

INDUSTRY

## Construction

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### OVERVIEW

#### CONSTRUCTION

Property owners, contractors, architects, engineers and developers engaged in commercial, institutional, nonprofit, and residential building projects across New England benefit from Bowditch & Dewey's full-service capabilities for the construction industry.

Our team members negotiate design and construction agreements for and with owners and major local and national design firms and construction managers, contractors and subcontractors for a variety of project delivery methods, including cost plus/GMP, lump sum, and design/build.

We work closely and collaboratively with all the players involved in construction – owner's representatives, project managers, construction managers, and designers – so that we can identify key legal and business issues arising from the design and construction process and address those issues in the agreements, including:

- Drafting and negotiating contracts
- Defending change orders
- Filing and perfecting mechanics liens and defending against liens filed against a project
- Preserving and proving bond claims
- Negotiating with unions
- Litigation
- Construction financing
- Ensuring compliance with OSHA regulations
- Bid protests
- Discrimination and wrongful termination claims

- Workers' compensation
- Warranty claims
- Insurance coverage issues

From time to time, despite effective negotiation, disputes inevitably arise during construction. Our strong background in litigation and dispute resolution means that we can directly assist you as challenges arise. Our litigation team regularly prosecutes and defends complex contract, warranty, surety bond, bankruptcy, employment and OSHA claims. We recognize the demands that litigation can impose on a project's budget, and combine extensive negotiating skills, deep industry insight and trial experience to help ensure your dispute is resolved as quickly and effectively as possible.

The goal of any construction project is to maintain quality, workmanship and the project goals for long-term use and enjoyment while delivering the project on time and within budget. We guide clients through the entire construction process, from the early stages of contract negotiation, financing and local permitting to providing day-to-day advice and offering solutions when emergencies or adverse claims threaten the completion of a project.

## EXPERIENCE

### Novel use of the state's consumer statute wins award for client

The owner of a local home hired an interior designer to provide a facelift to their property. The work went well initially until the designer stopped working or responding to communications from the homeowner. This was problematic because the owner had advanced considerable sums to the designer in anticipation of the designer buying fixtures and furnishings for the home. We secured a multiple damages award in state court and got almost all of the furnishings delivered based upon a novel legal argument using a consumer protection statute. It was the first time the statute had been used in Massachusetts against an interior designer.

### A mediated success to a subcontractor's claim on an unpaid change order

Our client in this case was a subcontractor responsible for a multi-million-dollar panelized exterior of public building. The Owner abandoned plans to build the exterior using pre-fabricated panels and, instead elected to proceed with a traditional approach. With our client, we pursued a claim against the owner in state court for the additional costs associated with field construction as opposed to pre-fabrication. After extensive discovery, the parties were able to resolve their claim in mediation on terms favorable to the client.

## OTHER EXPERIENCE

- Coordinated with municipal officials in Departments of Public Works and Code Enforcement and advised architects and engineers during design-development, pre-construction phase of new fast food chain restaurant
- General contractor who lost public construction projects due to Awarding Authorities' findings that it was not the lowest eligible and responsible bidder
- Subcontractor on public construction project at assessment of damages hearing following non-payment

- State agency in dispute with elevator repair and maintenance contractor
- Private school in abutting property owner's appeals of Conservation Commission and Zoning Board of Appeals decisions in connection with expansion project
- Colleges, universities, independent schools, health care facilities and other nonprofit organizations in design and construction of academic buildings, laboratories, libraries, dining and residential facilities, and health care facilities
- Pharmaceutical company in negotiation design and construction contracts for tenant build-out in multiple facilities having in excess of 1 million square feet
- Commercial developer in tenant build outs for office, retail, and mixed use developments
- Franchisee in various disputes and through completion of construction project
- General contractors and subcontractors against contract, warranty, and negligence claims
- Pursued payment and enforcement of mechanics lien on behalf of designers, contractors, and subcontractors
- Property owners in defense of claims for payment and in seeking damages for incomplete and defective work
- Hotel and resort against claims before EACC by labor union alleging violations of state labor laws
- Hotel condominium association in action against condominium builders arising from construction defects
- Hotels in Massachusetts, New Hampshire, Maine, Rhode Island and Florida in obtaining construction and equipment financing