



ALABAMA CONSTRUCTION LAW UPDATE

Below are recent court decisions affecting those dealing in the construction industry in Alabama. A full text of these and other decisions are available on the Wallace, Jordan, Ratliff & Brandt, L.L.C. web site at www.wallacejordan.com. If you have any questions or comments about this or other matters, please contact **Larry S. Logsdon** by telephone at (205) 870-0555 or by e-mail to ll@wallacejordan.com.

Whether Arbitration Clause in Construction Contract is Enforceable Depends on Whether Contract Affects Interstate Commerce

In *Ex parte Allen*, No. 1991656 & 1991707 (Ala. Apr. 20, 2001) the court upheld an arbitration provision related to a dispute arising out of a contract for the construction and operation of a golf course and clubhouse. The court found that the transaction substantially affected interstate commerce. This decision was based on an affidavit by the contractor stating that "Willard Byrd & Associates of Atlanta, Georgia, prepared the initial concept design for the golf course," that "Hardigree and Camco used this concept design prepared in Georgia for the basic design and layout of the golf course," that the parties believed "the actual design, layout and construction of the golf course would be performed by individuals and companies from other states," that a Florida resident would be the golf course architect, and that the parties believed "the vast majority of materials, equipment, machinery and supplies necessary to construct the golf course, clubhouse and other facilities would come from states other than Alabama."

Also, in *Ballard Servs., Inc. v. Conner*, No. 1992242 (Ala. June 29, 2001) the court upheld an arbitration provision finding that a construction contract affected interstate commerce because the case involved claims against out-of-state entities and the transaction directly involved an out-of-state company.

However, in *Ex parte Kampis*, No. 1000099 (Ala. Sept. 21, 2001) the court did not uphold an arbitration provision in a residential construction contract because there was no evidence that the contractor purchased any of the materials or equipment outside the State of Alabama and because the homeowner/plaintiff did not obtain financing outside the State of Alabama.

Fraud Claim Disallowed Because Suit Was Not Filed Timely

In *Jim Walter Homes, Inc. v. Kendrick*, No. 1981938 (Ala. July 13, 2001) the court found that a plaintiff's fraud claim against a general contractor was properly dismissed because the claim was not filed in time and as such was barred by the Statute of Limitations. The court so ruled because the plaintiff waited five years to file the action after he knew the alleged representation on which he based his action was false.

Clause in Contract Allowing Contractor to Select State That Suit Can Be Filed Is Upheld.

In *Ex parte D.M. White Constr. Co.*, No. 1000199 (Ala. June 15, 2001) the court upheld a provision in a contract between a general contractor and a subcontractor that required that any suit be brought in the State of Tennessee. The court found that such a clause, known as an "outbound forum selection clause" was enforceable unless the challenging party could establish that enforcement of the clause would be unfair on the basis that the contract was affected by fraud, undue influence, or overwhelming bargaining power or enforcement would be unreasonable on the basis that the selected forum would be seriously inconvenient.

Although this case involves a contractor seeking to have any disputes brought in the State of Tennessee, for Alabama contractors, such a provision can be used to claim that disputes by out of state subcontractors or other parties be filed and handled in the State of Alabama.

October 2001

This construction newsletter is a periodic update of Wallace, Jordan, Ratliff & Brandt, L.L.C. and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information only, and you are urged to consult an attorney concerning your own situation and any specific legal questions you may have. Rules of the Supreme Court of the State of Alabama may require this publication to be designated as advertising material and require us to advise you of such designation. "No representation is made that the quality of legal services performed is greater than the quality of legal service performed by other lawyers."

www.wallacejordan.com

Wallace, Jordan, Ratliff & Brandt, L.L.C.
Post Office Box 530910
Birmingham, Alabama 35253

Phone: (205) 870-0555

Fax: (205) 871-7534

