Scribbles Squibs #25 (March 3, 2014): Damages Resulting From Construction Issues*

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I. INTRODUCTION.

Anyone reading this who has been in business for more than two months knows that any number of problems can arise with construction projects. These different types of problems can result in various kinds of damages, being amounts of money that an arbitrator or a court can order one party to pay to another. This *Squib* will look into the kinds of damages – 'causes of action' - one might have a claim for or will have to defend against relating to construction contracts.

This *Squib* ends our seven part contracts series. Our next *Squib, Squib* #26, "The Recovery of Attorneys' Fees in Massachusetts' Litigation." Well worth your time to understand.

Literally, books and series of books are written on the subject of contract damages. This *Squib* will simply identify some of the more common forms of damages associated with construction projects and suggest some ideas that we hope you'll find useful in considering damage claims. Yours. And, the other guy's.

II. BREACH OF CONTRACT DAMAGES.

Our readers, at this point in our contract series, understand what a material breach of contract is and how that might affect their affirmative contract and money claims (and contract and money claims against them) and how these interplay with default and termination issues. Those who have studied these lessons assiduously are now almost ready to do my job. (Assuming you have a couple of really good suits and look good in wire rim glasses and understand that, under certain circumstances, there are eighty-one hours in a day. Exclusive of leisure time.) For this *Squib*, we will briefly discuss the *consequences* of all of this.

When a contract is breached, the breaching party is liable for whatever damages follow as a natural consequence and direct result of the breach. This is often hard to determine – the natural and direct aspects of this as compared with at what point they become indirect or remote damages.

If a party delays a contract, then it is potentially liable for delay damages. (Liquidated damages are simply another way of pricing potential delay damages) And, it is wise to keep in mind that even when a time extension is the only recoverable compensation for a delay as set forth in the contract, there can be several exceptions to this. One exception is that there is case law to the effect that when a time extension is the only remedy provided for and the other party does not give a deserved time extension, that party can be then liable for damages that will look a lot like delay damages. Also, for public jobs, even where the contract itself may not allow for

delay damages, under certain circumstances, there can be recoverable delay damages by statute when an owner causes or allows a delay or suspension of work for a period of in excess of fifteen days which suspension or delay is evidenced by a writing from the owner.

The basic idea is that potentially 'subjective' damages are probably not recoverable. So, for example, if you hadn't taken this job, you would have taken another and would have made boatloads of cash. What you might have earned had you chosen another opportunity probably wouldn't be recoverable, as they don't flow from the breach of *this* contract. Rather, they simply reflect a business election that you freely and willingly made. While you might have made a lot of money had you taken another contract, how could one prove this? And, you elected to pursue this contract opportunity and not the other, all the while not being under any compulsion to do so by your contracting party. Put another way, your contracting party is not liable for the fact that you made what ultimately turned out to be an unhappy choice. Your contracting party may very well be liable for the consequences of its breach as to *this* contract but will almost never be liable for what you might have been able to earn under another contract.

And, in addition, the basic idea is that both parties would have to be able to anticipate this kind of damage to 'naturally' flow from a breach at the point of their entering into this contract. In other words, the type of damages that one might incur due to another's breach has to be predictable at the start. If I work and you don't pay me, I will be damaged. If you delay the job and that costs me money, I will be damaged. If you try to make me do change order work for free, I will be damaged. The basic idea is that for a party to be liable for damages, that party has to know with some predictability before the damages are incurred what kinds of actions and inactions will cause the other party to be damaged. In other words, the kinds of damages that might arise can't generally be surprises. Underlying these ideas is that of fundamental fairness: both parties have to be able to know what they are looking at before the contract is started in terms of what the potential negative consequences will be for poor or unfair performance as to this *specific* contract.

The rule for determining damages in breach of contract cases is that the injured party should be restored to the position it would have been had the contract been properly performed. In other words, the injured party is to receive the "benefit of the bargain" it reasonably anticipated earning/enjoying when it signed the contract. If we signed a contract for you to build me a certain kind of house for four hundred thousand dollars, I should have that house for that amount of money. If you breach and I have to get someone else to build the house or complete the house you didn't finish, then you would be liable for the difference in price between what the job should have cost and what it actually did cost. That's the 'benefit of the bargain'.

An important idea to grasp is that if the other party breaches the contract, you are not entitled to be put in a better position than you would have been in had your contracting party properly performed. In other words, if the other side owed you blue board walls in building your house, as a result of the breach you are not entitled to now have plastered walls. If you were supposed to supply aluminum wire in performing your work, the other side should not end up having copper wire should it complete your work. One of the many reasons it's important to try to perform all of the work of your trade on a job is that if the other side has the opportunity to complete your work, errors in the plans and specifications may be corrected at your expense.

And, after the fact, some of these improvements may not be readily ascertainable. They might be buried in the walls, above the ceilings, in the slab.

While overly speculative damages are not generally recoverable, damages don't have to be proved to mathematical certainty. (If you didn't see the recent *Squib* on a Massachusetts court case from December, 2013 allowing for delay damages measured by the 'total cost' method, this can be found on our website in the *Squibs* section.)

In Massachusetts, typically one can sue on a construction contract for damages for a period of six years from the date of breach for 'unsealed contracts' and for twenty years from the date of breach for 'sealed contracts'. (Sealed contracts are contracts that contain a sentence in them to the effect 'this contract is entered into as a sealed instrument' or as a 'contract under seal'.) As with so many legal concepts, a 'contract under seal' in England was a more formal form of contract that was evidenced by having the signatures on it embossed with sealing wax, like the wax from a candle. If you are the party likely to be sued for breach of contract, there is no advantage to you in entering into contracts under seal, as you have possibly just earned yourself another fourteen years of possible exposure. This can be especially important if your company or you personally are an indemnitor to a surety. Being able to be sued for twenty years, rather than the usual six years, may be the difference between your having a sizeable indemnity debt to repay and having none at all. Here is a summary of the statute on what is required to make a contract a 'contract under seal'. In other words, for most of you, this is what you need to *avoid*:

M.G.L.A. 4 § 9A. Recital giving unsealed instrument effect of sealed instrument; "person" defined

"In any written instrument, a recital that such instrument is sealed by or bears the seal of the person signing the same or is given under the hand and seal of the person signing the same, or that such instrument is intended to take effect as a sealed instrument, shall be sufficient to give such instrument the legal effect of a sealed instrument without the addition of any seal of wax, paper or other substance or any semblance of a seal by scroll, impression or otherwise . . ."

A maximum period of time to sue within is called a 'statute of limitations'. While some – including a lot of lawyers – want to think that claims in '*quantum meruit'* will somehow save them when there has not been clear compliance with the requirements of a contract, since such claims are contract claims, they are generally subject to contract statutes of limitation.

Claims against surety bonds are actually 'contract claims' because, by definition, a payment bond or a performance bond is a 'contract bond'. Bond claims typically have a much shorter statute of limitations, often limited to one to two years from the date of the complained-of behavior or breach.

III. NEGLIGENCE DAMAGES.

Breaches of contract can be measured by contractual forms of damages. At the same time, some breaches of contract might be damages that could be either measured as breach of contract damages or as negligence damages. Typically, for contract damages, the kind and

measure of damages are established by the contract or by laws interpreting the contract. But, in situations where there is property damage or personal injury resulting from a failure to perform a contract skillfully, this can result in negligence damages.

Negligence damages are not necessarily measured or established by a contract. When one has a car accident with another, there is no contract between the parties. Still, damages may be recoverable by the party which has been wronged. Typically, negligence damages can be protected against by various forms of insurance. Insurance, on the other hand, does not generally secure or guarantee proper contractual performance not resulting in property damage or personal injury. Surety bonds may provide for some protection as to contract breaches, although surety bonds are actually not insurance products because of the fact that the premiums are not generally actuarily-determined (as are insurance premiums) and because of the indemnity obligation of the insured – called a principal – to have to pay back the surety for all of its loss and expense payments incurred, even when it turns out the principal wasn't actually in the wrong.

Typically, a party has only three years to sue for a claimed negligent act, figured from the date the cause of action accrued (usually, when the negligent act occurred).

The various 'statutes of limitation' are what are called 'conditional bars' to litigation. Meaning, that they may not be absolute in all cases, although they usually will be applicable. These can be waived in certain circumstances. Or, they can be extended by 'tolling agreements', being written agreements between the parties extending the time to sue. Sureties will sometimes enter into such agreements with claimants when a claim is close to being settled but will be lost if no suit is filed. Such agreements benefit both parties in not requiring legal suits with their attendant expense when no suit is likely to be necessary.

With regard to negligence claims involving construction projects, there is another kind of limitation which is not waivable, being a 'statute of repose'. Massachusetts has a statute requiring suits for negligence actions arising out of any deficiency or neglect in the design, planning, construction or general administration of an improvement to real property to be generally commenced only within three years after the cause of action accrues but, in no event shall such actions be commenced more than six years after the earlier of the dates of: (1) the opening of the improvement to use; or (2) substantial completion of the improvement and the taking of possession for occupancy by the owner. This type of issue is often involved with claims by condominium associations against builders when such claims are made years down the road. Also, this type of issue can sometimes arise in litigation against surety performance bonds when defects are discovered in construction years down the road.

Here's an important point to keep in mind. Between the parties to a contract, most of the standards that will describe the adequacy of contract performance are contained in the contract. But, in situations where 'third parties' (non-parties) to the contract suffer property damage or personal injury, the contractual standards are not binding at all on the third parties simply because of the fact that they are not parties to the contract and their rights are created by law and not by contract. So, for example, if materials are installed under a contract that meet contractual standards but, possibly, not all applicable standards such as those imposed by a local

or national code, the fact that a contracting party might not be able to object on that basis has no application to the third party who is not party to the contract in question.

One of our common advices to clients involved with situations where they are not able to comply with all applicable industry standards and codes because of the circumstances of the situation is to simply not do the work at all. A reason for this is that there is a principle of law that says that a violation of a regulation or statute is itself evidence of negligence. Looking at the issue from a slightly different standpoint, even if your contracting party is willing to allow you to not meet industry standards – i.e. painting below an appropriate temperature, paving over frozen ground – that won't protect you for claims from third parties who are neither bound by the contract nor by your contracting party's allowing you to not meet industry standards. Not meeting applicable codes and industry standards can be especially devastating with serious injury claims. While the violation of industry standards and codes in and of itself does not actually establish the negligence, it goes a fair distance down that road. Juries – typically the fact-finders in negligence cases – often get just the general gist of the matter. It's not much of a stretch to find liability for an injury once it is clear that the offending party didn't comply with some applicable industry standard or code, including safety codes such as those embodied in OSHA.

One of the more complicated issues with construction contracts is what happens when your contracting party holds contract funds from you when his claims against you ultimately, if successful, will be secured by your insurance. On the one hand – from your perspective – he is doubly securing himself and, by depriving you of your contract income, makes it less likely that you will be able to complete contract performance without seriously damaging your cash flow and company. From *his* perspective, a bird in hand is worth two in the bush and insurance companies may not likely assume liability for damages *now*. There is no overarching legal principle resolving this issue. To some extent, this may be covered by a contract provision. But, often it won't. There are some strategies for dealing with this issue, although you will probably need professional help at this point.

IV. UNFAIR AND DECEPTIVE TRADE PRACTICES DAMAGES.

In Massachusetts, these are so-called Chapter 93A damages. For those who recover these damages, they can get either double or triple actual damages plus attorneys' fees. As we will learn in our next *Squib*, in most Massachusetts litigation, the prevailing – winning - party only recovers his 'statutory' attorney's fee, which is, believe it or not, either $1.25 or $2.50! Not a misprint! So, if your lawyer is forced to work for such low wages, the next time you and he/she go out to lunch, be sure to pay. Chances are, he's *hungry!* And, not in a good way!

How to define an 'unfair and deceptive' trade practice? For years, the standard judicial definition was: 'conduct causing those inured to the rough and tumble of commerce to raise an eyebrow'. This type of conduct is more than mere negligence. It is more than a mere breach of contract. In the vernacular, it is conduct where the other side is out and out trying to screw you.

There are essentially two different systems here, generally speaking. The claims that tend to be more successful – the plaintiff wins more of the time – are claims of consumers

against businesses. These are claims under Section 9 of Chapter 93A. The claims of businesses against businesses tend to be less successful, which claims are under Section 11 of this statute. The rationale for this disparity is that a business is presumed to have a great deal more sophistication and leverage than a consumer would have in a similar situation, which causes the law to favor consumer claims more. Some would say, additionally, that there is merit in the statement that Massachusetts is pro-consumer and anti-business, particularly where a consumer and a business are involved in the same dispute.

Ordinarily, one can't sue a public owner under C. 93A. This is because for this type of claim, the defendant has to be one engaged in 'trade or commerce'. Since a public owner isn't in business, it is, in the main, not liable for these types of claims. Perhaps somewhat unfairly, there have been a number of cases where public owners themselves can file C. 93A claims against businesses and recover. And, there have been some claims where public owners have been found liable for this type of claim but, generally, limited to situations where the public owner is engaged in a money-making activity, such as in running a golf course for profit, as one court case held. But, where the public owner is essentially just providing governmental services, it is not ordinarily liable for C. 93A claims.

What about claims against insurance companies under insurance policies and surety bonds? There have been some cases that have said that violations of MGL C. 176D – unfair insurance claims settlement practices – may also be claims also under MGL C. 93A. Again, this seems to work somewhat better with claims by consumers than with claims by businesses if the matter actually goes to trial. At the same time, one must always keep in mind that only about one percent of all superior court civil cases actually go through a complete trial. Why? The process simply takes too long and it is far too expensive to be cost-effective, most of the time. Since insurance companies generally write business throughout the United States, my experience has been that the various claims departments are not cognizant of what their obligations are under local (as in Massachusetts) law. Each state's procedural and substantive laws are different/may be different from the laws of other states. And, until they have some ring-time here, many insurance companies may not be aware of to what extent Massachusetts is very much an anti-insurance company state.

Here are the areas (taken from MGL C. 176D 3 (9)) where insurance companies tend to get into trouble with claims. Keep in mind that the term 'insurance policies' also includes 'surety bonds'. The following comments are made with regard to payment bond claims:

"(9) Unfair claim settlement practices: An unfair claim settlement practice shall consist of any of the following acts or omissions: . . . .

(b) Failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies; ***(At some point in time, the insurance company may simply stop responding to your requests for payment, particularly when you have thoroughly documented your claim and they have no further questions to ask or documents to ask for.)***

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; (***This would seem to require a claims handling manual. My***

experience is that not many sureties actually have one, something they don't care to advertise to the world. And, to the extent that they have some written procedures, chances are they don't always follow them and/or that the people handling these claims have been improperly and/or inadequately trained.)

(d) Refusing to pay claims without conducting a reasonable investigation based upon all available information; ***(Some sureties try to limit their 'investigation' to only getting their principal's contentions concerning your claim, then denying the claim on the basis that it is disputed. This is probably not sufficient in most cases, particularly in Massachusetts.)***

(e) Failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed; ***(Reputable sureties will probably not intentionally try to pull a claimant 'over the line', meaning deliberately inducing the claimant to not file suit until after the statute of limitations has expired on the claim. But, others may. And, keep in mind that when a bond has a statute of limitations, that can only generally be met by suing the bond within that time period, not by simply writing to the surety within that time period, as many contractors seem to feel as being all that is required.)***

(f) Failing to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear; ***(A biggie. A <u>real</u> biggie.) . . . .***

(n) Failing to provide promptly a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement." ***(Again, something that doesn't happen a lot.)***

At some point in the prosecution of a surety bond claim, when any of these has not been complied with, knowledgeable claimants and their attorneys will bring that to the attention of the surety. Keep in mind that very few claims are really *bona fide* 'bad faith claims'. Alleging bad faith when it isn't there can actually have the opposite effect intended in actually delaying conclusion of your payment bond claim. Other than simply royally pissing off the claims representative, many sureties will actually have two different claims representatives overseeing payment bond claims in which bad faith is alleged: one for the actual payment bond claim and one for the bad faith claim. The Great Teacher Himself said (paraphrased) to make friends with your accuser on the way to court for, if you don't, the judge will lock you up and throw away the key! Commercial disputes generally are resolved more easily (and quickly and more cheaply) when people act in a reasonable, non-adversarial way. Alleging bad faith, for better or worse, can make the matter very personal for the claimed offending bond claims representative.

Sureties *do* like to limit interest and attorneys' fee awards. Having any kind of colorable (possible) claim in these regards often helps stimulate settlement juices. Just keep in mind that while many attorneys can serviceably play this violin, only a few can play it with the attention it deserves. As a Stradivarius. Especially as to the E string. Which can be temperamental.

V. OTHER FORMS OF CLAIMS THAT ARE RELATED TO CONSTRUCTION CONTRACTS AND CONSTRUCTON CONTRACT ISSUES.

There are many and the following list isn't conclusive.

Here are a few that pertain to performing public projects in Massachusetts. If you bid a job and a public awarding authority wrongfully disregards your bid or otherwise treats you at odds with the bid laws, you might be able to recover against them either bid preparation costs (more or less an honest mistake on their part) or lost profits (when the mistake is far worse.) If you carry a bidder on or near bid date when that bidder knows that you will likely be carrying his number, if he refuses to do the job for that number, he may be liable for the difference between the amount of his bid and the amount of the next available or substitute bidder/performer. If, on a public job, you refuse as a general contractor to accept lower priced filed subbidders against whom you have no real objection as to standing or ability when the owner asks you to, you may be liable to those lower priced filed subbidders for claims for lost profits if you don't give them the job.

As mentioned above, surety bond claims are contract claims. The surety bonds themselves are contracts and the surety bonds guarantee performance of the contracts of their principals.

A mechanic's lien is a claim that devolves from a contract, whether the contract is directly with the owner or with the general contractor or even with a subcontractor. Just keep in mind that ordinarily, a subcontractor (first or second tier) and a materialman who doesn't have its contract with the owner does not generally have any contract claims that it can file against the owner. Why? Because, it doesn't have a contract with the owner. A mechanic's lien isn't a contract claim. It is a statutory claim that wouldn't otherwise exist apart from the statute. And, it is subject to a fairly short statute of limitations. It must be commenced – and there are at least three steps in filing one – no later, generally, than ninety days after the general contractor or any subcontractor working on that job last works. And, tuck away in some corner of your mind that courts don't find much validity in claims that the materialman or subcontractor 'unjustly enriched' the owner if he/she/it does not get paid. Your contract claims, in the main, are against those with whom you have contracts. (Now, if you can get the owner to guarantee the credit of the general contractor in writing in lieu of your filing a mechanic's lien, that is a different story, for now you do have a contract with the owner.)

VI. CONCLUSION.

There are really two key things to know about damage claims involved with construction contracts. The first is to actually know that you have a claim. In law school, the primary goal of the education is not for the newbie lawyer to learn the law – which can change almost every day – but to simply spot the legal issue. At first blush, recognizing that a claim exists doesn't seem that difficult. But, the estimator is not generally the project manager and the superintendent is

almost never the project manager. All three of these people have a different view as to what the cost and performance obligations for any particular job are. The estimator will have a clear view of what he/she hoped the job would be before it begins: we do this much work and for this cost. The superintendent will have a more practical view: there is this work that has to be done and I have to get it done irrespective of the cost implications. And, the project manager is somewhere in the middle. On the one hand, he has an idea about how the job was estimated and, on the other hand, he has an idea about how the job is to be built and *is* being built. But, he or she is not as likely to have the same full picture that the estimator and the superintendent have, each of these two people possibly seeing something different.

I have found some situations where a PM may not be aware of the fact that there is actually a claim in progress. For example, on a unit price contract requiring cleaning and recoating large submersible pumps, the PM didn't immediately realize that his field forces were painting both the inside and outside of the pump bodies and surfaces (as opposed to only the outside of these bodies and surfaces) until he realized that his coverage for the coating wasn't anything close to what was estimated. At that point, understanding this variation in his costs, he submitted a claim and got some pretty decent compensation. Contractors who have better cost measuring systems – and then actually follow them during construction, which is often not done - are a lot less likely to lose sight of the fact that they might have claims.

The second key thing is to have an attorney who does this stuff day in and day out. It's hard enough for any contractor to have both the technical skills to perform a trade and the business skills to survive as a business. Legal issues are complex and require a great deal of education, training and then a lot of experience. When you read an ad on the internet or in a phone book that indicates a lawyer or firm handles *everything,* then that is either the smartest person you will ever know or someone who is probably not that good as to any one of these practice areas. In other words, a jack of all trades, a master of none.

At Sauer & Sauer, we are contract lawyers. We routinely handle various surety bond and indemnity claims, mechanics' liens, bid protests and all manner of construction claims and litigation. It is rumored that some contract lawyers may, very occasionally, even settle some of these disputes *with* contracts. I'm sure we wouldn't know anything about such things. Only to say that if you get something from reading a *Squib* such as this, that's *nice*. If you learn something from reading one of our longer construction articles on the website, that's *good*. Or, if you take one of our free seminars and learn something that helps you get better, *benissimo.* Maybe someday we'll ask you to do a favor for us. It's often wise to reciprocate. Unless, maybe, you like waking up next to a horse head that might be looking at *you*. I mean, how embarrassing! Like, what would you talk about? When was the last time you had an intelligent conversation with a horse? *Capisce?*

Folks, here's a final practice point. Before you take the final action that may subject you to claims of breach of contract and before you embark on a claim for breach of contract damages against your contracting party, inquire of your counsel exactly what kind of claims you are able to make (or defend against) and what the kinds and amounts of damages may be associated with those claims and defenses. Most superior court cases don't come to trial on construction matters for five years or so and there are a lot of expensive steps before they do. Know what you

are getting in for and know that the enthusiasm one has for litigation in the early days often results in dismay long before the process has concluded. Know also the possible ramifications being in a claims situation may have for secondary parties responsible for your conduct, such as each party's surety and the various mechanics' liens that one might file and how they are likely to be responded to. And, be sure you understand the Massachusetts rules on the recovery of attorneys' fees, which is the subject of our very next *Squib:* "The Recovery of Attorneys' Fees in Massachusetts' Litigation".

You now know everything about contracts that I do. Both things. Now, go out there and make buckets of money! And, then send me pictures. Of at least the first bucket. If you don't have a camera, then send me the actual bucket. But, only if it is oak. And, in good condition. You see, I'll be using it to collect maple syrup at my seventeen hundred acre farm in Vermont next winter. Assuming my ponytail grows out sufficiently and my primary care doc will allow me to eat some ice cream for a change.

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* A *'squib'* is defined as 'a short humorous or satiric writing or speech'. Wiktionary defines *squib* as: "a short article, often published in journals, that introduces empirical data problematic to linguistic theory or discusses an overlooked theoretical problem. In contrast to a typical linguistic article, a squib need not answer the questions that it poses." What the heck does *that* mean? That sounds like something that a politician might say. Or, something that a lawyer might say. And, have you noticed how many politicians are also lawyers? I mean, aren't you sorry you asked? Like the Munchkins, *Squibs* are short. But, Dorothy wouldn't have gotten to Oz without them. I mean, had she wandered around forever like Moses in the wilderness (no GPS in those days), Ace Hardware and Home Depot not yet even on the mercantile horizon, where would that of gotten her? Without the 3-in-1 oil the Tin Man necessarily had to have, that sucker would have froze up real good. When asked for this *Squib* how he thought they would have fared with a much longer trip, the Lion said that he was scared to even think about it. The Scarecrow never actually answered the question. He just scratched his head a bunch of times. (Understandable, straw being as itchy as it is.) Dorothy, regrettably, was unavailable for comment. To survive in this crazy construction industry, you gotta read and understand this stuff. That is unless you have a pair of ruby red slippers. And, if you did, would you really want your bros seeing you actually *wearing* them? And, doing that *clicking* thing? I mean, who really wants to live in Kansas anyway? Does anyone out there actually know anyone named Aunty Em? Besides, the slippers would only work if you clicked them together *before* you submit that dumb bid! And, a lot of the time, you're not going to realize it was a dumb bid until you actually submitted it and then got the job.

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This article is not intended to be specific legal advice and should not be taken as such. Rather, it is intended for general educational and discussion purposes only. Questions of your legal rights and obligations under your contracts and under the law are best addressed to legal professionals examining your specific written documents and factual and legal situations. Sauer & Sauer, concentrating its legal practice on only construction and surety law issues, sees as part of its mission the provision of information and education (both free) to the material suppliers, subcontractors, general contractors, owners and sureties it daily serves, which will hopefully assist them in the more successful conduct of their business. Articles and forms are available on a wide number of construction and surety subjects at www.sauerconstructionlaw.com. We periodically send out 'Squibs' - short articles, such as this one - on various construction and surety law subjects. If you are not currently on the emailing list, please contact us and we'll put you on it. Possibly as the result of our last Squib, we were recently invited to test drive a new FIAT 500. The one with the hot engine. Popping the clutch in first, I left rubber. All the way up the sidewalk. That's a lot of rubber with the four wheels and the two training wheels. Too much power for me. Maybe I need a Viper or the new Corvette to go along with my new Bentley. (I was looking at the Rolls Royce Ghost. Unfortunately, business is just not that good and sacrifices have to be made. I mean, who really needs the hood ornament and the umbrella in the door? Don't they sell umbrellas at places like CVS?) Or, maybe even a Schwinn bicycle. Like the one they sell at Walmart. The one with three wheels. I wonder. Can you still get them with gimp hanging from the grips? I know I can add baseball cards to the spokes any time I feel like it. These days, though, they might actually be 'Magic' cards. No problem: I'm hip. Only problem is that I'm not at all sure they actually still say stuff like that anymore. Whatever. If they can't take a joke, well then they can just go and take a flying EDITOR:THIS SQUIB HAS BEEN UNEXPECTEDLY TERMINATED DUE TO TECHNICAL DIFFICULTIES. IT SEEMS THAT SOMEONE CROSSED OUR METATAGS WITH SOME RATHER AGGRESSIVE GOOGLE SPIDERS, THE RESULTING PROGENY BEING NOT AT ALL PRETTY AND QUITE, OTHERWORLDLY IN APPEARANCE. IF IT COMES TO A SCREENPLAY, SIGOURNEY WEAVER WILL BE OFFERED THE RIGHT OF FIRST REFUSAL FOR THE STARRING ROLE . OLDER GALS GOTTA EAT, TOO. Now that we are (finally) done with our seven part contracts series, we are embarking on an ambitious primer for how to go from being the guy who empties the wastebaskets to president of a billion dollar a year construction company. This one has only one hundred and forty-three parts. We hope no one is, like, in a real hurry to, uh, retire. Face it! You really can't afford to do that anyway. Except for guys and gals like Joe, Brad, Wayne, Fido, Tom, John, Ahab, Ann, Bobby, Paul, Mortimer, Ted, Aloysius, M, Bill,

Russ, Xavier and, of course, Spot. (You think I am actually listing real people and creatures here? Prove it!) You guys all still have the first dollar (yen? yuan? leather bone?) you ever made. Way back in the day. Like when guys and gals like us were hip. (Don't get me started!) Me? I won't retire until I can get my RR Ghost. Two, actually. I mean, you'd get sick of the color if you only had just one. Besides with a trunk that big, you could throw a mess of FIAT 500's in back. For every now and then when you feel like it, you can burn up the roads. When you really want to ***get down****! They do go faster with baseball cards in the spokes. And, especially, with hurricane winds behind them.*

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