

LITIGATION AND ARBITRATION**PROJECT COUNSELING****STATE AND LOCAL GOVERNMENT
CONTRACTS****ERIC J. FIRSTMAN**

*Chair, Construction and Facilities
Practice Group*

Eric Firstman focuses his practice on construction litigation, construction project planning, procurement of professional services and regulatory compliance.

Before joining Meyers Nave, Eric was a Principal at a construction and real estate law firm in Northern California, where he handled large public and private construction and development matters, complex construction litigation, and virtually every aspect of design and construction projects.

Eric is a Charter Fellow and Advisory Board Member of the Construction Lawyers Society of America, a Fellow of the Litigation Counsel of America, and a member of the Associated General Contractors of California.

The Construction and Facilities practice group (CFG) opened in July 2013 with a single focus on the construction industry and a commitment to excellence in the practice of construction law. We specialize in construction law and understand the construction industry – the issues, the technologies, the language. CFG lawyers understand the challenges faced by owners, designers, contractors, subcontractors, construction managers, and specialty consultants.

TRIAL AND ARBITRATION PRACTICE

CFG tries construction cases. Since opening, CFG has tried four complex construction disputes to final judgment or award - including the defense of more than \$100 Million in contractor claims following a termination of a hospital design build contractor (20 days of testimony); defense of more than \$10 Million in a contractor's delay, disputed changes and lost productivity claims on a reservoir project (32 days of testimony); and smaller business matters. More than 60 "in court" days of witness examination; processing more than one million separate documents; and taking and defending more than 100 depositions for these trials alone. Our CFG attorneys add another 100 "in court" days of complex construction litigation expertise from their trial experience prior to joining Meyers Nave, which included complex construction cases involving power plants, wastewater treatment plants, water conveyances including tunnels and related power facilities, libraries and detention facilities.

CFG works in close coordination with in-house counsel, providing high quality legal services with attention to cost controls, cost-effectiveness and results. CFG understands every case as a continuing value proposition, with attention to cost/benefit for each legal dollar, proactively managing and controlling the entire dispute process – claims preparation, negotiations, document retrieval systems and discovery, disclosure and managing experts, and conducting trials.

LITIGATION AND MEDIATION PRACTICE

CFG settles cases on their merits, often following dispositive motions. Examples include a 2017 summary judgment for an owner defending an eight-figure contractor claim on a state highway project and a 2015 dismissal by a contractor in the face of a summary judgment on a seven-figure contractor claim on a college facility. CFG has defended eight-figure claims through discovery that then settled at the amount of the pre-litigation settlement offer; recovered seven-figure settlements in mediation; and counseled clients through default terminations, litigation and settlements of claims exceeding \$100 million.

PROJECT COUNSELING

CFG attorneys devote substantial time to project oversight and pre-litigation counseling on troubled projects, procurement, and bidding disputes. CFG's focus is consistent: understand the client's objectives; recommend pragmatic solutions; and move the project forward.

Every construction project is different and every construction dispute involves unique facts, technology, processes and contracts. CFG will review the drawings, understand the schedule, walk the project, meet staff in the trailers, and study the job photos. CFG evaluates claims on projects as varied as process facilities, hospitals, heavy civil projects, and government office buildings.

CFG provides realistic assessments of entitlement, damages, litigation costs, litigation risks and uncertainties, time required and potential outcomes. Whether CFG is counseling on settlement, reserving rights or preserving defenses, the immediate focus remains the client's focus—completing the project, maintaining the

Construction & Facilities Services

- Pre-project planning
- Procurement
- Bid preparation and protests
- Subcontractor substitutions
- Alternative delivery methods
- Project closeout
- Dispute resolution
- Litigation and appeals
- Competitive bidding
- Payment disputes
- Prevailing wage rules
- Green building and energy standards
- Local hiring preferences
- Specification preparation and review
- Surety bonds
- Indemnity claims
- Validation actions
- Standard form agreements
- Front-end specifications
- FTA regulations
- OSHPD projects
- Stark law
- California Public Contract Code
- Davis-Bacon Act
- California Compliance Monitoring Unit procedures

revenue stream, and understanding the cost/benefit tradeoffs. Just as costs and schedules drive construction projects, cost and timely resolution drives construction disputes. Whether the answer is face-to-face negotiation, facilitated negotiation, mediation, mini-trials, referees or arbitrations, CFG evaluates each case on its facts, and recommends cost-effective solutions.

STRUCTURING PROJECTS AND CONTRACTS

CFG works with clients to plan, structure and draft baseline construction contract documents for design-bid-build, design-build and construction management at risk; equipment procurement; and design and consulting contracts. CFG attorneys advise on contract negotiation and drafting, project oversight and pre-litigation counseling. CFG understands the use of construction contracts on construction projects and how the contracts work in dispute resolution. Simple language, express risk allocations and straightforward concepts work.

There is no “one size fits all” when it comes to contracts. While CFG has forms of contracts we recommend, we have deep experience with the various standard industry and government forms – including the contracts of the American Institute of Architects (AIA), Consensus DOCS, the Engineers Joint Contracts Documents Committee (EJCDC) and the Construction Management Association of America (CMAA).

CFG METHODS

Whether planning projects, counseling on claims resolution, or litigating a claim, we work towards the client’s business objectives. CFG lawyers do not work in silos; we work collaboratively. We have a unified commitment to high quality work and meeting the client’s expectations. We share our clients’ sense of urgency to find the best solutions. We provide legal solutions that make business sense.

REPRESENTATIVE MATTERS

2015 – Hospital Default Termination

After the default termination of a design build contractor on a multi-phase \$360 million hospital construction project, the assertion of more than \$100 million in contractor claims, and commencement of litigation by the project owner, the matter was settled, avoiding years of construction delay and litigation. The project is now completed.

2016 – College Building

CFG represented a construction management firm in the successful defense of claims by a contractor on a college facility, securing a dismissal with prejudice after filing a summary judgment based on the contractor’s deposition testimony. When the contractor then filed new, assigned claims against the construction management firm, the matter settled for less than 10% of the remaining co-defendant’s settlement amount.

2017 – State Highway (partial summary judgment)

After construction delays and more than \$10 million of change orders, the contractor on a project to rebuild a state highway filed suit seeking more than \$14 million in disputed changes, delays and measured mile lost productivity claims. CFG secured a summary judgment on the contractor’s affirmative claims for failure to comply with contractual administrative dispute procedures. The matter thereafter settled in judicial settlement conference under CCP §664 with the project owner retaining the contract retention and the contractor receiving zero on its affirmative claims.

2016 – Reservoir Construction Delay and Lost Productivity Dispute (32 trial days)

CFG defended a public owner of a reservoir on claims for delay, differing site conditions, extended overhead and lost productivity damages. The case involved more than 30 depositions and 32 days of hearing testimony from more than 20 witnesses. Although the initial award granted the contractor approximately 25% of the amounts claimed, the superior court declined to confirm.