

Construction Practice Group

Practice Overview





Seyfarth Shaw LLP

Capabilities

The Construction Practice Group attorneys at Seyfarth Shaw help contractors, owners, architects, engineers, and other design professionals with the legal aspects of construction and property development—from contract preparation and negotiation, documentation, teaming agreements, and project management, through payment and lien conflicts and post-construction disputes.

Seyfarth has one of the nation's most prestigious construction groups with more than 40 attorneys coast-to-coast focusing on construction law. Our construction offerings are rounded out by the talents of attorneys practicing in real estate, labor and employment, environmental, and other complimentary areas, enabling us to deliver comprehensive and efficient service to clients. Many of the attorneys in our construction group are licensed architects and engineers who can anticipate potential problems and proactively address them early in the process. Moreover, our deep experience in construction law has enabled us to streamline intake procedures, saving case preparation time, and to provide "lessons learned" seminars after each of our engagements.

Our attorneys are highly experienced in the development and use of a wide variety of construction, design, and engineering contracts, including design-build, fast-track, cost-plus, guaranteed maximum price, lump-sum, turnkey, engineer-procure-construct, build-operate-transfer, and joint venture and teaming agreements.

Contract Drafting, Negotiation, and

Administration. Our experience in the field enables us to anticipate and create the agreements necessary to facilitate cooperation and prevent future disputes among contractors, designers, government agencies, licensing and bonding entities, suppliers, contractors, and owners.

We have handled contracts involving a number of emerging issues, such as:

- Building commissioning, indoor environment, and toxic mold
- Use of building information modeling (BIM) in the construction process
- Leadership in Energy and Environmental Design (LEED) and other “green” building considerations
- New statutory framework for certain types of construction, such as multifamily housing
- Increasing complexity in the public construction market as public owners move away from traditional sealed-bid work to public-private partnerships (PPPs) and innovative, negotiated contracts

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We regularly review, analyze, and recommend ways to improve the administration of contracts and the application of contract terms to avoid disputes and address new or unforeseen problems that can occur during the performance of a contract. We work with



DESIGN-BUILD AGREEMENTS

The General Services Administration (GSA) was involved in an extremely complex design-build project for the IRS national headquarters outside of Washington, D.C. The project delivery vehicle employed by the GSA was designer-lead, design-build—a cutting-edge delivery vehicle for the U.S. Government. Relations between the design-build team and the GSA were troubled and eventually resulted in multimillion dollar claims by the team against the U.S. Government.

- Our in-depth understanding of the design-build process and careful drafting of the agreements among the design-build team led to an avoidance of disputes among the design-build team members. Our contracts achieved the desired results and the team members were able to successfully complete the project without internal disputes.

Result: We continued our counsel after the project was completed, and represented all of the team members in dispute resolution procedures against the GSA in order to recover additional costs arising from design and construction of the project. We successfully mediated a settlement of all disputes wherein each team member recovered costs and a fair and equitable profit.

clients to develop appropriate responses to each situation, including drafting project correspondence, negotiating contract amendments, modifying construction management programs, and introducing supplemental or specialized consultants, if necessary.

Regulatory Counseling. Every construction project must comply with a unique and complex set of regulations, including Occupational Safety & Health Administration (OSHA), zoning, environmental, health, state and local, licensing, building code, and industry regulations.

Our construction group attorneys have a deep understanding of these regulations and their impact on construction industry stakeholders, and we work closely with the firm's corporate and environmental lawyers to bring a well-rounded regulatory perspective to each project.

Project Administration and Management. Our familiarity with the potential pitfalls that can occur during the construction process enables us to help clients avoid contractual issues, obtain proper insurance, comply with zoning ordinances, and avoid delays, liens, interruptions of work, and disputes among parties. We strive to place our clients in the best position to bypass such problems and to be contractually prepared should they occur.

As part of a full-service law firm, our construction attorneys are also able to tap the resources and knowledge of our real estate attorneys to address the variety of issues and responsibilities that arise during a construction or infrastructure project such as building codes, financing, taxes, land use and development, and transfer of property rights. Additionally, we work with our environmental attorneys to anticipate and plan for the full gamut of waste disposal, hazardous material handling, and other environmental consequences that accompany construction projects.

Green Construction. Companies and individuals involved in green projects face increasing challenges as they seek to synthesize the many technical, contractual,



REPRESENTATION OF INDUSTRIAL OWNERS

A large manufacturer was embarking on a substantial capital improvement program. Our client wanted us to draft and negotiate engineer-procure-construct contracts with significant performance guarantees for the production equipment.

- ▶ Our understanding of the construction industry and our client's business allowed us to prepare and negotiate contracts that properly allocated and mitigated the project risks among the parties while enabling our client to obtain the facilities it wanted within its budget.

Result: Our client was able to put more than \$1 billion of industrial facilities in place that met or exceeded the performance guarantees. Changes were far lower than industry averages and all issues were resolved at the project management level without resorting to formal dispute resolution efforts.



INTERNATIONAL REPRESENTATION OF ENGINEERING ENTITY

A large, multinational engineering company was in a dispute with the Government of Singapore. Our client had designed and managed the construction of a large waste water treatment facility for Singapore's Department of the Environment. During the design and construction phases, disputes arose as to the scope of services that our client was required to supply. Our client's contract with the Singapore government required arbitration of disputes, and they were concerned that no commercial entity had ever prevailed against the Singapore government in an arbitration held in Singapore.

- ▶ Due to our team members' extensive engineering backgrounds and knowledge of the design and construction processes, we were able effectively to counter all of the government's arguments.

Result: We were able to recover every dollar sought by our client, as well as legal fees and costs incurred in the arbitration. This case remains the most significant victory achieved by an engineering firm in Singapore against the Singapore government.

record-keeping, and procurement issues unique to these projects. Further complicating this area is the recent proliferation of legislation at the federal, state, and local levels mandating—and in some cases providing incentives for—green projects. We proactively counsel clients on statutes and regulations that require and/or provide incentives for green construction, helping them to mitigate risk exposure and avoid claims. To protect our clients' interests, we prepare contracts that properly allocate the responsibilities and risks for green projects and offer analysis of contracts drafted by others to identify trouble spots that are unique to this area. Two of our attorneys are LEED Accredited Professionals, having demonstrated a thorough understanding of green building practices and principles, as well as a familiarity with LEED requirements, resources, and processes. As such, we are especially well suited to assist companies with all aspects of LEED Projects.

Building Information Modeling (BIM). While the benefits of BIM are abundantly clear, the risks associated with this evolving technology are not, and may create significant exposure for all parties without proper identification and reallocation. To minimize these risks, we help clients address legal concerns through contract negotiation and complementary project agreements. We protect clients' interests with standard contract terms that reflect a fair allocation of risks, develop a framework for collaboration and performance, and encourage reliance on the data contained within the model. We assess and revise the role and definition of a designer to reflect multiple-user input to the design process, delegation of design elements, and decision-making from the designer to contractors and computer programs and third-party reliance on data from within the "intelligent model." Our attorneys address the administration of intellectual property and the 3D design model to ensure confidentiality of proprietary information and to protect the ownership interests of the parties. We also help ensure proper professional liability coverage for parties' evolving roles and responsibilities on BIM projects.

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Public-Private Partnerships (PPPs). The use of PPPs to fund infrastructure projects is gaining momentum. Because public infrastructure needs such as highways, tunnels, bridges, power, water, and school projects exceed the capability of government budgets to meet them, private funding through PPPs is becoming a valuable tool to bridge the gap in public spending. We are well suited to represent parties in these complicated transactions. We have extensive experience with complex construction projects, and we regularly represent clients in their dealings with the federal, state, and local governments. Additionally, our business services lawyers regularly represent clients in forming new entities and in securing financing for their ventures.

Alternative Dispute Resolution (ADR). The rise in popularity of mediation and other forms of ADR has dramatically affected the construction dispute resolution process. Due to our longstanding involvement in this area, we are able to find the most efficient solution to our clients' problems and resort to litigation only after far less expensive options have been exhausted. We have considerable experience in matters involving architect and engineer malpractice claims, defective performance and design specifications, constructive and formal changes, delay claims, terminations, late payments, differing site conditions, inadequate coordination, and breaches of warranty. Several of our attorneys serve as mediators and arbitrators themselves, which offers unique insight into nearly every aspect of the ADR process.

INTERNATIONAL ARBITRATION INVOLVING MILITARY PROJECT IN AFGHANISTAN

Our client, a major international government contractor, was the prime contractor on a U.S. Army Corps of Engineers project involving fast-track, design-build improvements to a military airport in Afghanistan.

- After our client issued a default termination to its major subcontractor, we vigorously defended the prime contractor in an arbitration under the auspices of the International Chamber of Commerce.

Result: Following a lengthy hearing, the Arbitral Panel ruled in our client's favor entirely. In so doing, the arbitrators found that our client's default bases were sufficiently proven and adopted our expert's scheduling analysis. With respect to the defaulted subcontractor's claims for breaches of contract and the value of its plant and equipment, the arbitrators dismissed all of the \$20 million claim.

Litigation. Should litigation prove necessary, our group has successfully litigated and defended complex construction claims before courts, dispute resolution boards, and arbitration tribunals throughout the United States and abroad. We have extensive experience in preparing and defending claims of contractors seeking recovery from private owners and public bodies.

Representative Clients

Our clients represent the full range of entities involved in construction, design, and infrastructure projects.

They include:

- General contractors and subcontractors
- Architects and engineers
- Design-builders
- *Fortune* 500 companies
- Project owners and developers
- Large, medium, and small privately held companies
- Educational and healthcare institutions
- Large, foreign-owned conglomerates
- Lenders, insurance companies, and sureties
- State and municipal entities
- Materials suppliers
- Public and private agencies ■

RESOLVING CONTRACTOR AND SUBCONTRACTOR DISPUTES

A number of contractors and subcontractors brought disputes against our clients, an owner and its engineering firm, which arose from construction of a water purification plant in North Carolina.

- Because we understood both the engineering processes and the relationships between the construction subcontractors, we were able to separate out and successfully mediate a number of the claims brought by the contractor's team. However, the contractors then brought approximately \$10 million in additional claims against our clients.

Result: After three weeks of arbitration proceedings, the contractors were awarded only \$1,500. This success was due in large part to our understanding of the teamwork involved between the owner and designer, as well as our extensive network of expert witnesses who proved invaluable in presenting the case for our clients.

About Seyfarth Shaw

Seyfarth Shaw LLP ("Seyfarth") was founded in 1945 by three lawyers and has grown to more than 800 lawyers across 13 markets in the U.S. and abroad. We handle issues for our clients in all key areas including labor and employment, litigation, construction, corporate, employee benefits, environmental, government contracts, intellectual property, commercial litigation, real estate, securities litigation, trade secrets, trusts and estates, and workouts and bankruptcy, among others.

Our success is the result of a constant, unrelenting focus on the needs of our clients. Our commitment to excellence and our belief in the strength of a team-based approach to the delivery of our services offers an atmosphere of creative and innovative thinking.

Our clients are our partners in business and we are committed to listening to their needs and to aligning the skills and abilities of our people to respond to those needs. Our clients range from *Fortune* 100 to midsize companies, and include publicly traded and privately held companies and various types of funds. We represent clients of all sizes across all industries and we are diligent in providing the same level of commitment to each client.



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