

## Overview

The Steeptoe & Johnson multi-state Construction Law Team represents developers, commercial and residential contractors, architects, engineers, project owners, and building product manufacturers and suppliers. Team attorneys often have a seat at the table with clients during project development and are called on to draft and negotiate design and construction contracts to protect each client's interests. When disputes are unavoidable, we are staunch advocates in complex construction litigation and arbitration, aggressively defending our clients.

Throughout the recent COVID-19 pandemic, our attorneys advised construction clients as they dealt with project delays, increased material and labor costs, material scarcity, OSHA regulations, and labor shortages.

Our Construction Team lawyers also frequently collaborate with tax, project finance, environmental, real estate, labor and employment, and government relations lawyers to provide holistic, practical, and cost-effective solutions to our construction clients, no matter the location.

## Capabilities

- Project formation and assessments
- Contract drafting, review, and negotiation services for construction management contracts, EPC and design-build contracts, prime construction contracts, subcontracts, design services agreements, master services agreements, purchase orders and other construction documents, including:
  - The American Institute of Architects (AIA) forms
  - ConsensusDOCs forms
  - EJCDC forms
  - Government contracts
  - Manuscript contract documents
  - Joint venture agreements
  - Pre-bid agreements

- Project delivery system analysis and procurement advice
  - Scope of work and change-order analysis
- Mechanics' liens, claims filing and claim evaluation
- Safety law advice, including compliance and enforcement action defense (OSHA/MSHA), monitoring of regulatory changes, public comment assistance
- Payment and performance bond claims
- Bid protests
- Construction defect claims
- Delay claims
- Design errors & omissions claims
- Differing site conditions claims
- Federal/state procurement, federal contract claims
- Insurance policy review for compliance with contract insurance requirements, and resolution of insurance coverage gaps via manuscript endorsements
- Risk management guidance, including CGL, excess, professional, pollution, builder's Risk, auto, workers' compensation, employer's liability, cyber liability coverages
- OSHA, with a dedicated emergency response team, including OSHA compliance and enforcement action defense, monitoring or regulatory changes, public comment assistance
- Alternative dispute resolution/mediation and arbitration, including dispute avoidance techniques and advice for vetting and selecting mediators and arbitrators
- Jury and bench trials
- Appellate proceedings

**Other Services Relating to Construction:**

- Planning and zoning variances
- Real estate transactions and title insurance
- Project finance, including bond counsel, private finance, and private equity
- Federal, state, and local permitting
- Government relations and lobbying services

- Environmental law, including regulatory compliance and enforcement actions
- Tax law compliance (state and federal)
- Products liability defense (heavy equipment and machinery)
- Insurance coverage counsel for monitoring and advice on insurance defense matters

## ***Representative Experience***

- Won summary judgment for a builder sued by a condominium association, successfully arguing all implied warranties had been effectively disclaimed and waived by the individual unit owners
- Advised large engineering and architectural firm on business expansion in multiple states
- Advised and defended a construction company who faced conflicting jurisdictional claims by two rival unions for a project in western New York, resulting in a successful decision by the United States Court of Appeals for the Second Circuit
- Successfully represented a national construction company after a structural failure and catastrophic collapse on a multi-million-dollar project in the midwestern United States
- Performed IRS percentage of completion audits on behalf of a commercial contractors
- Secured judgment on behalf of general contractor in connection with \$68,000,000+ development of major historic building in Louisville's urban core
- Counsel to an economic development authority negotiating an incentive package for the construction of a \$40 million manufacturing facility
- Represented a real estate developer in all aspects of the development of a 1,100 acre mixed- use development including acquisition, conventional and public financing, acquisition of public grants and tax incentives, environmental remediation, construction, zoning and land use, state and federal and local environmental permitting, sales and ground leasing and build to suit leasing
- Prepared construction defect and faulty workmanship coverage opinions for multiple insurers
- Prosecuted a six-figure mechanics' lien claim that resulted in the contractor-client obtaining relief in excess of the amount of the lien
- Negotiated settlements in multimillion-dollar cases involving wrongful death, product defect, professional malpractice, and construction defect claims
- Represented public owners in the procurement of major new construction projects valued in excess of \$500 million to \$1.5 billion

- Represented private owner in procurement of major urban office headquarters complex, with mixed-use retail and Class A tenant lease office space, and major sustainability elements, including solar and geothermal energy-saving features
- Represented water and wastewater systems contractor in arbitration of a dispute with a tunneling subcontractor on a major water pipeline over 100 miles in length, helping the client to achieve a successful settlement within days after filing a highly detailed Motion to Dismiss that demonstrated the subcontractor had assumed the risks inherent in the design and construction of the tunneling works, and that the subcontractor's pay applications had released its differing site conditions claims
- Represented a commercial contractor in connection with a \$33 million multi-family apartment complex project financed through a tax credit based public-private partnership. Negotiated the terms of the owner's heavily modified American Institute of Architects (AIA) contract form to obtain terms favorable to the client, including terms to protect the client against impacts from the COVID-19 pandemic, and exposure to construction defects liability and sale and use tax liability in the event of a tax audit or assessment despite reliance on the owner's tax exemption certification
- Represented a government owner in its pursuit of damages for design errors and omissions committed by the original architect and a mechanical engineer on a major data center project. The case required extensive analysis of the feasibility of the mechanical engineer's mechanical and electrical system designs for the HVAC systems. A significant settlement was achieved, and the client recovered essentially all funds paid for the failed design, enabling the client to successfully get the project back on track without having to file suit

***Ben M. McFarland*****Team Leader**

(304) 230-2337

[ben.mcfarland@steptoe-johnson.com](mailto:ben.mcfarland@steptoe-johnson.com)