than just spot the issue, but allowing ourselves to be educated is, at a bare minimum, a pretty good start.

NOTE: Prior newsletters are available (in a searchable format) at the Section's website: *www.osbarconstruction.com*.