

Construction Law

“As construction lawyers, we view our clients’ projects through both a business lens and a legal lens. Our objective is to keenly identify risks within a contract with the presumption that the project will proceed. Unless the risks outweigh the benefits, we aim to keep the deal alive. If litigation is required, we are prepared to defend or prosecute claims with the resolve that Pashman Stein is known for.”

Pashman Stein Walder Hayden’s construction law practice provides high-quality legal services to all participants in the commercial and residential construction industries including owners, contractors, architects, engineers, designers, surveyors, construction managers, and other construction professionals in domestic and international companies of all sizes.

Clients turn to our attorneys for counsel on day to day matters in all aspects of the construction business and phases of projects for our keen business perspective and practical, cost-conscious approach to resolving problems. Our objective in drafting, reviewing, and negotiating construction contracts is to advise clients against risks while maintaining a project’s viability.

Our attorneys have experience representing clients in complex commercial and residential construction projects, industrial and manufacturing facilities projects, and government projects. We counsel clients on major industrial ground-up installations and serve as domestic counsel for global businesses installing or renovating manufacturing facilities in the U.S., in industries including pharmaceutical, food and beverage, hospitality, solar energy, and general retail/commercial. We have industrial-level experience with engineering procurement construction (EPC) and engineering procurement construction management (EPCM) and have advised on manufacturing construction and equipment installation.

In addition, we serve as outside counsel to contractors, auditing their operational contracts and ensuring that they have the right tools in place to successfully conduct business. These contracts include agreements with employees, suppliers, vendors, and developers, and include review of standard AIA contracts to ensure protection.

Construction projects, both private and public, often result in disputes. Litigation is not necessarily the first step we take; if litigation is inevitable, our attorneys will use sound business judgment and resolve the matter vigorously in mediation, arbitration, or in court. We are experienced in both defending and prosecuting claims in state and federal courts for claims that arise out of construction projects such as payment disputes, lien claims, insurance coverage, defective design or construction, delay damages, cost overruns and change orders, extended overhead, cost escalation, lost profit and wrongful termination. We also represent clients in arbitration matters before private panels such as the American Arbitration Association. In addition, one of the members of our construction law team is a recognized AAA Construction Arbitrator with substantial experience mediating and arbitrating a variety of construction disputes.

Our services include:

- Contract formation and negotiation
- Surety bond claims and litigation
- Construction claims and litigation
- Mechanics' and construction lien claims
- Government and public contracts
- Private and public procurement and bidding
- Construction defect and warranty claims
- Insurance coverage issues and litigation
- Engineering, Procurement and Construction (EPC)
- GMP contracts
- Claims analysis
- Professional liability (errors and omissions)
- Manufacturing construction projects
- Pharmaceutical construction projects
- Equipment and machinery installation
- Claims related to construction defects, defective design, delay damages, cost overruns, and change orders, extended overhead, cost escalation, lost profit and wrongful termination, and dispute resolution, including arbitration and mediation.

Representative Matters

Our firm is proud of the results it has achieved for clients, some of which are noted here. Of course, each legal matter is unique on many levels, and past successes are not a guarantee of results in any other pending or future matters.

- Represented a surveyor in a multi-party construction litigation dispute and through extensive negotiations secured an early pre-discovery dismissal of the client.
- Represented a public housing authority in a construction litigation matter brought against it by a contractor seeking millions of dollars for a terminated contract for the construction of low income housing units before any units were constructed. After a three-week long trial, the jury returned a favorable jury verdict for the housing authority.
- Represents an environmental contracting firm in connection with payment claims against a NYC public agency.

- Represented a commercial business owner in a complex construction arbitration against its general contractor, construction manager and architect for breach of contract and defective construction. After a multi-week arbitration hearing, the arbitrator returned an award in favor of the business owner.
- Represented a New York-based developer and financier of solar energy projects in disputes in both the U.S. District Court for the District of New Jersey and the Superior Court of New Jersey arising from three municipal project financings for the design and construction of dozens of solar power electric generating facilities on government-owned properties in Morris, Somerset, and Sussex counties. Successfully obtained a judgment discharging more than \$40 million in Municipal Mechanics' Liens levied against public project funds and then secured an affirmance of that decision following an expedited appeal. Defeated multiple attempts to freeze tens of millions of dollars in proceeds from solar renewable energy certificates, section 1603 grants from the U.S. Department of the Treasury, and revenue derived from the sale of solar electricity. Negotiated extremely complex global settlement agreements that resolved disputes with the engineering, procurement, and construction contractor, county improvement authorities, and county governments.
- Represented a New York-based developer and financier of solar energy projects in a litigation venued in the Superior Court of New Jersey, Law Division, Bergen County relating to the development and construction of solar facilities on government-owned property in Little Ferry, New Jersey and Secaucus, New Jersey. Obtained summary judgment on the bulk of the plaintiff's damages claims and negotiated a favorable settlement for remaining claims prior to trial.
- Obtained vacatur of preliminary injunction granted in favor of condominium association against unit owner for unauthorized renovations to unit and alleged structural damage to condominium building.
- Successfully settled construction defect case for installer of high-tech floor systems in newly constructed state-of-the-art surgical center in New York City after developing evidence of defective condition of floor covering and theory to overcome supplier's limited warranty.
- Representation of a New Jersey Country Club in connection with a \$10,700,00 construction loan.
- Represented plaintiffs in construction case against design and building professionals seeking \$5 million in damages for structural failure.

Suit was filed against the architect, engineer, construction manager that hired the various subcontractors, concrete company and mason for negligent design and construction of a 90,000 square foot suspended concrete slab that failed after a few years of use. Prior to trial, we obtained a multimillion dollar settlement from a majority of the defendants. As an interested party, we successfully opposed the declaratory judgment action by the masonry contractor in the underlying case seeking to disclaim coverage. Case required an in-depth analysis of the "Your Work" exclusions and doctrine of "reasonable expectations" with regard to claims for property and loss of use damages under standard CGL policies. We obtained summary judgment as the court held that plaintiff's damages were covered under the masonry contractor's policy. The trial court and Appellate Division rejected plaintiff's

application for fees under court rule because plaintiff did not succeed in obtaining verdict against defendant contractor in underlying matter. In a case of first impression, the New Jersey Supreme Court reversed and awarded our client substantial fees as a successful claimant in the coverage action.

- Represents owners, general contractors, prime subcontractors, and suppliers in construction defect matters in connection with commercial projects and residential condominium projects.
- Represented New Jersey Turnpike in construction litigation involving the expansion of the Driscoll Bridge arising out of errors in original steel design and resultant increased costs to the Turnpike. Favorably resolved against contractor and project insurer resulting in several million dollars being paid to the Turnpike.
- Negotiated a favorable settlement on behalf of an international mineral processing company against a manufacturer and fabricator on projects in several states.
- Represented a premier commercial construction company as general outside counsel on many contract and litigation matters.
- Represents architectural firm as general outside counsel.
- Represents engineering firm in multi-party construction defect matter.
- Lead industrial, construction and equipment outside counsel for major Italian chocolate and confectionery products manufacturer.