



Eric J. Firstman
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Practice Group
Construction and Facilities
Public Contracts

California Bar Number
111534

Education
University of California, Hastings College of
the Law, JD, 1983

University of California at Los Angeles, BA,
Political Science, 1980

Practicing Since: 1984

Eric Firstman is Chair of the Construction and Facilities Practice and the Public Contracts Practice. He focuses his practice on construction litigation, construction project planning, procurement of professional services and contractors, regulatory compliance and facilities plans. Eric also advises clients on public works contracting matters, including competitive bidding requirements, bid protests, contractor prequalification, solicitation documents, subcontractor issues, and claims resolution.

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.

Trial Practice – trial of complex construction disputes to final judgment in state and federal court, jury and court trials, and arbitrations involving commercial facilities, detention facilities, libraries, irrigation and power facilities, college bond programs and wastewater treatment plants.

Special Counsel for Procurement, Negotiation and Contracting on Mega Projects – \$3 billion hospital construction and renovation program, covering multiple sites and delivery methods; \$1.5 billion airport and seaport expansion covering multiple contracts and delivery methods; \$2.4 billion airport expansion covering over 40 contracts.

Construction Law Counsel to Capital Improvement Programs, Bidding, Contracting and Litigation – for water, sanitation, port and hospital districts covering multiple projects exceeding \$300 million; for nine school districts and community college districts undertaking large bond funded construction programs exceeding \$1.5 billion combined value and over 50 separate projects; for the capital improvement programs of over 10 cities and counties on construction projects exceeding \$400 million value; for HUD and for housing authorities on HUD- and USDA-funded programs.

Professional Affiliations

- Member, The State Bar of California
- Charter Fellow and Advisory Board Member, Construction Lawyers Society of America
- Member, Associated General Contractors of California
- Member, Forum Committee on the Construction Industry
- Fellow, Litigation Counsel of America

Honors and Awards

- Northern California Super Lawyers list: Construction Litigation and Government Contracts, *Super Lawyers Magazine*, 2007-2023
- “Super Lawyer: Corporate Counsel list,” *Super Lawyers Magazine*, 2008-2013
- Litigation Counsel of America, Society of Construction Lawyers, 2012-2023
- AV Preeminent rating, Martindale-Hubbell (“Legal Leaders: Construction Law,” *The American Lawyer* and *Corporate Counsel*)

Presentations and Publications

- Presenter, “Public Contracting Requirements and Competitive Bidding in California,” Meyers Nave/Lorman Education Services seminars throughout California, 2017-2020
- Author, “Public Contract Code Section 9204: New Challenges for Drafting and Administering Public Works Contracts,” Meyers Nave Client Alert, 2017
- Author, “California Supreme Court Decision Provides Guidance for Identifying and Avoiding Section 1090 Conflicts in Public Contracting and Procurement,” Meyers Nave Client Alert, 2017
- Presenter, “SB 465: New Reporting Requirements and Working Group Studies,” County Counsels’ Association Fall Public Works and Contracts Study Section Conference, 2017
- Presenter, “Evolving Standards for Expert Testimony and Hearsay: Proving Damages and Lost Profits,” Construction Lawyers Society of America Conference, 2017
- Presenter, “Planning for, and Defending Against, Public Works’ Contractor Claims in California,” Lorman Education Services webinar, 2017
- Author, “SB 465 Has Major Impact on Construction Industry,” *California Constructor*, May/June 2017
- Presenter, “Planning for, and Defending Against, Public Works’ Contractor Claims,” Lorman Education Services webinar, 2016

- Presenter, “Current Issues On Bidding, Contracting and Claims on California Public Works Contracts,” Lorman Education Services webinar, 2015
- Presenter, “Public Law: Handling Contractor Claims on Public Works Construction Projects,” The State Bar of California 88th Annual Meeting, 2015
- Presenter, “Public Contract Code Requirements and Competitive Bidding,” Lorman Education Services Seminar, 2013
- Presenter, School of Trial Advocacy, Stanford Law School, 2007-2013
- Presenter, “Public Contract Code Requirements and Competitive Bidding in California,” Lorman Educational Services, 2002-2013
- Presenter, “The Emerging Trend of CM-At Risk on Public Procurements,” Construction Superconference, 2009
- Presenter, “Construction Contracting for Public Entities,” Lorman Educational Services, 1993-2004
- Presenter, “Title 24 Challenges for Hospital Construction/Renovation,” California State Bar Association, 2006
- Author, “Real Property Law and Debtor-Creditor Relations in California,” *Standard Forms of California Jury Instructions on Construction Contracts*, Matthew Bender Co.
- Author, “Supreme Court Bars Civil Rights Claims Arising from Withheld Payments on Public Works Contracts,” *The Construction Lawyer*, Vol. 21, No. 4, Fall, 2001

Representative Experience

Trials and Arbitrations

- *Santa Clara Valley Transportation Agency* – Serve as litigation counsel for the SCVTA in defense of claims by the prime contractor for the BART Extension (Fremont to Santa Clara, Phase I, Milpitas and Berryessa Stations), a design-build contract competitively procured and awarded. (2019-current)
- *Santa Clara Water District* – Served as lead litigation counsel for the Santa Clara Water District in litigation arising from the design and construction of the Rinconada Water Treatment Plant. The litigation before the Disputes Review Board overseeing the plant project involved alleged owner-caused delay claims (zero days awarded on 1000 days claimed under four separate time impact analysis claims). Also serving as lead litigation counsel in design negligence claim litigation. (2018-current)
- *City of Hayward State Route 238 Highway* – After construction delays and more than \$10 million of change orders, the contractor on a \$60 million construction contract to rebuild a state highway filed suit seeking more than \$14 million in disputed changes, delays and measured mile lost productivity claims. After three years of litigation and shortly before expert disclosures, 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 a mandatory judicial settlement conference under CCP §664 with the project owner retaining the contract retention and the contractor receiving zero on its affirmative claims. (2016-2018)

- *College Building* – 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 after trial continuance for less than 10% of the remaining co-defendant’s settlement amount, amounting to approximately 98% of the demand. (2013-2018)
- *City of Santa Barbara Wastewater Treatment Plant* – 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. Total recovery by settlements in excess of \$2.5 million. (2018-2019)
- *State of California Department of Water Resources Reservoir Construction* – Represented the public owner of a reservoir in defense of \$14 million in claims for delay, differing site conditions, extended overhead and lost productivity (Ibbs and Measured Mile Methods) damages. The case involved more than 30 depositions and 32 days of hearing testimony in State Contract Act Arbitration from more than 20 witnesses. The initial award granted the contractor approximately 25% of the amounts claimed; however CFG tried certain defenses to the Superior Court by petition to vacate, resulting in a tentative ruling granting a full defense to the State. 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, and then further review by the Superior Court after remand. CFG won a second and final ruling denying the contractor’s theories of substantial compliance for a full defense on contractor claims. Appellate proceedings and disgorgement litigation continues. (2014-current)
- *Hospital Corporation* – Represented a hospital owner in disputes following a default termination of a design-build contractor on a \$290 million, multi-phase hospital construction project. The case required more than 50 depositions and 20 full days of hearing testimony from more than 40 witnesses. The final award denied \$130 million in contractor claims for lost profits and quantum meruit. (2014-2017)
- *Los Angeles International Airport* – Served as lead litigation counsel for the Los Angeles International Airport on diverse matters, and advised on transactional issues, including: close out negotiations with Walsh Austin Joint Venture on the new Bradley West Core and Gates Projects, procured under a CM-at-Risk contract; claims, negotiations, litigation, discovery and settlement of \$23 million in claims arising from delays and alleged differing site conditions in the construction of Taxilane S by Flatiron Construction; construction claims arising from disputes over a boring contract; litigation with designer and contractor over Runway 25L concrete deterioration, including settlement with the design firm; and disputes over prevailing wage compliance enforcement settled in chambers the first day of trial.

- *City of Berkeley Public Library* – After prevailing at the trial level twice only to be reversed by the court of appeal twice, the matter resolved in 2016, prior to the third trial, with the contractor receiving zero on its affirmative claims (exceeding \$10 million) and zero on its claims to recover its retention (over \$2 million). The result was secured by enforcing the contract claim procedures. The matter resulted in two published opinions: *Armtz Builders v. City of Berkeley* (2008) 166 Cal.App.4th 276 and *Westamerica Bank v. City of Berkeley* (2011) 201 Cal. App. 4th 598. (2016)
- *Hospital Arbitration* – Served as lead counsel in a complex arbitration on behalf of the hospital owner culminating in a 20-day hearing (over 30 witnesses testified, including 20 engineering, design, schedule and damage experts) before Judge Carl West, in his first assignment after retiring from the Los Angeles Superior Court’s Complex Litigation Department, Central Civil West. The arbitration concerned claims arising from the default termination of a design-build contractor of a \$300 million hospital project at approximately 30% completion. The final award granted the contractor zero on \$130 million in lost profit and quantum meruit claims. (2014)

Settlements

- *Bridge Dispute* – 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, recovering over \$450,000 in a settlement with the performance bond surety for the completion of the project by a replacement contractor, and then defending against over \$2.0 million in various claims asserted against the owner. After three years of litigation, defended against all claims and affirmatively recovered an additional \$935,000 for the owner in settlement for a total recovery of over \$1.38 million, approximately 98% of the original \$1.44 million construction bid amount. The matter included delay and differing site conditions claims. (2015-2018)
- *City College of San Francisco Child Development Center* – Represented City College of San Francisco in affirmative claims regarding serious construction defects that resulted in the closure of a new Child Development Center, rendering the facility a total loss. Obtained recovery of \$4.8 million (98% of demand) after expert discovery through settlement reached at judicial settlement conference. (2013-2018) Representing the College in ongoing affirmative claims regarding construction defects at the Chinatown campus. (2016-current)

Counseling, Contracting and Transactions Counsel

- *County of San Mateo Capital Improvement Program* – Provided template documents for general contracts, design-build contracts, and construction-manager-at-risk contracts; reviewed and commented on specific design-build, construction-manager-at-risk, and OSHPD renovation contracts for the capital improvement program; and advised on many related issues, such as Labor Code Compliance and construction claims. The \$631 million, five-year program includes multiple improvements to hospital facilities, jail facilities, and a new five-story office

building for 600 county employees with an adjoining 1,022-spot parking structure. (2016-2019)

- *County of Santa Clara Construction Contract Templates* – After serving as litigation counsel in defense of construction claims and litigation arising from the Santa Clara Medical Center (which was procured under design-build authority), revised and revamped the County’s standard form construction contracts, including new templates for design-bid-build, CM-at-risk, and design-build. (2017-2018)
- *Washington Hospital Healthcare District* – Contracting, contract administration, construction closeout and dispute resolution regarding a \$300+ million acute care facility completed in 2018. Phase 1 projects included a Central Utility Plant, Center for Joint Replacement, utility infrastructure, and miscellaneous contracts preliminary to construction of main hospital. Phase 2 projects included the 224,800 square-foot acute care facility and parking structure. Services included project planning and documentation, advance contracting (base isolation), contract development, contractor procurement planning and competitive selection, contract documents (base isolation procurement, design contracts, construction contracts, CM-at-risk contracts), contractor replacements, and design professional procurement and replacements. (2015-2018)
- *Hospital Construction Program* – Served as lead transactional counsel on 11 new hospital construction projects, with a combined value in excess of \$2 billion. The projects used design-bid-build, CM-at-risk, design-build, and target cost procurement methodologies. (2010-2014)
- *Oakland International Airport and Seaport Expansion* – Served as lead transactional counsel on the \$1.5 billion Vision 2000 Program, which included a new concourse, new gates, new baggage claim areas, and renovations to airport roadways, curbsides and parking lots. The Port procured the new terminal project using a Master Builder approach, which included design-build procurements. Following that procurement, prepared reusable templates for design-build procurements. (2003-2007)
- *San Francisco International Airport Expansion* – Served as lead transactional counsel on the \$2.4 billion San Francisco International Airport expansion, which included design and construction of the 2.5 million-square-foot international terminal, the AirTrain system to transfer passengers among the terminals, two new parking garages and improvements to airport access from Highway 101 and BART. The Airport procured the AirTrain System using a design-build procurement contract. (1998-2003)