



CONSTRUCTION

GROUP CHAIR



William G. Kelly

Our vast experience with construction causes clients to seek our counsel in construction property and liability losses. Our team has decades of experience representing general contractors, prime contractors, sub-contractors, sub-sub-contractors, construction managers, owners, developers, design professional, architects and engineers. Our lawyers assist clients in addressing the legal challenges of engaging in the design, development, mechanic's liens, interference, collapse, financing, performance and management of major construction and government procurement contracts. Our experience enables us to handle the complete spectrum of issues arising before, during and after project completion. Our construction litigation team has tried cases in the state and federal courts across the United States, and we have argued cases in many different appellate forums. We have appeared in various forums for arbitration, mediation and other kinds of alternative dispute resolution.

Our lawyers are authors of *The Labor Law Handbook* published by the New York State Bar Association to address construction site loss. Our experience extends to counseling clients on risk avoidance in construction programs. We also understand the traditional and bespoke insurance structures surrounding construction. Our construction attorney participate in key industry groups including the Associated General Contractors of America, American Institute of Architects, American Bar Association, and the U.S. Green Building Council's LEED AP Program.

AMERICAN WITH DISABILITIES ACT COMPLIANCE AND DISPUTES

Business property owners and tenants often misunderstand their legal obligation to make premises accessible to individuals with disabilities. Many businesses mistakenly believe that if

they owned or leased premises before accessibility laws were enacted or if they have not made substantial physical changes to premises during that time then they have no obligation to make it accessible to individuals with disabilities. In other words, they believe they are "grandfathered in," making them exempt from laws that now require businesses open to the public to be fully accessible to individuals with disabilities. The reality is that most business owners welcome disabled customers and offer assistance if it is needed. Yet, both federal and state laws require businesses to do significantly more. Our lawyers are experienced in advising clients on all aspects of the ADA. We also represent clients in suits brought against them for ADA non-compliance. Often, "career plaintiffs" look for violations of ADA in order to seek some form of cash settlement. We fight these claims and win.

ARCHITECTS, ENGINEERS AND OTHER DESIGN PROFESSIONALS

We represent architects, engineers and other design professionals in contractual issues related to project delivery systems such as design-build, design-bid-build, and fast-track. We advise on relationships with owners, consultants, contractors or subcontractors, during the pre-design, design, construction and post-construction phases. We handle claims regarding design professionals, and by or against professional liability insurance carriers. Our practice in this area is enhanced by the group's experience in the formation and management of design professional practices.

Our Construction Practice Group lawyers who focus on architects, engineers and other design professional issues work closely with team members in our Professional Liability Practice Group.

APPELLATE ADVOCACY

The appellate outcome of construction matters is equally important to the outcome of a trial or lower court proceeding. Appeals often have precedent setting significance with impact far beyond a single matter. Success at the appellate level requires different skills than those applied at trial. It is important to understand the appellate bench, and the perfection of the record.

Our lawyers' analytical, writing, and oral advocacy skills are honed for success on appeal. Our lawyers have served as judicial law clerks to trial and appellate court judges, providing insight into the working of the priorities and decision-making of the bench.

Our Construction Practice Group lawyers work closely with our Appellate Practice Group – teaming together to often parachute into matters handled by separate trial counsel. We are regularly sought in this regard to serve as appellate monitoring counsel during trial. Clients also engage us to write amicus curiae briefs, and to work with other trial counsel to ensure that construction matters are properly postured for appeal.

CLAIMS PREVENTION

We work with clients to monitor projects during construction to ensure awareness of issues and potential pitfalls. This is done with the goal of assist in the prevention or resolution of claims. We review contract forms and procedures so clients are better able to avoid many situations that might result in claims or delays.

CLASS ACTION DEFENSE

Achieving success in construction class action matters requires strategy for early dismissal, defeating class certification, Rule 23(f) appeals of class certification decisions, and precluding plaintiffs' expert witnesses. This strategy must work backwards from the desired result to be successful. We understand the constantly evolving standards for class certification in the construction arena. We have been able to convince parties and courts that certification must be denied. In this regard, we understand that class actions can often be favorably resolved with a

comprehensive and irrevocable settlement. Often, carefully negotiated settlements of class actions are true “wins” in that they avoid years of litigation cost, uncertain risk and potential reputational harm. We also recognize the need for coordinated strategy against the setting of regulatory inquiry, government action, or criminal prosecutions.

COMMERCIAL LANDLORD/TENANT DISPUTES

Our lawyers are experienced in representing landlords in commercial leasing disputes. Commercial leases involve a unique and often complicated interplay between contract law, property law and business strategy. Disputes in commercial leases may trigger statutory obligations or may simply require the application of law. Landlords are faced with numerous difficult decisions regarding which remedy to pursue in correcting the situation when tenants refuse to pay rent or comply with the obligations in the lease.

In addition to our legal experience in commercial landlord/tenant disputes, our attorneys also have experience in the property management field. Understanding the business and economic issues facing landlords dealing with commercial leasing problems allows us to provide legal advice that makes good business sense.

Our Construction Practice Group lawyers who focus on commercial landlord/tenant issues work closely with team members in our Commercial and Corporate Practice Group.

CONTRACT FORMATION, CONTRACTUAL CLAIMS AND PERFORMANCE

We advise clients on contract documents that expressly allocate risk, responsibility and rewards for proper performance essential to a successful project. We utilize our considerable experience with numerous forms of contracts, from customized forms to standard industry and government forms.

We handle claims, including changed or unforeseen conditions, delays, disruptions, productivity loss, acceleration, and payment disputes. We work with qualified experts and closely with claims consultants to maximize benefits and minimize risks for our clients. Where possible, we work to achieve early and fair resolution of construction disputes without the expense and disruption of litigation.

Our Construction Practice Group lawyers who focus on contract formation, contract claims and performance issues work closely with team members in our Commercial and Corporate Practice Group.

CONSTRUCTION DEFECT AND PROPERTY DAMAGE CLAIMS

We represent owners, contractors and other project participants in claims that arise out of property damage to projects during construction or after project completion. Many construction contractors and subcontractors have found themselves on the receiving end of a complaint about the quality of the result of their work. Project managers and construction executives need lawyers who are experienced with the defenses available in the event of a complaint that work is defective. We apply knowledge of the nuances of the Sprearin Doctrine, betterment doctrine, discharge by prior material breach, as well as notice and opportunity to cure. Our team has years of knowledge with examining causation issues, spoliation of evidence, and the failure to mitigate.

DEFAULT/TERMINATION CLAIMS AND SURETY PRACTICE

We handle issues that arise from contractor and subcontractor default and termination. We also counsel and litigate on issues stemming from construction project failure. This includes payment and performance bond claims, as well as default and/or termination of bonded contractors.

E-DISCOVERY

Our lawyers advise construction clients in developing pre-litigation policies and procedures. We counsel clients on implementing effective technologies to manage and dispose of data defensibly and consistently with emerging best practices. Our team also advises on preserving documents and data effectively where there is a duty to preserve. We work with clients to explain defensible disposal before a duty to preserve arises. Once a duty to preserve arises, we work hand-in-glove with clients on legal holds and their scope. Our managing partner, John Jablonski, is nationally recognized in this arena. He is the Editor of Arkfield's Best Practices Guide for Legal Holds, and the former chair of the Defense Research Institute's E-Discovery Committee.

EMPLOYMENT, LABOR AND OSHA

As counsel for many construction businesses, we guide employers in employment structuring and documentation - with the goal of minimizing claims and litigation. We believe in well-crafted and designed employer/employee relationships that are memorialized in clear and fair employment agreements and other employment-related documents. We also counsel clients in connection with decisions related to disciplining and terminating employees. When an employee alleges of harassment or discrimination, we guard our clients' interests. When disputes arise, we team with clients on a strategy that resolves the dispute before litigation ensues. However, we recognize that certain cases are especially difficult to resolve and must therefore be aggressively defended. We have a proven record of success in employment litigation and arbitration.

We assist clients in confronting the landscape of health and safety regulations of federal, state and municipal agencies to protect individuals and property in the workplace. We advise on the scope and application of these regulations, the potential liabilities in ongoing project activities and appropriate responses to inspection issues or the issuance of subpoenas and citations.

Our Construction Practice Group lawyers who focus on employment and labor issues work closely with team members in our Employment and Labor Practice Group.

ENVIRONMENTAL RISKS

Our construction lawyers keep current on environmental risks on construction projects such as federal CERCLA and RCRA liabilities and compliance with state statutes and regulations. We counsel environmental engineers, contractors, owners, sureties and insurance carriers in assessing environmental risk and resolving environmental issues in construction projects.

Our Construction Practice Group lawyers who focus environmental risks work closely with team members in our Toxic Tort and Environmental Practice Group.

GOVERNMENT CONTRACTS AND BID PROTESTS

We provide a full range of services in connection with government contracting at the local, state and federal level, and with international agencies. We have litigated matters involving procurement laws and the awards process, and have written extensively on competitive bidding and related subjects. We represent public owners, contractors, subcontractors, engineers, architects, suppliers and sureties in the procurement process, including bidding, bid protests, contractor selection and awards processes used by public agencies.

INSURANCE PROGRAMS

Our vast experience with construction losses causes clients to seek our counsel in construction property and liability losses. Insurance issues are unique among general contractors, prime contractors, sub-contractors, sub-sub-contractors, construction managers, owners, developers, architects and engineers. We understand the traditional and bespoke insurance structures surrounding construction. Additional insured and contractual indemnity issues often intertwine.

Certificates of insurance are often insufficient. We comprehend complex issues surrounding construction defect, Wrap and OCIP policies, as well as the impact of completed operations. One of our lawyers is the author of a key chapter on construction insurance loss and risk shifting entitled "Labor Law and Construction: Insurance Coverage and Indemnity Unveiled" for the The Labor Law Handbook published by the New York State Bar Association. Our experience extends to counseling clients on risk avoidance in construction programs.

Our Construction Practice Group lawyers who focus on insurance issues work closely with team members in our Insurance Solutions Practice Group.

PUBLIC-PRIVATE PARTNERSHIP PROJECTS

We represent federal, state and local governments, as well as developers, lenders and other private sector firms in P3 projects. We negotiate arrangements and establish properly aligned incentives that are the foundation for successful P3 projects.

Our Construction Practice Group lawyers who focus on public-private partnership projects work closely with team members in our Commercial and Corporate Practice Group, as well as our Municipal and Government Practice Group.

SUSTAINABLE DESIGNED CONSTRUCTION

We advise clients on alternatives available to address sustainable/high energy efficiency/green building design and construction. We understand available incentives and modeling contract documents to reflect the added responsibilities and risks.