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Construction Law

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Chamberlain Hrdlicka's domestic and international construction and procurement law practice takes our lawyers across the nation and around the globe on behalf of our clients. We count among our clients -- owners, developers, construction lenders, construction managers, subcontractors, vendors, architects, engineers, and sureties. We work closely with our clients during all phases of the construction process to help them accomplish their goals and objectives. Our lawyers know the construction industry, and are in tune with the many diverse legal and business issues that our clients face. In fact, several of our construction lawyers have engineering degrees and real world construction experience, having worked in the construction industry prior to beginning the practice of law.

Our representation of clients extends from the beginning of projects through their conclusion, from the negotiation of contracts and preparation of bids to the resolution of construction disputes. Chamberlain Hrdlicka's attorneys have extensive experience with all types of project delivery options and are well-versed in the major industry contract forms, including the forms prepared by AIA, EJC, AGC, EJCDC, and CMAA. We regularly assist in project administration, job close-outs, and settlement, and "privatization" matters. We perform disaster and injury investigations. We provide a full range of services with respect to government (federal, state, and local) contracts, including bid protests and board of contract appeals claims.

Our construction and procurement attorneys have a thorough knowledge of the law and extensive experience with construction defect claims, contract disputes, extra work claims, extended term claims, delay and disruption claims, acceleration claims, and claims for lost labor and equipment productivity. We have an understanding of various scheduling techniques, and we understand the methods of calculating extended project costs and unallocated home-office overhead so that we can assist our clients in recovering their entitled losses on a delayed project. Additionally, Chamberlain Hrdlicka has the knowledge and experience required to address issues such as design defects, cardinal changes, commercial impracticability, differing site conditions, access problems, over-zealous inspectors, structural failures, rejection of nonconforming work, terminations, mechanic's liens, payment and performance bonds, performance guarantees, liquidated damages, and warranties. When our clients need legal advice or practical guidance concerning any aspect of a construction project, we are prepared and able to assist.

When litigation cannot be avoided, Chamberlain Hrdlicka will vigorously fight for our clients. We have extensive experience in all forms of construction litigation including arbitration, mediation, bench trials, and jury trials. Our attorneys have successfully handled countless construction cases before state and federal courts, state and

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federal administrative agencies, and courts in foreign countries. Chamberlain Hrdlicka attorneys are active members of the American Arbitration Association. We regularly utilize all varieties of alternative dispute resolution, including mediation, dispute review boards, structured negotiations and other creative approaches to resolve complex disputes fairly and efficiently.

In an article published in the *Construction Executive*, Chamberlain Hrdlicka has been listed among the publication's U.S. ranking of **The Top 50 Construction Law Firms** in the field.

Areas of Expertise

- Representation of owners, developers, construction lenders, general contractors, construction managers, subcontractors, suppliers, architects, engineers and sureties.
- Participation extends from the beginning of projects through their conclusion, from the preparation of bids and negotiation of contracts through the resolution of construction disputes.
- Extensive experience with all types of project delivery options.
- Well-versed in the major industry contract forms, including the forms prepared by AIA, EJC, AGC, EJCDC, and CMAA.
- Regularly assist in project troubleshooting, job close-outs and settlement, and "privatization" matters.
- Attorneys perform disaster and injury investigations.
- Provide a full range of services with respect to government (federal, state and local) contracts, including bid protests, litigation in the Court of Federal Claims and board of contract appeals claims.
- Extensive experience resolving contract disputes involving extra work claims, extended duration/delay claims, disruption claims, acceleration claims, and claims for lost labor and equipment productivity, construction defect claims, cardinal changes, commercial impracticability, differing site conditions, access problems, claims arising from over-zealous inspectors, structural failures, rejection of nonconforming work, terminations, mechanic's liens, payment and performance bonds, performance guarantees, liquidated damages, and warranties.
- Thorough and detailed understanding of various scheduling techniques and understanding of the methods of calculating extended project costs, inefficiency and acceleration claims and unallocated home-office overhead.
- Extensive experience resolving construction disputes through litigation, arbitration, mediation, dispute review boards, structured negotiations and other forms of ADR.
- Successful handling of countless construction cases before state and federal courts, state and federal administrative agencies, and courts in foreign countries.
- Experience serving the industry as arbitrators.

Representative Matters

- Represented the general contractor in an arbitration proceeding against a subcontractor who refused to tear out and replace a 100,000 square foot concrete slab that the owner rejected. The dispute was arbitrated before three arbitrators, who awarded our client 100% of the money spent with the new subcontractor who performed the required remedial work. In addition, the Panel found our client to be the prevailing party for purposes of recovering attorneys' fees. The case settled prior to the entry of an award on the

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amount of those fees.

- Represented the subcontractor who performed the electrical and mechanical work on a natural gas processing facility in an arbitration with the general contractor. A panel of 3 arbitrators heard testimony for several weeks, and then awarded our client approximately \$9,000,000 on its \$10,500,000 claim, and awarded the contractor \$300,000 on its \$10,000,000 counterclaim, for a net award of \$8,700,000 to our client. In addition, the arbitrators awarded our client pre-judgment interest and substantial attorneys' fees, so that the final award in our client's favor exceeded \$11,000,000.
- Represented a contractor who sued an engineer for negligent misrepresentation relating to the bid documents provided by the engineer on a road construction job. The case was tried to a federal court jury, which returned a verdict in our client's favor for 100% of the amount claimed. The engineer appealed, and the court of appeals affirmed.
- Represented a subcontractor in an arbitration arising out of the construction of a hotel/casino in Louisiana. The general contractor default terminated the client, and then spent almost \$10 million in excess of the remaining subcontract funds repairing and completing my client's work. The parties agreed to a bifurcated arbitration before a single arbitrator. In the liability phase, the arbitrator ruled that the default termination was improper. Then, in the damages phase, the arbitrator awarded the client almost all of its costs on the project.
- Represented the general contractor in an arbitration proceeding against a subcontractor who had been terminated on a project in Indiana. The subcontractor claimed the termination was wrongful. The case was tried, and the panel awarded the client nearly 90% of its out-of-pocket completion costs, plus attorneys' fees.
- Represented the general contractor in what is now the lead case on the interpretation of the standard Federal Variation in Estimated Quantities (VEQ) clause. We won the case on summary judgment in the U.S. Court of Federal Claims (reported at 26 Cl. Ct. 936), and the judgment was affirmed by a three judge panel of the U.S. Court of Appeals for the Federal Circuit (reported at 11 F.3d 1032). Had the Government prevailed in its interpretation, the client would have had to pay the Government \$773,000. Our judgment was for \$212,000 - a swing of approximately \$1 million.
- Represented the largest subcontractor (in dollar amount) on an office building in Los Angeles, who was in litigation with the project owner, general contractor, architect and other subcontractors. The owner asserted a delay claim in excess of \$10 million against the client and the other project participants. The client was owed some \$800,000. After many days of depositions, much motion practice and several days of mediation, the client was paid all of his \$800,000, and obtained releases from all parties. Nobody else was as fortunate. There were another 60 days of depositions and a 65 day trial for the remaining participants.
- Represented the masonry subcontractor on a building demolition and reskinning project in Texas. The client, who was also providing the scaffolding for use by all trades, had anticipated ten months of field overhead expenses, and because of delays which the client contended were the responsibility of others, the project (and the client's overhead) extended out over 30 months, an extended duration of 20 months. A panel of three arbitrators appointed by the American Arbitration Association awarded the client nearly 90% of its claimed extended field overhead expenses from the general contractor. Additionally, the general contractor was ordered to reimburse the client all of the attorney's fees incurred in bringing the case.
- Represented the design/build (EPC) contractor in defense of a subcontractor claim on an upstate New York power plant. The subcontractor claimed its contract balance plus \$4 million in delay and inefficiency damages. The case settled for payment of the contract balance only.

Construction Law, Continued

- Represented a design/build (EPC) contractor in arbitration on a Vermont power plant project. The client was owed \$2.5 million in retainage, and the owner had a \$7 million counterclaim for defective construction. The arbitrator awarded the client \$2.1 million.
- Represented a general contractor in defense of a \$1 million defective construction claim brought in a Vermont federal court by the City for whom the client had supplied and installed a boiler. Parts of the case were resolved in the client's favor on summary judgment, the balance was decided for the client after an evidentiary hearing, and the United States Court of Appeals for the Second Circuit affirmed the judgment (reported at 2003 WL 22020581).
- Represented a contractor in a dispute arising out of the construction of an incinerator in Virginia. The client claimed entitlement to monies for lost efficiency. The defendants claimed delay damages of approximately \$10 million. This case was litigated in the United States District Court in Arlington, Virginia, and settled late the evening before the trial was to start. In the settlement, my client was paid \$1.5 million on its inefficiency claim (approximately 50,000 man-hours), plus \$2 million in wrongfully withheld retainage, and the defendants took nothing on their counterclaim.
- Represented the owner of a steel mill in Kentucky, who was defending against a \$20M delay claim filed by the general contractor. After a lengthy arbitration hearing, a panel of 3 arbitrators awarded nothing to the general contractor on the delay claim.
- Represented a large Georgia specialty trade contractor in Miller Act lawsuit out-of-state, and settled with savings of over two and one-half million dollars to client.
- Achieved reversal of a termination for default against a coating contractor on a NASA project at Moffett Field in California, in which the government was found to have been using different criteria for inspection than what was specified. The Court of Federal Claims granted the contractor payment for its outstanding contract balance and its entire claim for additional compensation, including delay costs and legal fees.
- In a bid protest in Florida, represented a client that was awarded its anticipated profit on a project the client was not awarded even though it was the low bidder, in addition to legal fees. The trial revealed that the government agency was changing its cost estimates to justify its refusal to award the contract to the client.
- Represented a contractor against a large insurance company in an arbitration in Chicago, involving coating work performed on a 46-floor office tower. The contractor was terminated for default, allegedly for failing to meet the schedule. The termination was overturned after it was revealed at the hearing that the owner was using the threat of termination to try to force the contractor to do extra work for no additional compensation. The contractor recovered all payments as well as costs of delay and interference from the owner.