

TRIAL AND LITIGATION
ARBITRATION AND MEDIATION
PROJECT COUNSELING
STRUCTURING 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.

DISPUTE RESOLUTION

CFG tries construction cases. In its first six years, CFG tried five complex construction disputes to final judgment or award, ranging from the defense of more than \$130 million in contractor claims following a termination of a hospital design-build contractor (20 days of testimony) to the 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).

We have conducted more than 80 “in court” days of witness examination, processed more than one million separate documents, and taken and defended more than 130 depositions for these five major trials alone. CFG attorneys add another 100 “in court” days of complex construction litigation expertise from trial experience prior to joining Meyers Nave.

CFG also has experience settling construction claims throughout the litigation and arbitration process, often following dispositive motions. Examples include a summary judgment for an owner defending an eight-figure contractor claim on a state highway project and a dismissal by a contractor in the face of a summary judgment on a seven-figure contractor claim on a college facility project. 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.

Our team has handled complex construction cases involving highways, bridges, power plants, wastewater treatment plants, water conveyances including tunnels, university buildings, hospitals and detention facilities.

PROJECT COUNSELING

CFG attorneys assist with 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, infrastructure projects and government 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 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.

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

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 also 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 APPROACH

CFG works in close coordination with in-house counsel, providing high quality legal services with attention to cost management, cost effectiveness and results. CFG handles 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.

Whether planning projects, counseling on claims resolution, or litigating a claim, we work toward 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

Hospital Project

CFG represented a hospital owner in disputes following the default termination of a design-build contractor on a \$300 million hospital construction project. The case required more than 50 depositions and 20 days of testimony from more than 30 witnesses. The final award granted the contractor zero on \$130 million in lost profit and quantum meruit.

Wastewater Treatment Plant

CFG represented the public owner of a wastewater treatment plant in a case involving the negligent design and engineering of a replacement tertiary filtration treatment system, which resulted in construction delays, poor plant performance, plant closures and lost revenues. CFG obtained a \$2.25 million jury verdict for the client.

Bridge Dispute

CFG represented a public owner in a bridge construction project by navigating the owner through the general contractor’s default and termination for cause at the midpoint of construction. After three years of litigation, CFG defended against all claims for a total recovery of approximately 98% of the original \$1.44 million construction bid amount.

Reservoir Construction

CFG represented the public owner of a reservoir in defense of \$14 million in claims for delay, differing site conditions, extended overhead and lost productivity damages. The case involved more than 30 depositions and 32 days of testimony from more than 20 witnesses. The initial award granted the contractor approximately 25% of the amounts claimed, however the Superior Court declined to confirm. The matter was remanded for further findings on the project owner’s objections regarding pre-litigation claim requirements and the California Contractor’s License Law. CFG won a second and final ruling denying the contractor’s theories of substantial compliance for a full defense on contractor claims.