

## PRACTICE

# Construction Litigation

## KEY CONTACTS

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## OVERVIEW

## CONSTRUCTION LITIGATION

Developers, contractors, subcontractors and designers rely on our construction litigation team to help them through the full range of construction, contracting and administrative disputes. Of course, construction disputes rarely begin with litigation. They are, more commonly, the product of months, if not years, of festering disputes, attendance to contractual provisions and, ultimately, are a product of an extensive project history.

We work with our clients to simplify the process of converting construction disputes into legal positions by sharing our deep understanding of the construction process and working with our clients during the course of their projects to protect their rights in real-time. By combining extensive industry experience, negotiating skills, and a deep appreciation of what it takes to prosecute or defend claims before mediators, arbitrators and courts, we can help ensure that disputes are resolved as quickly and effectively as possible.

### How we can help

- Bid protests
- Protection of mechanic's lien rights for contractors and designers
- Payment bond claims under G.L. ch. 149 and Miller Act
- Change order and extra work claims;
- Delay, inefficiency, production, and impact claims
- Contract termination claims;
- Design defects
- Construction defects
- Product liability claims
- Warranty claims

- Workers' compensation
- OSHA

## EXPERIENCE

### Summary Judgment victory in a difficult contractual claim

When another party failed to build key, agreed-to components of a major construction project, the principal developer turned to the firm for help. With tens of millions of dollars at stake, our client obtained Summary Judgment on damages, thereby avoiding a trial.

### Trial victory in a claim for negligent construction

In 2014, we prevailed in a jury trial in the Massachusetts Superior Court representing one of the region's largest utility providers in a lawsuit for damages arising out of catastrophic damage caused to an electric transmission line during environmental testing on a construction site. The jury awarded substantial damages to our client after a multi-day trial involving complex environmental and regulatory issues.

### 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.

### Winning payment in an arbitration for an architect

We obtained an arbitration award in favor of an architecture firm, which had not been paid in full for work performed on a project. The other side argued that our client had actually been overpaid, claiming that the architect exceeded the authorized scope of work on the project. We successfully demonstrated, primarily through invoices and copies of payments, that the owner knew or should have known the full scope of work being performed and billed, despite not having a signed contract or purchase order for the work in question.

### 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.

## OTHER EXPERIENCE

- Owner of a senior living facility in defense of defended claims in excess of \$2 million brought by a designer-builder in connection with a \$14 million construction project. The successful arbitration was a multi-party, complex case that spanned over 40 days of hearings.

- Developer who had sought declaratory and injunctive relief to prevent a municipality from terminating a mixed-use development's rights to the town water supply after the client had already invested millions in its redevelopment. The client was awarded summary judgment.
- Four-star hotel in Boston involving claims against a contractor for many millions of dollars.
- Seven-figure arbitration award against a general contractor client on behalf of our clients who were experiencing construction defects in their new home.
- Multi-million dollar extra work claim through pre-litigation mediation for key subcontractor on major bio-medical facility project.
- Claims against a subcontractor for default on a multi-million dollar bridge contract.
- Federal contractor in defense of Miller Act claims brought by one of their subcontractors, achieving a positive result in Federal Court.
- Design-builder on a public infrastructure project in successful defense of over \$100 million in claims.
- Major regional construction company in connection with parallel criminal and civil investigations into alleged OSHA violations.