

Construction

Construction can be a difficult business. Margins can be tight, supply chain disruptions and labor shortages abound, risks are high and mistakes are costly. To survive in the competitive marketplace, companies in the construction industry require experienced legal guidance.

That's why companies turn to the experienced and nationally ranked construction law attorneys at Stinson, with one of the largest dedicated practices of its kind. From our bases throughout the country, we serve clients in construction-related matters of all types across the United States. We are known for providing practical and timely assistance to our clients in an industry where literally time is money.

Our attorneys routinely advise clients of all sizes, including owners, lenders, engineers, architects, developers, contractors, designers, insurers and sureties. We also develop programs to assist construction companies in satisfying their obligation to comply with state and federal laws, and provide training to ensure that a company is complying with its own contract terms and best practices. When disputes arise, our attorneys work closely with clients to formulate strategies to resolve matters in a creative and cost-effective manner. Clients value our experience with mediation, arbitration, litigation and negotiation in highly specialized and complex cases.

In an ever-changing and highly regulated market, clients count on Stinson's construction attorneys to stay abreast of industry developments, emerging trends and current legislation. We participate in numerous local, regional and national industry-related associations, and frequently write and speak on current issues pertaining to our clients.

LITIGATION / ARBITRATION / CLAIM EXPERIENCE

- Represented a specialty contractor on a \$100 million highly specialized baggage handling system subcontract as part of Miami-Dade County's \$3 billion North Terminal construction project at the Miami International Airport. Our client suffered severe project delays, disruptions and compressed work and provided substantial extra work for the project. In response to our client's request for additional compensation due to those severe impacts, the owner threatened false claim violations and possible termination of further work. We obtained an early settlement and recovered more than \$10 million and a release from the owner for any alleged false claim issues or other issues—all without formal litigation and while preserving important business relationships with the owner.

Construction

- Represented the owner and operator of a cogeneration facility that supplies electricity and steam to a chemical plant. A series of lightning strikes caused the cogeneration facility to shut down, resulting in a temporary interruption of electricity and steam to the chemical plant. The owner alleged that the chemical plant sustained damage to its equipment as a result of the temporary interruption of electricity and steam. After investigating the claim and conducting limited discovery, we obtained dismissal of the owner's lost profit claims and subsequently settled the case favorably in mediation.
- Obtained a successful result for our client in a \$10 million insurance coverage dispute brought by its excess insurer, stemming from an explosion at the Hawthorne Generation Station in Kansas City. The U.S. Court of Appeals for the Eighth Circuit affirmed the trial court ruling that the insured owed no part of the \$10 million to the insurer.
- Represented industrial coatings contractor in the preparation and negotiation of a request for equitable adjustment to the U.S. Army Corps of Engineers seeking payment for delay damages and costs overruns resulting from differing site conditions and contract changes on a significant canal wall painting project.
- Represented 2nd tier subcontractor in connection with request for equitable adjustment in compensation arising from delays and inefficiencies arising from alleged poor project management by general contractor. Claims submitted under the Miller Act and favorably resolved in settlement.
- Represented owner in connection claims for defectively designed and installed new ammonia refrigeration system for expanded cold storage plant. Successfully resolved in several mediations with owner, design-builder and its insurance companies.
- Defended a general contractor in a lawsuits relating to the construction of wind farms and defended against mechanic's lien claimants regarding claims for unpaid work and disputes over scope of work. Claims were favorably resolved in settlement.
- Successfully defended mechanical subcontractor in response to claims of improper design and installation of cooling and heating units in downtown multi-story condominium complex. Received 100% value on mechanics lien.
- Represented general contractor in defense of claims of improper installation of 30-foot high retaining wall around a multi-story office building and parking lot.
- Represented roofing contractor in connection with two successful bid protests concerning roofing projects for county water department.
- Represented demolition contractor in the preparation and negotiation of a request for equitable adjustment [termination settlement proposal] to the U.S. Army seeking payment for delay damages stemming from discovery of high levels of asbestos that caused the project to be shut down for months and ultimately terminated for convenience.
- Assisted woman-owned construction contractor in connection with mandatory disclosure relating to small business size status and affiliation rules on Bureau of Interior and U.S. Army Corps of Engineers contracts.

Construction

- Advise clients through all kinds of project delivery systems—from design-bid-build and construction management to design-build and Public-Private Partnerships.
- Develop programs to assist construction companies in satisfying their obligation to comply with federal and state laws, and we provide training to assure that the company is complying with its own contract terms and best practices. Our attorneys have also drafted job descriptions, policies, manuals and training programs for Chief Compliance Officers.
- Work with clients on projects involving highways, bridges, refineries, industrial plants, schools, hospitals, high-rise buildings, power plants, facilities for Native American tribal entities, and energy efficiency and performance contracts.
- Represented an architectural firm in the landmark Minnesota Supreme Court case of *Helmberger v. Johnson Controls*, successfully overturning a lower court ruling that had required architects and engineers performing work for a school district to allow public access to their files under the Minnesota Government Data Practices Act.
- Conducted a construction cost audit on behalf of an owner in a \$12 million residential project. After a two-week arbitration hearing, the arbitrator ruled in favor of our client on every issue in the case and required the contractor to repay substantial overbillings that the owner had paid.
- Represent commercial owners in connection with drafting and negotiations of Engineering, Procurement and Construction contracts for industrial projects.
- Provided guidance to specialized supplier concerning handling of increased costs arising from China imposed tariffs on materials.
- Advised general contractors and subcontractors regarding the recovery of escalating material costs not anticipated at the time of the bid.
- Advised owners, general contractors, and subcontractors regarding recovery of additional time and costs incurred arising from COVID-19 pandemic.
- Represented municipality concerning claims for defective flooring work in community recreation hall.
- Defended a subcontractor in federal court against claims of defective work and schedule delays. After a three-week trial, the jury returned a verdict in favor of our client and against the general contractor on all claims. The court also awarded our client attorney's fees and costs.
- Represented the owner of a bio-diesel facility in a dispute over additional work claims. After a one-week arbitration hearing, the arbitrator found in favor of our client and against the general contractor on all claims.
- Served as counsel to the power division of a large architectural/engineering firm in various litigation matters arising from international power generation projects, including coal-fired, gas-fired and hydroelectric plants.

Construction

- Represented a subcontractor pursuing claims for delay, disruption, inefficiencies, accelerated work and extra work on a \$120 million expansion project for San Antonio's convention center. We ultimately negotiated a \$3 million payment from the owner without further need for litigation and helped preserve a profitable service contract and a good relationship between our client and the owner.
- Represented a subcontractor pursuing a construction impact claim of \$8.85 million on a \$1 billion microchip fabrication facility project in Colorado. The project was built on a super-fast-track basis and our client suffered severe impacts to its programming and installation work for the facility monitoring system. We achieved a favorable settlement for our client.
- Defended a subcontractor against claims arising from a 42-story commercial office complex project in Jersey City, New Jersey. Our client's lower-tier electrical sub-subcontractor and its supplier initiated a \$4 million claim against our client for extra work costs and other damages regarding fire alarm system work. We resolved the entire case successfully after settling with the sub-subcontractor, which severely undercut the supplier's ability to maintain the lawsuit without its co-party.
- Also representing a national restoration client, we recently defeated a flooring subcontractor's mechanic's lien claim for unpaid remediation work, by pressing for voluntary early exchange of documents and by crafting legal arguments that drove the damage claim down to a nominal amount and led to a successful, early settlement that was well within the client budget.
- Represented one of the largest restoration companies in the U.S. on matters including defending against claims of poor workmanship and defective work, litigating issues regarding the scope of work to be performed, collection work, and defending against employment claims. Collection work included filing mechanic's liens for completed work and pursuing claims against a property owner for misuse of insurance proceeds intended to pay for restoration work.
- Persuading the Arizona Supreme Court to reverse prior unfavorable precedent, we obtained summary judgment for the client regarding the anti-deficiency statute's applicability to construction loans. The published opinion is *BMO Harris Bank, N.A. v. Wildwood Creek Ranch, LLC*, 236 Ariz. 363, 340 P.3d 1071 (2015).
- Breaking new legal ground, we won a case that clarified subrogation and other legal doctrines for discharging liens, options, and other encumbrances. The published appellate opinion is *Brimet II LLC v. Destiny Homes Marketing*, 231 Ariz. 457.
- Employing a first-of-its-kind analysis, we were able to place a construction issue on a referendum ballot despite admitted defects in the petition. The published appellate decision is *Forszt v. Stop Oro Valley Outrageous Giveaways*, 212 Ariz. 263.
- Successfully litigating the expansive scope of arbitrators' powers, we helped the client avoid court in a commercial construction dispute. The published appellate decision is *Sun Valley Ranch 308 v. Robson*, 231 Ariz. 287.

Construction

- Suing a structural engineer for defective designs affecting multiple homes in a development, we obtained a judgment for the entire claim, including an award of all attorneys' fees and costs and monetary sanctions against the design engineer.
- Defended owners against wrongful turn-over demands in bankruptcy proceedings.
- Our attorneys represented a senior executive at a national architectural, engineering and environmental design-build company. We provided advice regarding company and ownership governance, entity formation, specific state laws regarding professionals and professional service companies and agreement re-structuring and negotiation. Our advice assisted the executive and the company in developing its scope of services and geographical footprint in numerous states throughout the United States.
- Obtained a summary decision defeating a contractor's claim in arbitration for amounts claimed for unauthorized work injurious to the property; successfully sued to unwind toxic contractor-investor joint venture and in various matters (obviously wearing different hats!) recovered warranty damages, defeated warranty damages, prevented recovery for undocumented change orders, defeated lien claims, enforced lien claims, prevented foreclosure and recovered deficiencies from guarantors.

TRANSACTIONAL AND CORPORATE EXPERIENCE

- Negotiated contracts for the original construction of the Mall of America and represented the general contractor in connection with numerous expansion and tenant build-out projects, including disputes over subcontractor defaults, personal injury claims and alleged construction defects.
- Represented a large commercial owner in the drafting, development and negotiations of template master agreements for design and construction manager services along with drafting and negotiation of service orders relating to the design and construction of data centers throughout the county.
- Negotiated and drafted numerous, Owner-Architect contracts for multi-million dollar projects.
- Negotiated and drafted numerous Design-Build contracts on complex commercial projects in industrial, commercial, retail and other settings.
- Negotiated and drafted Architect-subconsultant contracts for use by design firms with all engineers, architects and other sub-consultants.
- Drafted template subcontract forms for specialty subcontractor to use with lower tier subcontractors.
- Authored CLE books for Missouri Bar concerning topics of: mechanic's liens and private and public prompt payment acts.
- Represented owner in connection with drafting and negotiations of data center project in the Netherlands.
- Handle day-to-day issues for owners, general contractors and subcontractors, such as insurance coverage disputes, bid mistakes/bid protests, contract negotiations, prevailing wage issues and

Construction

satisfaction of applicable MBE/WBE requirements.

- Representation of physicians, groups, hospitals, and health care facilities in development of physician compensation plans, individual employment agreements, equity buy-ins and buy-outs, construction projects, mergers and practice acquisitions, with attention to compliance with the Stark Law and Anti-Kickback Statutes.
- Representation of developers, investors and operators in organizing, building and operating Ambulatory Surgical Centers offering service lines in ENT, Gastroenterology, Oncology, Orthopedics, Pain Management, Plastic Surgery, Ophthalmology, Podiatry, Radiotherapy, and Surgery.
- Represented developer and operator of critical access hospitals operating facilities in five states, including corporate structure, financing, CON, acquisition of existing facilities, construction of new hospitals, development, operating, licensing, and recruiting of physicians.
- Organized joint ventures between not for profit hospitals and physician practice groups to provide medical oncology services, and radiation oncology services.
- Acted as outside general counsel for three different hospital groups during periods they did not have adequate in-house staff.
- Preparing, negotiating and reviewing legal documents, agreements and contracts (e.g., leases, employment agreements, UCC matters, etc.).
- Counseling on corporate organizational, employee ownership and governance issues.
- Counseling on employment issues (termination, compliance).
- Counseling on employee benefit programs and taxation.
- Counseling on copyright and trademark matters.
- Counseling on licensing and special industry regulatory matters.
- Attending various management and board meetings, as requested.
- Assistance in establishing domestic and foreign branch offices.

REGULATORY EXPERIENCE

- Represented providers in connection with IRS and Board of Healing Arts audit of medical practice after embezzlement by practice manager and physician.
- Represented principal investigators in connection with FDA audit of hospital and practice based research studies.
- Represented providers before Boards of Healing Arts and peer review committees on issues of medically unnecessary services, substance abuse, negligence, failure to document services or inadequate medical records, disruptive physician allegations, inappropriate sexual activity, mental health issues, failure to supervise, corporate practice of medicine and fee splitting with unlicensed individuals, credentialing of

Construction

foreign medical graduates.

- Represented providers defending qui tam, suspension, and exclusion proceedings involving Medicare, Medicaid, Department of Justice, Department of Defense, and Office of the Inspector General.

CONTACT: Barry L. Haith | 314.259.4563 | barry.haith@stinson.com

CONTACT: Stephen Schemenauer | 612.335.1891 | steve.schemenauer@stinson.com

TEAM

Bradley S. Anderson

Frank W. Basgall

James D. Bass

Adrianna M. Chavez

Kirk H. Doan

Benjamin D. Eastburn

Susan Warshaw Ebner

Patrick Edwards

David W. Frantze

Eric H. Galatz

Barry L. Haith

James E. Holland, Jr.

Gunnar T. Johanson

J. Vincent Keady

Jessica L. Knox

Dwight A. Larson

Timothy Laycock

Steven R. Lindemann

Bailey L. McGowan

Matthew D. Moderson

STINSON

STINSON LLP \ STINSON.COM

Construction

Keith S. Moheban

Marc A. Myrin

Lowell J. Noteboom

David G. Parry

Stephen Schemenauer

Jere D. Sellers

Aalok K. Sharma

Brian E. Sobczyk

Ryan M. Sugden

Robert H. Torgerson

Michael E. Tucci

Michael Vincent

Jonathan R. Waldron

Eric Whytsell

Christopher J. Zarda

RELATED CAPABILITIES

Bankruptcy & Creditors' Rights

Business Litigation

Business Ownership Disputes

Commercial Lending

Copyright Protection

Income Tax

Labor, Employment & Benefits

Native American Law & Tribal Governance

Private Business

STINSON

STINSON LLP \ STINSON.COM

Construction

Trademark Prosecution & Brand Management

NEWS

Matt Moderson Selected to *Ingram's* 2024 40 Under Forty

04.24.2024

Jessica Knox Selected to ABA Forum on Construction Law Diversity Fellowship

03.19.2024

Ryan Sugden Offers Guidance for Challenging Permit Fees in *Colorado Real Estate Journal*

03.14.2024

Kirk Doan Recognized as Leading Health Care Attorney by Missouri Lawyers Media

03.13.2024

URBN Opens \$60 Million Fulfillment Center in Missouri, Stinson Attorneys Serve as Legal Counsel

02.23.2024

Kansas City Business Journal Names Moderson to "20 to Know" in the Legal Industry List

02.19.2024

Stinson Associate Selected to FOCUS St. Louis Spring 2024 Cohort of Emerging Leaders

02.07.2024

Six Attorneys Elected to Partnership at Stinson in 2024

01.09.2024

Barry Haith Named to Inaugural Construction Law POWER List

12.18.2023

Best Lawyers® Recognizes Stinson in "Best Law Firms" Report

11.02.2023

Stinson Attorneys Recognized in the 17th Edition of *Benchmark Litigation*

10.05.2023

Law360 Highlights Myrin Joining the Firm in Dallas

09.29.2023

Sharma Selected to Leadership Minnesota Class of 2024

09.20.2023

STINSON

STINSON LLP \ STINSON.COM

Construction

Stinson Adds to Dallas Real Estate Bench with Arrival of Marc Myrin

09.18.2023

Law360 Highlights Larson's Return to Stinson

08.29.2023

Dwight Larson Returns to Private Practice, Joins Stinson in Minneapolis

08.22.2023

Stinson's Arnone, Edwards Selected to 40 & Under List

08.03.2023

Stinson Attorneys Selected for Inclusion on 2023 Minnesota *Super Lawyers* and Rising Stars Lists

07.17.2023

Chambers USA 2023 Legal Guide Recognizes Stinson Attorneys and Practice Groups

06.05.2023

Stinson Attorneys Selected to LCLD 2023 Fellows and Pathfinder Programs

03.06.2023

Eleven Attorneys Elected to Partnership at Stinson in 2023

01.05.2023

Super Lawyers® Recognizes 26 Stinson Attorneys in Missouri and Kansas

11.14.2022

Lindemann, Knox Author Article in ABA Forum on Construction Law's *Under Construction*

08.11.2022

Sugden Selected to Denver Leadership Foundation Program

07.22.2022

Basgall Recognized by *Wichita Business Journal* as a Young Professional in Legal

07.22.2022

MSBA Construction Law Section Elects Jessica Knox as New Council Member

07.01.2022

Schemenauer Named to *Minnesota Lawyer's* Real Estate and Construction Law "POWER 30" List

06.30.2022

STINSON

STINSON LLP \ STINSON.COM

Construction

Sugden Uses Recent Court Decisions to Show Why Good Contracts Matter in Construction Projects

06.16.2022

Susan Warshaw Ebner Selected to Serve on Procurement Round Table

06.02.2022

The 2022 *Chambers* USA Guide Recognizes Stinson Attorneys and Practice Groups

06.02.2022

Stinson Establishes Infrastructure Task Force to Support Clients

03.08.2022

Super Lawyers Recognizes 21 Stinson Attorneys in Missouri and Kansas

11.15.2021

Stinson Recognized Among the Top National Law Firms in 2022 Best Law Firms Ranking

11.05.2021

Ten Stinson Attorneys Named 2022 Lawyers of the Year by *Best Lawyers in America*

08.19.2021

Chambers USA Recognizes Stinson Attorneys and Practice Groups Nationwide

05.25.2021

Stinson Attorneys Named to 2020 Kansas & Missouri *Super Lawyers* and Rising Stars

11.16.2020

Stinson Recognized Among Top National Firms in 2021 Best Law Firms Ranking

11.05.2020

Best Lawyers Recognizes 21 Stinson Attorneys as "Ones to Watch"

08.20.2020

112 Stinson Attorneys Selected to the 2021 *Best Lawyers in America* List

08.20.2020

Nineteen Stinson Attorneys Named 2021 Lawyers of the Year by *Best Lawyers in America*

08.18.2020

Stinson Attorneys Named to *Benchmark Litigation's* 2020 40 & Under Hot List

07.21.2020

STINSON

STINSON LLP / STINSON.COM

Construction

Stinson Attorneys Named to 2020 Minnesota *Super Lawyers* and Rising Stars

07.20.2020

Steve Lindemann, Johnny Wang Publish Top 10 Action Items for Contractors in NASBP Blog

06.17.2020

Chambers USA Recognizes Stinson Attorneys and Practice Groups Nationwide

04.29.2020

Steve Schemenauer Featured in *Finance and Commerce* on COVID-19 Contracts

03.20.2020

Stinson Establishes Coronavirus Task Force to Support Clients

03.12.2020

Stinson Continues Growth of St. Louis Office with Two Business Litigation Partners

02.11.2020

EVENTS

2024 Construction Law Update

03.05.2024

2023 Construction Law Update

Stinson LLP, 02.23.2023

Fall Construction Seminar

1201 Walnut Street, Suite 2900, Kansas City, MO 64106, 11.15.2022

33rd Annual Construction Law Update

02.15.2022

Are you ready for the new federal cybersecurity and supply chain requirements?

04.21.2021

2021 Construction Law Update

01.28.2021

Construction During COVID-19 Webinar

A discussion on OSHA's guidance and enforcement, and what to do if they show up at the job site.

09.24.2020

STINSON

STINSON LLP \ STINSON.COM

Construction

2020 Construction Law Update
Stinson LLP: Minneapolis, 01.29.2020

PUBLICATIONS

The Unauthorized Use of Architect Drawings or Plans: Is it Theft?
04.18.2024

Stateside H-1B Visa Pilot Program Launch
01.08.2024

Update: HF100, the Legalization of Adult-Use Cannabis in Minnesota
07.11.2023

USCIS Proposes Significant Fee Increases for U.S. Employer Filings
01.11.2023

OSHA - What Happened in 2022 and What to Expect in 2023
01.09.2023

Check Your LED Lighting Supplies and Construction Materials or It Could Cost You
08.23.2022

Judicial Holdings Throw Vaccine Mandate Implementation into Disarray
12.01.2021

Changes to Colorado's Flood Plain Maps Stall Developments
11.11.2021

Biden Administration Announces Heat-Related Hazard Inspection Initiative, Upcoming Rulemaking
09.20.2021

Paycheck Protection Program - What Has Changed?
02.03.2021

IRS Extends Relief for Qualified Opportunity Funds
01.27.2021

New OSHA COVID-19 Construction Guidance: How Does it Impact Your Job Site?
06.10.2020

Top 10 Action Items for Contractors Reopening Their Offices
06.02.2020

STINSON

STINSON LLP \ STINSON.COM

Construction

DoD Issues Class Deviation and Guidance to Implement CARES Act Relief for DoD Contractors under Section 3610

04.14.2020

Kansas Executive Stay Home Order and Exceptions Relevant to Construction Industry

04.01.2020

Real Estate and Construction Industries are Deemed Critical Sectors by Governor Walz

04.01.2020

It's No Longer Business as Usual - Government Office Closures Due to Coronavirus

03.18.2020

STINSON

STINSON LLP \ STINSON.COM