

Tips for litigating construction disputes in Delaware

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Delaware is arguably the premier venue for litigating all matters corporate and its judges are familiar with a panoply of corporate disputes. Few construction disputes are heard in Delaware, but if you find yourself there, here are some considerations and quick facts.

Delaware is one of the few jurisdictions that retains a division between courts of equity and of law. The Delaware Court of Chancery has exclusive jurisdiction over equitable claims, but it can exercise jurisdiction over legal claims if there is at least one equitable claim in the lawsuit. The Delaware Superior Court has jurisdiction over legal claims only. Because many construction lawsuits involve contract claims only, such claims will likely be heard in Delaware Superior Court (absent diversity to get into federal court). If the dispute exceeds \$1 million, then it will be adjudicated before a judge assigned to the Complex Commercial Litigation Division (CCLD), which was designed to streamline commercial litigation in Delaware Superior Court. The judges tend to be savvy on e-discovery issues and will be amenable to arguments that discovery is overly broad or unduly burdensome compared to its relevance. Delaware Superior Court judges have a quarterly civil and criminal rotation, which affects scheduling of various matters, including trial.

The bar in Delaware, federal and state, is high calibre, active and close-knit. Judges and lawyers attend inns of court and other legal functions regularly, so expect that your local counsel knows the judge and opposing counsel well, has litigated with them before and expects to do so again in the future. This means that the bar is highly civil; if you are looking for local counsel with a highly aggressive approach, file suit elsewhere.

Judges in Delaware expect your local counsel to be active in your matter. While Delaware is certainly not inhospitable to *pro hac vice* counsel, using your local counsel as a drop-box generally does not play well there. Expect to involve your local counsel so that they can argue meaningful motions and be involved at trial. You will find a number of able litigators, but it is harder to find someone who specialises in construction litigation matters, particularly in the larger firms based in Wilmington.

Both the Delaware Court of Chancery and the Delaware Superior Court have proactive judges who move matters along quickly. The Delaware Court of Chancery typically moves cases faster than the Delaware Superior Court, but neither is a laggard when it comes to hearing and ruling on motions.

Delaware has no intermediate court of appeals; appeals go straight to the Delaware Supreme Court. The Delaware Supreme Court has broad mandatory review so an appeal from a lower court in a construction dispute is likely to be heard.

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